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**REQUEST FOR PROPOSALS**  
**to**  
**The Utah State Legislature**

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**Issued by:**

**The Executive Appropriations Committee of**  
**the Utah State Legislature**



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**Consultant for Feasibility Study on Privatization of Portions of the**  
**Utah State Hospital and the Utah State Developmental Center**

**2009-02**

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## **I. RFP CONTACT**

The Executive Appropriations Committee of the Utah State Legislature (EAC), is the issuer of this RFP and all subsequent addenda to this RFP. Inquiries regarding this RFP should be directed, in writing, to:

Thomas R. Vaughn  
Associate General Counsel  
Office of Legislative Research and General Counsel  
Email: tomvaughn@utah.gov

## **II. DEFINITIONS**

As used in this RFP:

1. "EAC" means the Executive Appropriations Committee of the Utah State Legislature.
2. "FACILITIES" means the forensic units of the USH and the semi-secure units of the USDC.
3. "ICF/MR" means an Intermediate Care Facility for the Mentally Retarded.
4. "LEGISLATURE" means the Utah State Legislature, its members, staff, staff offices, and all employees and agents of the Utah State Legislature and of its staff offices.
5. "OLRGC" means the Office of Legislative Research and General Counsel, a staff office of the Utah State Legislature.
6. "RFP" means this Request for Proposals to the Utah State Legislature for "Consultant for Feasibility Study on Privatization of Portions of the Utah State Hospital and the Utah State Developmental Center 2009-02."
7. "USDC" means the Utah State Developmental Center.
8. "USH" means the Utah State Hospital.

## **III. PURPOSE OF REQUEST FOR PROPOSALS**

The purpose of this RFP is to enter into a contract with a qualified person or entity to:

1. Conduct a feasibility study to determine whether one or both of the FACILITIES

can be operated by a private (non-governmental) entity in a manner that will result in one of the following:

- a. the provision of services that are currently provided at or for the FACILITIES, at the same cost at which those services are currently provided at or for the FACILITIES;
  - b. a savings to the state while providing services at the same level or a higher level than is currently provided at or for the FACILITIES; or
  - c. the provision of services at a higher level than is currently provided at or for the FACILITIES, at the same cost at which current services are provided at or for the FACILITIES.
2. Advise the EAC of the best options and methods to obtain a result described in Section "III.1" of this RFP and the benefits and drawbacks of each option and method.
  3. Provide the EAC with a detailed report of the data, assumptions, financial analysis, and other criteria considered in making the determinations and rendering the advice described in Sections "III.1" and "III.2" of this RFP.

#### **IV. QUALIFICATIONS**

A person or entity responding to this RFP must be able to satisfy the EAC of the person's or entity's:

1. Knowledge and expertise that will enable the person or entity to make the determinations and provide the advice described in Section III, Purpose of Request for Proposals.
2. Ability to gather, understand, and organize a large amount of information in a short time.
3. Ability to determine and understand the current management, operation, and budget of the USH, the USDC, and the FACILITIES.
4. Ability to determine and understand the services and service levels currently provided at and for the FACILITIES.
5. Understanding of the federal and state legal requirements relating, generally, to an ICF/MR and a state mental hospital and, specifically, to the USH, the USDC, and the FACILITIES.

## **V. EXPECTATIONS**

In addition to making the determinations and providing the advice described in Section III, Purpose of Request for Proposals, the person or entity that is awarded the contract under this RFP is expected to:

1. Quickly gain an in-depth understanding of the current operation and budget of the USH, the USDC, and the FACILITIES and the privatization options available for the FACILITIES, including an analysis of options available from entities that manage and operate similar facilities on a private basis.
2. Consider options that may include operating the FACILITIES at their current locations or at other locations.

## **VI. DESCRIPTION OF USH, USDC, and the FACILITIES**

### **1. USH**

The USH is located on a 314 acre campus in Provo, Utah. The USH is a 354 bed psychiatric facility that operates under the direction of the Division of Substance Abuse and Mental Health, within the Utah Department of Human Services. The USH provides residential mental health treatment to people with severe mental illness who are referred from 11 community mental health centers throughout the state. The USH provides treatment to children from ages 6 through 18 and to adults. The USH also provides residential mental health services at forensic units to people committed by the courts for mental health treatment or evaluation.

