

SERVICE PROVIDER/PROFESSIONAL SERVICES AGREEMENT

THIS **AGREEMENT** is made and entered into in duplicate this ____ day of _____, 20__, by and between SUMMIT COUNTY, a political subdivision of the State of Utah, whose address is 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017 ("**County**"), and _____, a _____, whose address is _____ ("**Service Provider**"). The County and Service Provider each is a "**Party**" and collectively they are referred to as the "**Parties**".

WITNESSETH:

WHEREAS, the County desires to have certain services and tasks performed as set forth below requiring specialized skills and other supportive capabilities; and,

WHEREAS, sufficient County resources are not available to provide such services; and,

WHEREAS, the service provided exposes the County to minimal insurance risk; and,

WHEREAS, the Service Provider represents that the Service Provider is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES.

The Service Provider shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Service Provider responsibilities throughout this Agreement and as set forth in the "Scope of Services" attached hereto as "Addendum A" and incorporated herein (the "Project"). Fees shall be calculated pursuant to the Fee Schedule, attached hereto and incorporated herein as "Addendum B". The total fee shall not exceed ____ Thousand Dollars (\$_).

2. **TERM.**

The term of this Agreement shall commence on the date of execution of this Agreement and shall terminate on _____, unless extended by mutual written agreement of the Parties.

3. **COMPENSATION AND METHOD OF PAYMENT.**

- A. No payment shall be made for any service rendered by the Service Provider except for services identified and set forth in this Agreement.
- B. For all “extra” work the County requires, the County shall pay the Service Provider for work performed under this Agreement as subsequently agreed to by both parties in writing.
- C. The Service Provider shall submit to the County Manager or his designee on forms approved by the County Manager, an invoice for services rendered during the pay period. The County shall make payment to the Service Provider within thirty (30) days thereafter.

4. **REPORTS AND INSPECTIONS.**

- A. The Service Provider, at such times and in such forms as the County may require, shall furnish the County such statements, records, reports, data, and information as the County may request pertaining to matters covered by this Agreement.
- B. The Service Provider shall at any time during normal business hours and as often as the County may deem necessary, make available for examination of all its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the County or its designated authorized representatives to audit and inspect other data relating to all matters covered by this Agreement. The County may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Service Provider’s activities, which relate directly or indirectly, to this Agreement.

5. **INDEPENDENT CONTRACTOR RELATIONSHIP.**

- A. The parties intend that an independent Service Provider/County relationship will be created by this Agreement. No agent, employee, or representative of the Service Provider shall be deemed to be an employee, agent, or representative of the County for any purpose, and the employees of the Service Provider are not entitled to any of the benefits the County provides for its employees. The Service Provider will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors or representatives during the performance of this Agreement.
- B. In the performance of the services herein contemplated the Service Provider is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work

contemplated herein must meet the approval of the County and shall be subject to the County's general rights of inspection and review to secure the satisfactory completion thereof.

6. SERVICE PROVIDER EMPLOYEE/AGENTS.

The County may at their sole discretion require the Service Provider to remove an employee(s), agent(s), or representative(s) from employment on this Project. The Service Provider may, however, employ that (those) individuals(s) on other non-County related projects.

7. HOLD HARMLESS INDEMNIFICATION.

- A. The Service Provider shall indemnify and hold the County and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the County arising out of, in connection with, or incident to the execution of this Agreement and/or the Service Provider's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the County, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Service Provider; and provided further, that nothing herein shall require the Service Provider to hold harmless or defend the County, its agents, employees and/or officers from any claims arising from the sole negligence of the County, its agents, employees, and/or officers. The Service Provider expressly agrees that the indemnification provided herein constitutes the Service Provider's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of Service Provider claims or recovers compensation from the County for a loss or injury that Service Provider would be obligated to indemnify the County for under this Agreement. This limited waiver has been mutually negotiated by the Parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.
- B. Service Provider does hereby remise, release, forever discharge and covenant not to sue SUMMIT COUNTY, its agents, servants, employees, officers, successors and assigns, and/or heirs, executors and administrators, and also any and all other persons, associations and corporations, whether herein named or referred to or not, and who, together with the above named, may be jointly and severally liable to the Service Provider, of and from any and all, and all manner of, actions and causes of action, rights, suits, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity, including

claims for contribution, arising from and by reason of any and all KNOWN AND UNKNOWN, FORESEEN AND UNFORESEEN bodily and personal injuries or death, damage to property, and the consequences thereof, which heretofore have been, and which hereafter may be sustained by the Service Provider or by any and all other persons, associations and corporations, whether herein named or referred to or not, from all liability arising out of, in connection with, or incident to the execution of this Agreement

- C. No liability shall attach to the County by reason of entering into this Agreement except as expressly provided herein.