### **2. Forensic Units of the USH**

The forensic units at the USH consist of four maximum security inpatient psychiatric treatment units that house, and provide services to, 100 male and female patients. The patients are placed at the forensic units by court order, pursuant to the Utah Criminal Code. The majority of the patients at the forensic units have been found not competent to stand trial and are sent to have their competency restored. Other patients have been adjudicated by the courts and sent to the forensic units for treatment of their mental illness. Treatment at the forensic units of the USH includes a combination of medication; therapy on an individual, group, and family level; occupational therapy; physical therapy; and work opportunities. The forensic units of the USH also have eight beds dedicated to house the most dangerous patients from the USDC. These patients are housed in the forensic units of the USH, because of the necessity of providing a secure facility for these patients.

3. USDC

The USDC is the only state-operated ICF/MR in Utah. The USDC houses approximately 260 people. The Division of Services for People with Disabilities determines eligibility for, and the appropriateness of, placement in the USDC based on criteria set forth in federal and state law. The USDC provides its clients with intensive residential care and treatment services on a 24-hour per day, seven-day per week basis. These services include, but are not limited to, on-site medical and dental services, recreational programs, physical therapy, assistive technology, speech/audiology services, psychology services, social work, music therapy, food service, sewing room services, security services, volunteer services, and a client library. Additionally, the USDC provides community job placement assistance, work crews, training in independent living skills, and other life skills. The USDC also provides services to people who reside outside of the facility, including those who reside in rural areas of the state. The USDC is located at 895 North, 900 East, American Fork, Utah, 84003.

4. Semi-Secure Units of the USDC.

The USDC has five semi-secure units. None of these units are completely secure or "lock-down" units, because Medicaid will not help pay the costs of treating patients in secure facilities. Individuals who are considered too dangerous to house in a semi-secure unit are transferred to the eight beds reserved by USDC at the secure forensic units of the USH. Medicaid does not help pay the costs of treating the patients placed at the secure forensic units of the USH. Security at the semi-secure units of the USDC may include time-delay locks, higher staffing, and partially fenced areas. The two units at the USDC that have the highest level of security are the Woodland unit and the Transitional Living Center. The Woodland unit houses up to eight adults and the Transitional Living Center houses up to eight teenagers. When it is determined safe to do so, the patients in these units are moved to the Oakridge unit or the Quail Run unit. The Oakridge unit houses up to 38 patients. These patients are usually adults, but older teenagers are sometimes also housed in this unit. The Quail Run unit also houses up to 38 patients. These patients are usually older teenagers, but adults are sometimes also housed in this unit. Only some of the patients in the Oakridge and Quail Run units are considered potentially dangerous. Extra staffing is assigned to those patients. The remainder of the patients in the Oakridge and Quail Run units are part of the general population of the USDC. When it is determined safe to do so, the patients in these units are moved to the Twin Home #4 unit. This unit houses up to ten adults or older teenagers.

## **VII. ANTICIPATED TIMELINE**

It is anticipated that the following timeline will be followed with respect to this RFP and the resulting contract:

RFP Opening Date: November 20, 2009 at 9:00 a.m.

Deadline for Notice of Intent to Participate in Site Visit: December 10, 2009 at 3:00 p.m.

Site Visitation Date: December 14, 2009 at 9:00 a.m.

Final Date for Submission of Questions: December 21, 2009 at 9:00 a.m.

Final Date for Addenda to RFP: January 5, 2010 at 9:00 a.m.

RFP Closing Date: January 19, 2010 at 3:00 p.m.

Opening of Responses to RFP: January 20, 2010 at 9:00 a.m.

Oral Presentations (if necessary): January 25, 2010 at 9:00 a.m.

Consideration of, and Award of, Contract: February 1, 2010 at 9:00 a.m.

Delivery of Completed Feasibility Study: June 1, 2010 at 9:00 a.m.

Formal Presentation of Study: June 22, 2010 at 9:00 a.m.

## **VIII. SITE VISITS**

Site visits of the FACILITIES are scheduled for December 14, 2009, beginning at 9:00 a.m. Proposers are not required to attend site visits. These visits are offered in case the proposer determines that a site visit would better assist the proposer in preparing a response to this RFP. Expenses incurred by a person or entity for a site visit will be borne by the person or entity. Anyone desiring to participate in a site visit must, no later than December 10, 2009 at 3:00 p.m., provide notice of their intent to visit the site by sending an email to: [tomvaughn@utah.gov](mailto:tomvaughn@utah.gov). If no notice is received by that date and time, the site visits will be cancelled.

## **IX. SUBMISSION OF PROPOSALS**

### **1. SUBMISSION TIME, PLACE, AND MANNER**

Twenty written copies of the proposal and one electronic copy (in PDF format) must be received at the following address on or before January 19, 2010 at 3:00 p.m. MST:

Attention: Thomas Vaughn  
Associate General Counsel  
Office of Legislative Research and General Counsel  
Utah State Capitol Complex  
W210 House Building  
Salt Lake City, Utah, 84114

2. LATE SUBMISSIONS

Proposals received after January 19, 2010 at 3:00 p.m. MST will not be considered.

**X. ORGANIZATION OF PROPOSAL**

The proposal must include the following information and must be organized and tabbed, with labels for the following sections, in the following order:

1. PROPOSER INFORMATION

The first page of the proposal must include the following information, in the following format:

a. Title: "Response to RFP for Consultant for Feasibility Study on Privatization of Portions of the Utah State Hospital and the Utah State Developmental Center 2009-02."

b. Proposer Summary Information:

Name:

Contact Person:

Address:

Telephone:

Fax:

Email:

Federal Tax ID Number:

c. Description of Organization of the Proposer:

Describe your organization, including organizational structure, age of the organization, location of offices, website, experience, financial stability, and qualifications of key personnel to be assigned to the project.

d. List of Owners:

Provide a complete list of owners of the proposer's organization.

e. References:

List a minimum of five references, including the name of a contact person, name of organization, address, and telephone number. At least three of the

references must be able to specifically address the proposer's qualifications and expertise that will enable the proposer to conduct the feasibility study and fulfill the qualifications and expectations described in this RFP.

2. EXECUTIVE SUMMARY

A one or two page executive summary that briefly describes the essence of the proposal and highlights the major features of the proposal. Proprietary information requests should be made in this section.

3. QUALIFICATIONS

A description of the proposer's qualifications to perform and fulfill the purposes and expectations of the RFP.

4. DETAILED RESPONSE

This section constitutes the major portion of the proposal and must include the following information:

- a. A complete narrative of the proposer's assessment of the work to be performed, the proposer's expertise and proposed methodology, and the resources necessary to complete the work and fulfill the requirements of this RFP.
- b. A description of the proposer's understanding of the overall purposes and expectations of this RFP.
- c. A clear description of any proposed options or alternatives for accomplishing the purposes and expectations of this RFP.
- d. A specific point-by-point response to each requirement of this RFP and all addenda, in the order the requirement is listed in this RFP and all addenda, including a statement that the proposer agrees to comply with that requirement. A response to this RFP that fails to clearly respond to, and agree to comply with, each requirement of this RFP and all addenda may be determined to be non-responsive and invalid.
- e. A proposed work plan that includes a basic plan and time schedule identifying the activities that must occur in order to complete the work required in this RFP and the work included in the proposal.
- f. The research methodology that the proposer will use to accomplish each

research task and to satisfy and complete the purposes and expectations described in this RFP.

- g. An assessment of, and evidence supporting, the proposer's ability and commitment to accomplish the purposes and expectations of this RFP without preconceived notions or subjective bias.

## 5. PROPOSED BUDGET

A detailed, enumerated draft budget for the proposal. This budget will include hourly rates that will be charged for each portion of the study and a maximum total amount that proposer may charge for the study, including all expenses and charges related to the study.

## 6. CONFLICTS

- a. Identify any benefit or harm that may come, or continue to accrue, to the proposer if the FACILITIES remain under public control or if the FACILITIES are privatized. Identify any association that the proposer has, or anticipates having, with a principal, person, or entity whose interests may be benefitted or harmed if the FACILITIES remain under public control or if the FACILITIES are privatized.
- b. The proposer shall include a signed statement indicating that the proposer has no relationship with any person or entity that would directly or indirectly interfere with fair competition for an award under this RFP.

## XI. OTHER REQUIREMENTS

The proposer's name must appear on each page of the proposal. Erasures, cross-outs, alterations, corrections, or other changes must be initialed by the person who signs the proposal. The proposal must contain evidence that the person who signs the proposal is authorized to bind the proposer to fulfill the proposal and to conduct negotiations and discussions relating to the proposal on the proposer's behalf.

## XII. CONTRACT

The successful proposer will be required to enter into the contract attached to this RFP as Attachment "A". The contract will be modified prior to execution of the contract to include the name of the successful proposer, specific details relating to the proposer and the proposer's response to this RFP, and correct dates and times.