8. INSURANCE.

Service Provider, at its own expense, shall maintain sufficient liability insurance against claims or lawsuits which result from the actions of Service Provider or its employees or agents. Service Provider shall provide to the County an Endorsement to the Insurance Policy designating the County as an additional primary insured. Such Endorsement shall provide that such insurance coverage is primary and not contributory to any insurance policy maintained by the County.

9. TREATMENT OF ASSETS; OWNERSHIP OF WORK PRODUCT.

Title to all property furnished by the County shall remain in the name of the County and the County shall become the owner of the work product and other documents, if any, prepared by the Service Provider pursuant to this Agreement (contingent on County's performance hereunder). Ownership of the work shall apply regardless of the form of the work product, including, but not limited to, writings, drawings, reports, any form of video or audio, etc. Upon final payment by County to Service Provider, Service Provider shall deliver to County all work product applicable to the services provided under this Agreement including, but not limited to, work product in draft form.

10. COMPLIANCE WITH LAWS.

- A. The Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- B. The Service Provider specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.

11. **COMPLIANCE WITH APPLICABLE LAWS.**

Service Provider, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services. Such laws include, without limitation, the following:

- A. Sexual Harassment. Service Provider agrees to abide by Utah Executive Order, dated June 30, 1989, which prohibits sexual harassment in the work place.
- B. State Discrimination Laws. Summit County is an Equal Opportunity Employer. Service Provider agrees to comply with UCA Title 13, Chapter 7, which prohibits discrimination on the basis of race, color, sex, religion, ancestry, or national origin. If any assignment or subcontracting has been authorized by the County, said assignment or subcontract shall include appropriate safeguards against discrimination. Service Provider shall take such action as may be required to ensure full compliance with the provisions of this paragraph.
- C. Title VII of the Civil Rights Act of 1964. Service Provider agrees to comply with Title VII of the Civil Rights Act of 1964 (Pub.L. 88-352), as amended, which prohibits discrimination on the basis of sex, race, color, or national origin.
- D. Age Discrimination Act of 1975. Service Provider agrees to comply with the Age Discrimination Act of 1975 (Pub.L. 94-135), as amended, which prohibits discrimination on the basis of age.
- E. Section 504 of the Rehabilitation Act of 1973. Service Provider agrees to comply with Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, which prohibits discrimination on the basis of disability.
- F. Americans with Disabilities Act. Service Provider agrees to comply with the Americans with Disabilities Act (Pub. L. 101-336, 28 CFR Part 36), as amended, in regard to employment, public accommodations, provisions of services, telecommunications, and other requirements.
- G. Fair Labor Standards Act. Service Provider agrees to comply with the Fair Labor Standards Act, including minimum wage, child labor limitations, and the overtime provisions of the Wage and Hour Division.
- H. Employment Eligibility Verification. Service Provider agrees to comply with the Immigration and Naturalization requirement to maintain a signed copy of the I-9 Employment Eligibility Verification form for each employee.

- I. Identity Documents and Verification. In making and performing this Agreement, Service Provider agrees to comply with the provisions of UCA §§ 63G-12-101 thru 402, *as amended*. Service Provider shall register and participate in the Status Verification System before entering into a contract with the county as required by Utah Code Ann. § 63G-12-302. The Status Verification System is an electronic system operated by the federal government, through which an authorized official of a state agency or a political subdivision of the state may inquire, by exercise of authority delegated pursuant to 8 U.S.C. § 1373, to verify the citizenship or immigration status of an individual within the jurisdiction of the agency or political subdivision. Service Provider is individually responsible for verifying the employment status of only new employees who work under Service Provider's supervision or direction and not those who work for another contractor or subcontractor, except each contractor or subcontractor who works under or for another contractor shall certify to the main contractor by affidavit that the contractor or subcontractor has verified, through the Status Verification System, the employment status of each new employee of the respective contractor or subcontractor. The Service Provider shall comply in all respects with the provisions of Utah Code Ann. § 63G-12-302. Service Providers's failure to so comply may result in the immediate termination of its contract with the County.
- J. Summit County Business License. Unless otherwise exempt, Service Provider agrees to obtain a Summit County business license as set forth in Summit County Code, Title 3.