### **XIII. PROPOSAL AND PRICE GUARANTEE PERIOD**

Each proposal submitted in response to this RFP, and the prices included in that proposal, are binding on the proposer from the date and time of the closing of this RFP until the later of 90 days after the day on which the RFP closes, or, if the proposer's proposal is accepted, upon completion of the services that the proposer is required to provide under this RFP and the attached contract.

### **XIV. ORAL PRESENTATIONS**

The EAC may require each proposer, at the proposer's expense, to appear at a committee meeting to make an oral presentation of, and answer questions regarding, the proposer's response to this RFP. The meeting for this presentation is currently scheduled for January 25, 2010 at 9:00 a.m., at the Utah State Capitol Complex.

### **XV. QUESTIONS**

Questions, requests for changes to this RFP, and requests for clarification must be submitted by email to [tomvaughn@utah.gov](mailto:tomvaughn@utah.gov) on or before December 21, 2009 at 9:00 a.m. Responses to substantive questions, responses to requests for clarification, and responses to requests for changes will be provided in the form of an addendum to this RFP.

### **XVI. ADDENDA**

All addenda to this RFP will be posted on the Utah Legislature's website at:

<http://le.utah.gov>

Addenda, and notifications of addenda, are not required to be provided in any other manner. All proposers, potential proposers, and other interested persons are required to check the website on a regular basis in order to receive notice of, or a copy of, any addendum.

The EAC may attempt to, but is not required to, provide email notification of an addendum to any person who sends a request to receive notification to:

[tomvaughn@utah.gov](mailto:tomvaughn@utah.gov)

Each proposer is required to acknowledge receipt of each addendum by email to:

[tomvaughn@utah.gov](mailto:tomvaughn@utah.gov)

## **XVII. PROTECTED INFORMATION**

Protection or disclosure of information submitted in response to this RFP is governed by Title 63G, Chapter 2, Government Records Access and Management Act. A proposer who desires to request protected status of any information submitted in the proposer's response to this RFP must specifically identify the information that it desires to protect and the reasons that the information should be afforded protected status under the law. In making this request, the proposer shall comply with the requirements of Utah Code Section 63G-2-305, Utah Code Section 63G-2-309, and all other applicable requirements of law. EAC's decision regarding the protected status of information shall be final and binding on the proposer. Each proposer will indemnify, defend, and hold forever harmless, the Utah Legislature, its members, offices, and staff, from any and all liability relating to the disclosure of information included in the proposer's response to this RFP, even if the proposer requested protected or other confidential status for the information.

## **XVIII. MODIFICATIONS TO, OR WITHDRAWAL OF, PROPOSAL**

### **1. PROCEDURE**

A proposer may modify or withdraw the proposer's response to this RFP at any time before the closing date and time of this RFP, by providing a written modification or a written statement withdrawing the proposal to OLRGC. Except as provided in Section "XVIII.2" of this RFP, modifications or letters of withdrawal received by the OLRGC after the closing date and time for this RFP will be rejected as invalid. Except as provided in Section "XVIII.2" of this RFP, the version of a response to this RFP, as it exists at the closing date and time of this RFP, will be binding on the proposer.

### **2. EXCEPTION**

Discussions may be conducted with offerors (proposers) who submit proposals determined to be reasonably susceptible of being selected for award, but proposals may be accepted without discussions. Pursuant to Utah Code Subsection 63G-6-408(5)(b), ". . . revisions may be permitted after submissions and before the contract is awarded for the purpose of obtaining best and final offers." Pursuant to Utah Code Subsection 63G-6-408(5)(c), "[i]n conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors." Revisions to proposals after the closing date and time of this RFP may only be permitted by written permission of the RFP contact. Each proposer will receive equal treatment. If EAC decides to enter into discussions with proposers after the closing date of this RFP, but before award of the contract, EAC will inform each proposer who submitted a timely, valid proposal of the schedule for these discussions and procedures for submission of a revised

proposal.

**XIX. COST OF RESPONDING TO RFP AND CONTRACT NEGOTIATIONS**

All expenses relating to responding to this RFP, including, but not limited to, preparing, submitting, and presenting a proposal, attending meetings in relation to this RFP, site visit expenses, and all travel, dining, lodging, and communication expenses will be borne by the proposer. The LEGISLATURE assumes no liability for any costs incurred by a proposer in responding to this RFP.