12. ASSIGNMENTS/SUBCONTRACTING/THIRD PARTIES.

- A. The Service Provider shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the County, and it is further agreed that said consent must be sought in writing by the Service Provider not less than thirty (30) days prior to the date of any proposed assignment. The County reserves the right to reject without cause any such assignment.
- B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and property bidding procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.
- C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the County.
- D. Any services and information provided by Service Provider are being furnished solely for the County's benefit and only with respect to the Project that is the subject of this Agreement and no third party may rely thereon and no third party shall be construed to be a beneficiary of this Agreement.

13. CHANGES.

Either Party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either Party unless such change or addition be in writing and signed by both Parties. Such amendments shall be attached to and made part of this Agreement.

14. MAINTENANCE AND INSPECTION OF RECORDS.

- A. The Service Provider shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by the County, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.
- B. The Service Provider shall retain all books, records, documents and other material relevant to this Agreement for six (6) years after its expiration. The Service Provider agrees that the County or its designees shall have full access and right to examine any of said materials at all reasonable times during said period.

15. POLITICAL ACTIVITY PROHIBITED.

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

16. NO OFFICER OR EMPLOYEE INTEREST.

It is understood and agreed that no officer or employee of the County has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer or employee of Service Provider or any member of their families shall serve on any County board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises Service Provider's operations, or authorizes funding or payments to Service Provider.

17. ETHICAL STANDARDS.

Service Provider represents that it has not: (a) provided an illegal gift to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide

commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Summit County ordinances.

18. PUBLIC FUNDS AND PUBLIC MONIES.

- A. Definitions: “Public funds” and “public monies” mean monies, funds, and accounts, regardless of the source from which they are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body. The terms also include monies, funds or accounts that have been transferred by any of the aforementioned public entities to a private contract provider for public programs or services. Said funds shall maintain the nature of “public funds” while in Service Provider’s possession.
- B. Service Provider’s Obligation: Service Provider, as recipient of “public funds” and “public monies” pursuant to this and other contracts related hereto, expressly understands that it, its officers, and employees are obligated to receive, keep safe, transfer, disburse and use these “public funds” and “public monies” as authorized by law and this Agreement for the provision of services to Summit County. Service Provider understands that it, its officers, and employees may be criminally liable under Utah Code Ann. § 76-8-402, for misuse of public funds or monies. Service Provider expressly understands that County may monitor the expenditure of public funds by Service Provider. Service Provider expressly understands that County may withhold funds or require repayment of funds from Service Provider for contract noncompliance, failure to comply with directives regarding the use of public funds, or for misuse of public funds or monies.

19. NOTICE TO RETIREES OF UTAH RETIREMENT SYSTEMS (“URS”).

County is a URS “participating employer.” Entering into this Agreement with County may affect a URS retiree’s retirement benefits including, but not limited to, cancellation of the retiree’s “retirement allowance” due to “reemployment” with a “participating employer” pursuant to Utah Code Ann. § 49-11-504 to -505. In addition, Service Provider is required to immediately notify County if a retiree of URS is the Service Provider; or an owner, operator, or principal of the Service Provider.

20. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

- A. All work proposed by the Service Provider is based on current government ordinances and fees in effect as of the date of this Agreement.
- B. Any changes to current government ordinances and fees which affect the scope or cost of the services proposed may be billed as an “extra” pursuant to Paragraph 3(C), or deleted from the scope, at the option of the County.
- C. The County shall make provision for access to the property and/or Project and adjacent properties, if necessary for performing the services herein.

21. TERMINATION.

- A. Either Party may terminate this Agreement, in whole or in part, at any time, by at least thirty (30) days written notice to the other Party. The Service Provider shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Service Provider shall promptly submit a termination claim to the County. If the Service Provider has any property in its possession belonging to the County, the Service Provider will account for the same, and dispose of it in a manner directed by the County.
- B. If the Service Provider fails to perform in the manner called for in this Agreement, or if the Service Provider fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within three (3) days written notice thereof, the County may immediately terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Service Provider setting forth the manner in which the Service Provider is in default. The Service Provider will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

22. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the first page of this Agreement.

23. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing Party shall be entitled to recover from the other Party, in addition to any other relief to which such party may be entitled, reasonable attorney’s fees and other costs incurred in that action or proceeding.

24. JURISDICTION AND VENUE.

- A. This Agreement has been and shall be construed as having been made and delivered with the state of Utah, and it is agreed by each Party hereto that this Agreement shall be governed by laws of the state of Utah, both as to interpretation and performance.
- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

25. SEVERABILITY.

- A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with any statutory provision of the state of Utah, said provision, which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.

26. ENTIRE AGREEMENT.

The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both Parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both Parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the Parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

27. WAIVER.

No failure of the County or Service Provider to exercise any power given to it under this Agreement, or to insist upon strict compliance by the other Party with any obligation, responsibility, or condition under it, and no custom or practice of the parties at variance with its terms shall constitute a waiver of that Party's right to demand exact compliance with those terms upon any subsequent default.

28. WARRANTIES.

Service Provider hereby warrants that the services performed by its employees will be performed substantially in conformance with the standard of care observed by similarly situated companies providing services under similar conditions. In the event of a breach of the foregoing warranty, Service Providers' sole obligation shall be to use

commercially reasonable efforts to re-perform the services in compliance with such warranty, if possible, or at the option of the County, Service Provider shall refund the fees paid by the County for the services rendered.

29. CONFIDENTIALITY.

The Parties agree that (a) all knowledge and information that either Party may receive from the other, including its employees or other consultants, or by virtue of the performance of services under and pursuant to this Agreement, relating to products, processes, apparatus, costs, technical data, business affairs of the Parties, and (b) all information provided by either Party in reports of work done, together with any other information acquired by or as a direct result of this Agreement and during the of such, shall for all time and for all purposes be regarded by the Parties as strictly confidential and held by each in confidence, and solely for the Parties' benefit and use, and shall not be used by either Party, or directly or indirectly disclosed by either Party to any person whatsoever outside the scope of this Agreement except with the other Party's prior permission. This provision does not apply to documents that are releasable by either Party under the Government Records Access and Management Act ("GRAMA"), UCA §63G-2-101 et seq.

30. GOVERNMENT RECORDS ACCESS MANAGEMENT ACT.

Service Provider acknowledges that County is a governmental entity subject to the Utah Government Records Access and Management Act ("GRAMA"), Utah Code Ann. §§ 63G-2-101 to -901. As a result, County is required to disclose certain information and materials to the public, upon request. Service Provider agrees to timely refer all requests for documents, materials and data in its possession relating to this Agreement and its performance to the County for response by County.

Generally, any document submitted to County is considered a "public record" under GRAMA. Any person who provides to the County a record that the person believes should be protected under subsection 63G-2-305(1) or (2) shall provide both: (1) a written claim of business confidentiality and (2) a concise statement of reasons supporting the claim of business confidentiality. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury.

31. INTERPRETATION; NOTICES.

The terms of this Agreement constitute the written expression of the mutual agreement of the Parties and shall be construed neutrally and not for or against either Party. Notices and communications given and made in connection with this Agreement may be given and made by any reasonable means including facsimile or email if reasonable under the circumstances.

32. GOVERNMENTAL IMMUNITY.

County is a body corporate and politic of the State of Utah, subject to the

Governmental Immunity Act of Utah (the "Act"), Utah Code Ann. §§ 63G-7-101 to -904. The Parties agree that County shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

33. NON-FUNDING CLAUSE.

County intends to request the appropriation of funds to be paid for the services provided by Service Provider under this Agreement. If funds are not available beyond December 31 of any effective fiscal year of this Agreement, the County's obligation for performance of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on the County as to succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Service Provider, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void.

If funds are not appropriated for a succeeding fiscal year to fund performance by County under this Agreement, County shall promptly notify Service Provider of said non-funding and the termination of this Agreement, and in no event, later than 30 (thirty) days prior to the expiration of the fiscal year for which funds were appropriated.

34. COUNTERPARTS.

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile shall be deemed an original signed copy of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

SUMMIT COUNTY

Thomas C. Fisher
County Manager

Approved as to form:

David L. Thomas
Chief Civil Deputy

SERVICE PROVIDER

Tax ID#: _____

Name, Title

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 20__, personally appeared before me _____, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he is the (title) ____ of _____, and acknowledged that he/she signed it voluntarily for its stated purpose as _____ (title) for _____, a _____ corporation.

Notary Public

Commission Expires: _____

ADDENDUM “A”

SCOPE OF SERVICES

(Request for Proposals & Proposal)

ADDENDUM “B”

PAYMENT SCHEDULE FOR “EXTRA” WORK