All expenses of the successful proposer relating to conducting contract negotiations, including, but not limited to, drafting, research, legal review, preparation, attending meetings, site visits, travel, dining, lodging, and communication expenses will be borne by the proposer. The LEGISLATURE assumes no liability for any costs incurred by a proposer relating to contract negotiations.

Proposer will not bill the LEGISLATURE for any expense incurred prior to the time that the contract is signed by all parties.

**XX. RESEARCH REGARDING PROPOSER**

The EAC reserves the right to conduct a background check of each person or entity that may assist in providing services under a response to this RFP, to determine the person's fitness and qualifications to fulfill the requirements of this RFP. The EAC may reject any response to this RFP that involves services from a person or entity that the EAC determines is unfit or unqualified to fulfill the requirements of this RFP. Upon request by EAC, proposer shall obtain, at proposer's expense, a criminal background check from the Utah Department of Public Safety, Bureau of Criminal Investigation for the proposer, each officer of the proposer, and each person associated with the proposer who will perform the work described in this RFP. Proposer will provide EAC with the results of each criminal background check obtained at the request of EAC.

## **XXI. PROPOSAL EVALUATION CRITERIA**

The EAC will evaluate each response to this RFP and will award the contract. The EAC will evaluate each proposer and each response to this RFP based on the following factors:

<b>Points</b>	<b>Criteria</b>
50	The qualifications, level of expertise, and experience of the proposer that will enable the proposer to most effectively fulfill the purposes, expectations, and requirements of this RFP.
30	The evidence that establishes that the proposer understands the concepts included in this RFP and the purposes, expectations, and requirements of this RFP.
20	Overall cost of the feasibility study described in this RFP in relation to the purposes, expectations, and requirements of this RFP.

## **XXII. MISCELLANEOUS RESERVATION OF RIGHTS**

The EAC reserves the right to not award a contract to any of the proposers who respond to this RFP, to cancel this RFP at any time, or to issue a new RFP for the same or similar services. The EAC reserves the right to reject and not consider any response to this RFP that does not strictly comply with the requirements of this RFP or with the requirements of law.

## **XXIII. RESTRICTIONS ON PUBLICITY**

The successful proposer may not make any announcement regarding the award of the contract relating to this RFP without the prior written approval of the EAC. Except as specifically authorized in the contract, the successful proposer may not refer to the Utah Legislature or use any data, pictures, or other representation of the Utah Legislature in its advertising, marketing, or other promotional efforts.

## **XXIV. DEVIATIONS AND EXCEPTIONS**

The proposer shall describe, in writing, any deviations or exceptions from the requirements, terms, and conditions of this RFP. This description shall be in a separate document that is attached to the proposer's response to this RFP and is signed by the proposer or the proposer's authorized agent. In the absence of such a document, the proposal shall be interpreted to agree to the requirements, terms, and conditions of this RFP and the proposer shall be held liable for any deviations therefrom.

# **Agreement for Consultation Services:**

## **Feasibility Study on Privatization of Portions of the Utah State Hospital and the Utah State Developmental Center**

**2009-02**

### **1. DEFINITIONS**

As used in this AGREEMENT:

- 1.1 "AGREEMENT" means this "Agreement for Consultation Services: Feasibility Study on Privatization of Portions of the Utah State Hospital and the Utah State Developmental Center 2009-02" between the LEGISLATURE and (consultant).
- 1.2 "(Consultant)" means (consultant), an independent contractor.
- 1.3 "EAC" means the Executive Appropriations Committee of the LEGISLATURE.
- 1.4 "FACILITIES" means the forensic units of the USH and the semi-secure units of the USDC.
- 1.5 "LEGISLATURE" means the Utah State Legislature.
- 1.6 "LFA" means the Office of Legislative Fiscal Analyst, a staff office of the LEGISLATURE.
- 1.7 "RFP" means the Request for Proposals to the Utah State Legislature, issued by the EAC, for "Consultant for Feasibility Study on Privatization of Portions of the Utah State Hospital and the Utah State Developmental Center 2009-02", and all addenda thereto.
- 1.8 "STAFF OFFICE" means the LFA, the Office of Legislative Research and General Counsel, the Office of Legislative Auditor General, Legislative Printing, the staff office of the Utah State House of Representatives, and the staff office of the Utah State Senate.
- 1.9 "USDC" means the Utah State Developmental Center.
- 1.10 "USH" means the Utah State Hospital.

## **2. PARTIES**

This AGREEMENT is between the LEGISLATURE and (consultant).

## **3. DUTIES OF (consultant)**

In exchange for the consideration described Section 4 of this AGREEMENT, (consultant) shall:

- 3.1** Conduct a feasibility study to determine whether the FACILITIES can be privatized in a manner that will result in one of the following:
  - 3.1.1** The provision of services that are currently provided at or for the FACILITIES, at the same cost at which those services are currently provided at or for the FACILITIES.
  - 3.1.2** A savings to the state while providing services at the same level or a higher level than is currently provided at or for the FACILITIES.
  - 3.1.3** The provision of services at a higher level than is currently provided at or for the FACILITIES, at the same cost at which current services are provided at or for the FACILITIES.
- 3.2** Advise the EAC of the best options and methods to obtain a result described in Section 3.1 of this AGREEMENT and the benefits and drawbacks of each option and method.
- 3.3** Provide the EAC with a detailed report of the data, assumptions, financial analysis, and other criteria considered in making the determinations and rendering the advice described in Sections 3.1 and 3.2 of this AGREEMENT.
- 3.4** Quickly gain an in-depth understanding of the current operation and budget of the FACILITIES and the privatization options available for the FACILITIES.
- 3.5** Complete an analysis of options available from entities that manage and operate facilities similar to the FACILITIES on a private basis.
- 3.6** Analyze options that may include operating the FACILITIES at their current locations or at another location.
- 3.7** Submit 20 copies and one electronic copy of a written report to LFA on or before June 1, 2010 at 9:00 a.m., that:

- 3.7.1 Contains the analysis and results of the feasibility study conducted by (consultant).
  - 3.7.2 Makes recommendations to LEGISLATURE regarding the potential privatization of the FACILITIES and the best manner of accomplishing privatization, if privatization is recommended.
  - 3.7.3 Describes the research conducted by (consultant).
  - 3.7.4 Describes the options considered by (consultant), including those recommended and those rejected, and the reasons for acceptance or rejection.
  - 3.7.5 Presents the data and information considered by consultant in conducting the feasibility study and making recommendations.
- 3.8 On or before June 22, 2010 at 9:00 a.m., make an oral presentation, and answer questions, to the EAC regarding the report described in Section 3.7.

#### **4. REPRESENTATIONS**

(Consultant) represents that (consultant):

- 4.1 Has sufficient knowledge and expertise to enable (consultant) to fulfill the duties described in Section 3 of this AGREEMENT.
- 4.2 Has the ability to gather, understand, and organize a large amount of information in a short time.
- 4.3 Has the ability to determine and understand the current management and operation of the FACILITIES.
- 4.4 Has the ability to determine and understand the services and service levels currently provided at or for the FACILITIES.
- 4.5 Has an understanding of the federal and state legal requirements relating, generally, to an Intermediate Care Facility for the Mentally Retarded (ICF/MR) and state mental hospitals and, specifically, to the USDC, the USH, and the FACILITIES.

**5. PAYMENT**

In exchange for the timely completion of the duties described in Section 3 of this AGREEMENT and fulfillment of the other terms and conditions of this AGREEMENT, LEGISLATURE agrees to pay (consultant) \_\_\_\_\_, in the following manner:

- 5.1 Upon completion of the duties described in Section 3 of this AGREEMENT, (consultant) shall submit to LFA a written statement itemizing the services provided under Section 3 of this AGREEMENT. (Consultant) shall submit the statement on or before \_\_\_\_\_. (Consultant) shall not submit the statement before completion of the duties described in Section 3 of this AGREEMENT.
- 5.2 Within 30 days after the day on which LFA receives the statement described in Section 5.1 of this AGREEMENT, LEGISLATURE shall pay to (consultant) \_\_\_\_\_.
- 5.3 The amount that LEGISLATURE is required to pay (consultant) under this Section 5 is the entire amount that LEGISLATURE is required to pay (consultant) for services provided by (consultant).

**6. INDEPENDENT CONTRACTOR**

- 6.1 (Consultant) is an independent contractor and is not authorized, expressly or by implication, to bind the LEGISLATURE, a STAFF OFFICE, the State of Utah, or any member, office, officer, department, agent, official, or employee of the LEGISLATURE or the State of Utah to any agreement, settlement, liability, or understanding or to perform any act as agent for the LEGISLATURE, a STAFF OFFICE, the State of Utah, or any member, office, officer, department, agent, official, or employee of the LEGISLATURE or the State of Utah.
- 6.2 (Consultant) is solely responsible to pay for all of (consultant's) materials, travel, and expenses and to pay each employee or subcontractor of (consultant) all wages, payments, expenses, fees, taxes, costs, insurance, and benefits of any kind relating to an employee or contractor of (consultant).

**7. INDEMNITY**

(Consultant) shall indemnify, defend, and hold forever harmless the LEGISLATURE, each STAFF OFFICE, the State of Utah, and each member, office, officer, department, agent, official, and employee of the LEGISLATURE and the State of Utah, in their individual and representative capacities, from and against any and all costs, losses, liabilities, damages, lawsuits, and claims, including, but not limited to, any claim for personal injury, death, or damage to personal property, or expenses (whether or not

arising out of third-party claims), including without limitation court costs, reasonable attorney fees and disbursements, and all amounts paid in investigation, defense, or settlement in connection with, arising out of, resulting from, or relating to any services provided by, or action taken by, (consultant) under this AGREEMENT. The indemnification provided by (consultant) is not and may not be limited in any way for the amount or type of damages, compensation, or benefits payable by or for (consultant) or (consultant's) employees, agents, or subcontractors under workers' compensation acts, disability benefits acts, or other employee benefits acts. The remedy provided to the LEGISLATURE, each STAFF OFFICE, the State of Utah, and each member, office, officer, department, agent, official, and employee of the LEGISLATURE or the State of Utah by this indemnification is in addition to, and not in lieu of, any other remedy available under this AGREEMENT or otherwise. This indemnification obligation is not diminished or limited in any way to the total limits of insurance required for, obtained by, or available to the (consultant) or (consultant's) employees, agents, or subcontractors.

## **8. OWNERSHIP OF STUDIES, REPORTS, AND OTHER MATERIAL**

**8.1** (Consultant) shall release to LFA all data and all finished and unfinished studies, reports, and all other material that (consultant) or (consultant's) employees, agents, or subcontractors possess or perform in relation to this AGREEMENT (in usable and manipulable electronic or hard-copy format, as specified by LFA) under the following circumstances:

**8.1.1** if (consultant) does not complete the duties required by this AGREEMENT; or

**8.1.2** within 30 days after the day on which LFA requests the data and finished and unfinished studies, reports, and other material.

**8.2** The data and finished and unfinished studies, reports, and other material described in Section 8.1 are the property of the LEGISLATURE.

## **9. SUBMISSION TO FINANCIAL AUDIT**

(Consultant) and (consultant's) agents or subcontractors agree to participate in a financial audit to ensure compliance with the provisions of this AGREEMENT upon written request by EAC, under the following terms and conditions:

**9.1** The audit may be performed by the EAC or an authorized representative of EAC.

**9.2** The audit may be performed no later than three years after the date of termination of this AGREEMENT.

**10. PROHIBITION OF PAYMENT BY OTHER GRANT OR CONTRACT**

Services performed under this AGREEMENT by (consultant) or any of (consultant's) employees, agents, or subcontractors may not be paid by any other grant or contract.

**11. ASSIGNMENT PROHIBITED**

(Consultant) may not assign this AGREEMENT, nor any duty or benefit relating to this AGREEMENT, without the prior written permission of EAC.

**12. LIMITATIONS ON LOBBYING**

Beginning on \_\_\_\_\_, and ending on \_\_\_\_\_, neither (consultant) nor any employee, agent, or subcontractor of (consultant) may communicate with a public official as defined in Utah Code § 36-11-102 (2009) for economic consideration for the purpose of influencing the passage, defeat, amendment, or postponement of legislative or executive action relating to the subject matter of this AGREEMENT.

**13. FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST**

(Consultant) attests that (consultant) is in good standing with all state, county, or federal agencies with whom (consultant) has a current, or has had a prior, contractual arrangement. Consultant further attests that there are no current or prior contractual or financial relationships between (consultant) or (consultant's) employees, agents, or subcontractors and the USDC, the USH, or a person or entity that is likely to receive a financial benefit or a financial setback based on the outcome of a decision regarding whether to privatize the FACILITIES.

**14. TERMINATION OF AGREEMENT**

**14.1** This AGREEMENT terminates on \_\_\_\_\_.

**14.2** This AGREEMENT may be terminated at any time before \_\_\_\_\_, if any of the following occur:

**14.2.1** LEGISLATURE and (consultant) agree, in writing, to terminate this AGREEMENT at an earlier date.

**14.2.2** If either party materially breaches this AGREEMENT and, following the breach:

**14.2.2.1** the non-breaching party gives written notice of the breach to the breaching party; and

- 14.2.2.2** at least seven days after the day on which the breaching party receives the notice described in Section 14.2.2.1, the non-breaching party sends a written notice of termination to the breaching party, unless, before the end of the seven-day period described in this Section 14.2.2.2, the breaching party cures the breach.
- 14.3** A material breach by (consultant) includes, but is not limited to:
- 14.3.1** Failure to provide the services or reports described in this AGREEMENT by the deadline provided for in this AGREEMENT.
  - 14.3.2** Making a misrepresentation in, or under, this AGREEMENT.
  - 14.3.3** Making a misrepresentation in response to the RFP.
- 14.4** If this AGREEMENT terminates under Section 14.1, (consultant) is not relieved of (consultant's) obligations under Sections 6 through 10, Section 12, and Sections 14 through 17 of this AGREEMENT.
- 14.5** If this AGREEMENT terminates under Section 14.2.1:
- 14.5.1** (consultant) is not relieved of (consultant's) obligations under Sections 6 through 10, Section 12, and Sections 14 through 17 of this AGREEMENT; and
  - 14.5.2** payment and other terms relating to the services performed under this AGREEMENT will be expressed in the written document described in Section 14.2.1.
- 14.6** If this AGREEMENT terminates under Section 14.2.2 due to a breach by (consultant):
- 14.6.1** (consultant) is not relieved of (consultant's) obligations under Sections 6 through 10, Section 12, and Sections 14 through 17 of this AGREEMENT; and
  - 14.6.2** LEGISLATURE is not required to pay, and consultant is not entitled to receive, the payment described in Section 5, or any payment.
- 14.7** Termination under Section 14.2.2 does not relieve either party of liability for any default prior to the termination.

**15. GOVERNING LAW**

This AGREEMENT shall be construed in accordance with, and governed by, the law of the State of Utah, without reference to principles governing choice or conflicts of laws. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this AGREEMENT or the breach of this AGREEMENT. Venue shall be in Salt Lake City, Utah, in the Third Judicial District Court for Salt Lake County.

**16. EQUAL OPPORTUNITY**

(Consultant) agrees to abide by the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order 11246, as amended, which prohibits discrimination on the basis of sex, 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990 which prohibit discrimination on the basis of disabilities. (Consultant) further agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

**17. SEVERABILITY**

A declaration by any court, or any other binding legal source, that any provision of this AGREEMENT is illegal and void does not affect the legality and enforceability of any other provision of this AGREEMENT, unless the provisions are mutually dependent.

**18. DEBARMENT**

(Consultant) certifies that neither (consultant) nor (consultant's) principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any government department or agency from participation in this AGREEMENT. If (consultant) cannot certify this statement, (consultant) has provided to LFA and attached to this AGREEMENT a full written explanation of (consultant's) inability to certify this statement before the execution of this AGREEMENT.

**19. INCORPORATION OF PROVISIONS OF RFP**

The provisions of the RFP are hereby incorporated into this AGREEMENT by reference. If any conflict exists between the RFP and this AGREEMENT, the terms and conditions of this AGREEMENT prevail.

**20. MERGER**

This AGREEMENT constitutes the entire agreement between the parties with respect to the subject matter contained in this AGREEMENT. There are no covenants, terms, or conditions, express or implied, written or unwritten, that govern the subject matter of this AGREEMENT, except as expressly described in this AGREEMENT. This AGREEMENT supersedes all prior agreements between the parties relating to all or part of the subject matter contained in this AGREEMENT.

**21. MODIFICATION OF AGREEMENT**

This AGREEMENT may be modified only in a written document, signed by:

\_\_\_\_\_, on behalf of the LEGISLATURE and \_\_\_\_\_, on behalf of (consultant).

**22. AUTHORITY TO BIND**

(Consultant) and the person who signs this AGREEMENT on behalf of (consultant) represent that the person who signs this AGREEMENT has the authority to bind (consultant), and does, by signing this AGREEMENT, bind (consultant) to the terms and conditions of this AGREEMENT.

In witness whereof the parties have executed this AGREEMENT as follows: