

**Request For Appropriation  
\$600,000 One Time  
Determination of Property Tax Revenues Foregone  
for Federally Controlled Lands In The State,  
Pursuant to HB357 and HCR19 (2018)**

Under HB357, which passed unanimously in both chambers last year, the Federalism Commission was charged with determining a methodology for determining the value of proper tax revenues foregone from the untamable federally withheld lands in our state. The Commission met several times and ultimately issued and awarded an RFP for a pilot project to determine the taxable value of all land in one Utah County (Washington County) and, subject to a subsequent appropriation, to determine the fair taxable value for all lands in the State. The Awardee of the RFP is an artificial intelligence property appraisal company that has the expertise to value all lands in Utah in real time, based on a wide variety of assumptions that permit state leaders to simulate sovereignty with respect to enhancing the taxable value of Utah lands, and correspondence tax revenue to schools and communities. The pilot demonstration for Washington County reveals that the taxable value of the land in that county is far in excess of the amount paid in PILT for that county.

Having detailed and justifiable valuation for all land in Utah is a tool that Senator Lee and Rep. Bishop indicate will help them more effectively negotiate for more full and fair payment of the PILT tax replacement payments.

Despite Congress promising in 1976 to hold Utah and our school children and communities harmless from the loss of property tax revenue from the federal government permanently withholding more than 65% our lands from ever be subject to property tax, the PILT property tax replacement program is nowhere close to a full or fair property tax replacement. Utah generates more tax revenues in 2 months on the 20% of our lands that are taxable than we have received in 20 years in PILT payments on the 67% of our federally controlled lands.

**Statewide purpose**

Utah is deprived of property taxes on millions of acres of federally controlled land. The federal government promised a property tax replacement known as PILT but it is nowhere close to a full or fair substitute in lieu of property taxes. Utah has never calculated the fair taxable value of the federally controlled lands to hold our federal partner to its promise to hold our school children and communities harmless as to property tax revenue foregone. This appropriation enables the determination of the fair taxable value of all federally controlled lands in the state to enable our federal delegation to hold the national government to its 1976 promise to hold our school children and communities harmless from the loss of property tax from federally controlled lands. It also enables other avenues for securing the full and fair property tax replacement payment.

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# **REQUEST FOR PROPOSALS**

**Issued by:**

**The Commission on Federalism**

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## **FEDERAL LAND VALUATION MODEL**

**RFP No. COF 2018-03**

November 14, 2018

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## I. RFP CONTACT

The Commission on Federalism is the issuer of this RFP and any subsequent addenda to this RFP. Inquiries regarding this RFP should be directed, in writing, to:

Robert H. Rees  
Associate General Counsel  
Office of Legislative Research and General Counsel  
Email: rrees@le.utah.gov

## II. DEFINITIONS

As used in this RFP:

1. "COMMISSION" means the Commission on Federalism, created by Utah Code Section 63C-4a-302.
2. "CONTRACTOR" means the person whose proposal submitted in response to this RFP is selected for an award of a contract to develop and MAINTAIN a FEDERAL LAND VALUATION MODEL and who enters into a contract with the COMMISSION to develop and MAINTAIN a FEDERAL LAND VALUATION MODEL.
3. "FEDERAL LAND" means land within the boundary of the state of Utah that is controlled by the United States government for the entire taxable year, excluding:
  - a. military installations;
  - b. federal enclaves as described in the United States Constitution, Article I, Section 8, clause 17; and
  - c. land owned by an Indian tribe as described in 18 U.S.C. Sec. 1151.
4. "FEDERAL LAND VALUATION MODEL" means a computer-based, interactive, modeling tool that:
  - a. accurately calculates in real time the market value of every acre of FEDERAL LAND within a designated county in the state of Utah;
  - b. enables a user to manually modify VALUATION FACTORS to calculate in real time the market value of FEDERAL LAND based on different assumptions about the presence of various VALUATION FACTORS relating to that land that affect its market value;
  - c. provides technical anchors to market data to ensure the ongoing integrity of the modeling tool and to ensure that land values determined by the modeling tool are defensible and based on sound and generally accepted valuation methodologies;
  - d. includes an assimilation of market data and visualization of GIS data related to all FEDERAL LAND in the state of Utah and tied to land lease and commodities

- level market data for mineral extraction, energy production, water management, and timber management and for recreational and agricultural uses;
- e. provides land valuation estimates that compare FEDERAL LAND to all available private lands and School and Institutional Trust Lands in the state of Utah;
  - f. allows the finished product to be tied to actual market sources and is sufficiently robust to enable valuation estimates to adjust automatically to current market conditions so that the modeling tool can be relied upon year after year on an ongoing basis; and
  - g. allows a user to estimate the value of FEDERAL LAND as it is currently used and to estimate changes in value due to future uses under various scenarios under private or public ownership.
5. "LEGISLATURE" means:
- a. the Utah Legislature, including the Utah House of Representatives and the Utah Senate;
  - b. the members, staff, and employees of the Utah State Legislature, the Utah House of Representatives, or the Utah Senate; and
  - c. staff offices of the Utah Legislature, the Utah House of Representatives, or the Utah Senate, and employees of those staff offices.
6. "MAINTAIN," when used in relation to the FEDERAL LAND VALUATION MODEL, means to oversee and ensure the continuous and proper functioning of the FEDERAL LAND VALUATION MODEL.
7. "MST" means Mountain Standard Time.
8. "RESPONDER" means a person who submits a proposal in response to this RFP and, in the case of the person whose proposal is selected for an award of a contract pursuant to this RFP, includes the CONTRACTOR.
9. "RESPONSIBLE" means being capable, in all respects, of:
- a. meeting all the requirements of this RFP; and
  - b. fully performing all the requirements of the contract resulting from the RFP, including being financially solvent with sufficient financial resources to perform the contract.
10. "RESPONSIVE" means conforming in all material respects to the requirements of this RFP.
11. "RFP" means this request for proposals, issued by the COMMISSION, for Federal Land Valuation Model, No. COF-2018-03.
12. "VALUATION FACTORS" means key features of the land or of the condition and status of land that affect the value of the land, including infrastructure available to or servicing



the land, public or private ownership of the land, uses of the land, the availability of commodities on or under the land and the practicality and feasibility of using or extracting those commodities, the uses and value of land within the vicinity of the land, and any other features of the land or other factors that affect its market value.

### **III. REQUEST FOR PROPOSALS INFORMATION**

1. The purpose of this RFP is to solicit proposals from qualified individuals or firm, or from qualified groups of individuals or firms, with the necessary qualifications and expertise to develop a FEDERAL LAND VALUATION MODEL and to MAINTAIN the FEDERAL LAND VALUATION MODEL for a period of five years after the FEDERAL LAND VALUATION MODEL has been developed.
2. This RFP is designed to provide basic information to solicit proposals from qualified individuals, groups of individuals, or firms, but, except to the extent expressly provided otherwise, is not intended to limit a proposal's content or exclude any relevant, important, or essential information.

### **IV. FEDERAL LAND VALUATION MODEL**

1. The CONTRACTOR will be required to develop and provide to the COMMISSION a fully operational prototype of the FEDERAL LAND VALUATION MODEL, no later than January 25, 2019, and provide a demonstration of its functionality and capabilities for valuing FEDERAL LAND within Washington County, at a time that the COMMISSION determines.
2. Following the demonstration under Section IV. 1 and subject to COMMISSION approval and the availability of further funding from the Utah Legislature, the CONTRACTOR will be required to expand the use, functionality, and capabilities of the FEDERAL LAND VALUATION MODEL to cover all FEDERAL LAND within all counties of the state of Utah.

### **V. ANTICIPATED CONTRACT TERMS**

1. Subject to other contract terms, the contract will be awarded for the period of the time to develop the FEDERAL LAND VALUATION MODEL plus a five-year period during which the CONTRACTOR will be required to MAINTAIN the FEDERAL LAND VALUATION MODEL.
2. The COMMISSION shall retain rights to the FEDERAL LAND VALUATION MODEL and information produced by the FEDERAL LAND VALUATION MODEL during the entire term of the contract entered pursuant to the award of a contract under this RFP and shall retain exclusive rights to the information produced by the FEDERAL LAND VALUATION MODEL in perpetuity. The rights of the COMMISSION to the

FEDERAL LAND VALUATION MODEL during the term of the contract shall be negotiated between the COMMISSION and the CONTRACTOR but shall be sufficient to enable the COMMISSION to fulfill the purposes described in this RFP relating to the valuation of FEDERAL LAND.

3. Subject to additional funding, as explained in Section V. 4, for five years following the development of the FEDERAL LAND VALUATION MODEL, the CONTRACTOR shall MAINTAIN the FEDERAL LAND VALUATION MODEL to ensure its proper and continual functionality.
4. The COMMISSION will pay the CONTRACTOR a total of \$25,000 for the development of a prototype FEDERAL LAND VALUATION MODEL and for the demonstration of the prototype, as outlined in Section IV. 1 of this RFP. That amount covers all work performed by and services provided by CONTRACTOR and all costs and expenses incurred by CONTRACTOR in providing the FEDERAL LAND VALUATION MODEL prototype and in providing a demonstration of the prototype. That amount will be paid to the CONTRACTOR after the demonstration referred to in Section IV.1. Subject to a successful demonstration of a prototype, the COMMISSION expects to seek an appropriation from the Utah Legislature of additional funds to expand the FEDERAL LAND VALUATION MODEL for estimating the value of all FEDERAL LAND in all counties of the state of Utah. While the COMMISSION will seek an additional appropriation, the COMMISSION does not and cannot provide any representation, guarantee, or assurance that the funding will be provided. The availability of any additional funds from a legislative appropriation is purely speculative at this time and should not be relied upon in submitting a proposal. It is expected that the maximum amount that will be available to pay the CONTRACTOR to develop and MAINTAIN a FEDERAL LAND VALUATION MODEL under a contract pursuant to this RFP is \$750,000, but the actual amount appropriated and made available to pay for a FEDERAL LAND VALUATION MODEL and to MAINTAIN the FEDERAL LAND VALUATION MODEL under a contract awarded pursuant to this RFP may be higher or lower.
5. The COMMISSION retains the option to terminate the contract at any time if:
  - a. the FEDERAL LAND VALUATION MODEL is no longer needed, or the need to MAINTAIN the FEDERAL LAND VALUATION MODEL no longer exists; or
  - b. the COMMISSION is not satisfied with the CONTRACTOR, the FEDERAL LAND VALUATION MODEL, or the manner in which the CONTRACTOR MAINTAINS the FEDERAL LAND VALUATION MODEL.
6. CONTRACTOR shall provide the FEDERAL LAND VALUATION MODEL and shall MAINTAIN the FEDERAL LAND VALUATION MODEL in an expeditious and professional manner and in accordance with the contract awarded pursuant to this RFP,



and shall provide independent validation of the results provided by the FEDERAL LAND VALUATION MODEL.

## **VI. TIMELINE OF RFP PROCESS**

The following timeline, subject to change by addendum, will be followed with respect to this RFP:

1. RFP issuance date: November 14, 2018.
2. Deadline for submitting questions seeking clarification of the RFP: 5:00 p.m. MST on Wednesday, November 28, 2018.
3. Date by which the COMMISSION expects to issue an addendum or addenda to the RFP to answer questions submitted before the deadline described in Section VI. 2 of this RFP: December 4, 2018.
4. Deadline for submitting proposals in response to this RFP: 12:00 noon MST on Friday, December 14, 2018.

## **VII. REQUEST FOR PROPOSALS GUIDELINES**

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

Proposals submitted in response to this RFP should NOT be submitted via SciQuest. A proposal submitted only via SciQuest will not be accepted.

An electronic copy in PDF format must be received by the RFP contact, Robert H. Rees, on or before 12:00 noon MST on Friday, December 14, 2018. There are two ways to submit an electronic copy. A RESPONDER may submit an electronic copy by email to [rrees@le.utah.gov](mailto:rrees@le.utah.gov). The email transmission, including attachments, is limited to 25MB per email, so if a RESPONDER sends anything larger, the RESPONDER will need to break the email into parts and send them separately. As an alternative to emailing an electronic copy, a RESPONDER may burn an electronic copy to a disk and deliver the disk to the following address:

Attention: Robert H. Rees  
Associate General Counsel  
Office of Legislative Research and General Counsel  
Utah State Capitol Complex, W210 House Building  
PO Box 145210  
Salt Lake City, Utah 84114-5210

Proposals received after 12:00 noon MST on December 14, 2018 will not be considered.

## 2. RESPONDER INFORMATION

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

a. Title: "PROPOSAL SUBMITTED IN RESPONSE TO THE RFP FOR FEDERAL LAND VALUATION MODEL, RFP No. COF 2018-03."

b. RESPONDER Summary Information:

Name:

RFP Contact Person:

Address:

Telephone:

Fax:

Email:

Federal Tax ID Number:

## 3. EXECUTIVE SUMMARY

The second portion of the proposal shall contain a one- or two-page executive summary that briefly describes the RESPONDER's proposal. This summary shall serve to highlight the major features of the proposal. The reader should be able to determine the essence of the proposal by reading the executive summary.

The executive summary shall also describe any deviations or exceptions from the requirements, terms, and conditions of this RFP. In the absence of such a written description, the response shall be interpreted to agree to the requirements, terms, and conditions of this RFP and the RESPONDER shall be held liable for any deviations from the RFP. Deviations and exceptions claimed by a RESPONDER may result in rejection of a response on the grounds that the response is not responsive to the RFP.

## 4. DETAILED DESCRIPTION

The third portion of the proposal constitutes the main portion of the response and shall include the following:

a. A complete narrative of the RESPONDER's assessment of the work to be performed, the RESPONDER's ability and approach, and the resources necessary to fulfill the requirements. This narrative shall demonstrate the RESPONDER's understanding of the overall performance expectations and clearly indicate all options and alternatives proposed.



- b. A description of the qualifications, including experience, education, training, and knowledge of each individual that the RESPONDER will designate to develop and MAINTAIN the FEDERAL LAND VALUATION MODEL described in this RFP.
- c. A list of three references (including a contact person and that person's contact information and title) of persons or entities for which the RESPONDER has provided services similar to the service sought by this RFP to develop and MAINTAIN a FEDERAL LAND VALUATION MODEL, who can render an opinion regarding the ability of the RESPONDER to develop and MAINTAIN a FEDERAL LAND VALUATION MODEL.
- d. A certification indicating that neither the RESPONDER nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction or contract by any governmental entity. If the RESPONDER cannot certify this statement, the RESPONDER shall attach a written explanation indicating why the RESPONDER cannot certify this statement.

## 5. RFP COMPLIANCE

The COMMISSION reserves the right to:

- a. reject a proposal on the grounds that the RESPONDER that submits the proposal is not RESPONSIBLE;
- b. reject a proposal on the grounds that it is not RESPONSIVE;
- c. reject a proposal that does not strictly comply with the requirements of this RFP and the required submission format; or
- d. waive minor informalities or minor technical errors in a proposal.

## 7. PROPOSALS ARE BINDING

All proposals are required to be signed by a person in authority to bind the RESPONDER to the response, the response cost, and the terms and conditions of the proposals. Proposals may not be withdrawn for a period of 60 days after the RFP due date. By submitting a proposal, the RESPONDER certifies that all information provided by the RESPONDER is true, complete, and accurate, that the RESPONDER is willing and able to develop and MAINTAIN a FEDERAL LAND VALUATION MODEL in the manner described in this RFP, that the costs quoted are correct, and that the costs quoted include all charges that will be required to develop and MAINTAIN the FEDERAL LAND VALUATION MODEL as described in this RFP.

## 8. RESPONDER'S RESPONSIBILITY

The successful RESPONDER is solely responsible for fulfillment of the responsibilities under the terms and conditions of the contract resulting from this RFP.

## VIII. OTHER REQUIREMENTS

1. The RESPONDER's name must appear on each page of the response. Erasures, cross-outs, alterations, corrections, or other changes must be initialed by the person who signs the Response. The response must contain evidence that the person who signs the proposal is authorized to bind the RESPONDER in relation to the response.
3. By submitting a proposal in response to this RFP, RESPONDER is acknowledging that he requirements, scope of work, and evaluation process described in this RFP are fair, equitable, not unduly restrictive, understood, and agreed to. Any exceptions to the content of the RFP must be protested in writing before the RFP response submission deadline.

## IX. EVALUATION AND CONTRACT

### 1. EVALUATION CRITERIA

Each proposal submitted in response to this RFP will be evaluated based on the criteria described in Section IX. 2. b. of this RFP.

### 2. EVALUATION PROCESS

- a. All proposals submitted by the deadline stated in Section VI. 4 will undergo a technical review for compliance with RFP requirements and for a determination of whether the RESPONDER appears objectively to be RESPONSIBLE. Proposals that are not RESPONSIVE and proposals from RESPONDERS who have not adequately demonstrated that they are RESPONSIBLE will be eliminated from further consideration.
- b. An evaluation committee appointed by the COMMISSION will evaluate proposals that are not eliminated in the technical review in accordance with the following criteria:

<b>Points</b>	<b>Criteria</b>
---------------	-----------------

- |    |  |
|----|--|
| 35 | The RESPONDER's demonstrated experience and expertise in developing and maintaining a FEDERAL LAND VALUATION MODEL, as explained in this RFP, including the quality of the proposed FEDERAL LAND VALUATION MODEL and of the RESPONDER's history, |
|----|--|

reputation, and record of developing or providing and maintaining any similar or equivalent modeling tool or the quality of any equivalent experience

65 The quality of the RESPONDER's proposed FEDERAL LAND VALUATION MODEL, the apparent ability of the proposed FEDERAL LAND VALUATION MODEL to perform as described in this RFP, and the accuracy, reliability, and soundness of valuation information that will be provided by the proposed FEDERAL LAND VALUATION MODEL

c. The COMMISSION's evaluation committee may conduct discussions with RESPONDERS who submit proposals determined to be reasonably susceptible of being selected for award, followed by an opportunity to make best and final offers, but proposals may be accepted without discussions.

### 3. UTAH PROCUREMENT CODE

All proposals will be evaluated in accordance with the requirements of the Utah Procurement Code.

### 4. CONTRACT

- a. The contract will be tentatively awarded, pending successful contract negotiations, to the RESPONDER whose proposal is the most advantageous to the state, taking into consideration evaluation factors described in this RFP.
- b. The contract shall include the standard terms and conditions included in Attachment A.
- c. The COMMISSION reserves the right to refuse to negotiate on exceptions if the COMMISSION determines that the exceptions are excessive or not in the interest of the state, or that negotiations could result in significant costs to the state or take a significant period of time.
- d. The COMMISSION reserves the right to review the contract on a regular basis in relation to performance and cost and may negotiate terms relating to cost and service during the term of the contract.

## X. QUESTIONS

Questions, requests for changes to this RFP, and requests for clarification must be submitted by email to [rrees@le.utah.gov](mailto:rrees@le.utah.gov) on or before 5:00 p.m. (MST) on November 28, 2018. 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.



## **XI. ADDENDA**

1. All addenda to this RFP, including answers to questions provided by addendum, will be posted on the Utah Legislature's website at:

<http://le.utah.gov>

Click on the triple horizontal bar in the upper right-hand corner of the page, then on "Publications" and then on "Requests for Proposals and Legal Notices."

2. Addenda and notifications of addenda are not required to be provided in any other manner. All RESPONDERS, potential RESPONDERS, 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.
3. The COMMISSION may attempt, but is not required, to provide email notification of an addendum to any person who sends a request to receive notification to:

[rrees@le.utah.gov](mailto:rrees@le.utah.gov)

## **XII. 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, and the Utah Legislature Policies and Procedures for Handling Records Requests. A RESPONDER who desires to request protected status of any information submitted in the response must specifically identify the information that the RESPONDER desires to protect and the reasons that the information should be afforded protected status under the law. In making this request, the RESPONDER 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. The COMMISSION's decision regarding the protected status of information shall be final and binding on the RESPONDER. Each RESPONDER shall indemnify, defend, and hold forever harmless the COMMISSION and the LEGISLATURE from any and all liability relating to the disclosure of information included in the RESPONDER's response to this RFP, even if the RESPONDER requested protected or other confidential status for the information. Attempts to designate an entire proposal, or large portions of a proposal, as protected will not be honored. Attempts to protect information relating to cost will also not be honored.

## **XIII. MODIFICATIONS TO, OR WITHDRAWAL OF, RESPONSE**

A RESPONDER may modify or withdraw the RESPONDER's proposal, at any time before the closing date and time for submitting a proposal, by providing a written modification or a written statement withdrawing the proposal to the RFP contact. Modifications or letters of

withdrawal received by the RFP contact after the closing date and time for submitting a proposal will be rejected as invalid. The version of a response to this RFP, as it exists at the closing date and time for submitting a proposal, will be binding on the RESPONDER.

#### **XIV. COST OF RESPONDING TO RFP AND CONTRACT NEGOTIATIONS**

1. All expenses relating to responding to this RFP, including preparing, submitting, and presenting a proposal, attending meetings in relation to this RFP, discussions, and all travel, dining, lodging, and communication expenses will be borne by the RESPONDER.

The COMMISSION assumes no liability for any costs incurred by a RESPONDER in responding to this RFP.

2. All expenses of the successful RESPONDER relating to conducting contract negotiations, including drafting, research, legal review, preparation, attending meetings, site visits, travel, dining, lodging, and communication expenses will be borne by the RESPONDER. The COMMISSION assumes no liability for any costs incurred by a RESPONDER relating to contract negotiations.
3. RESPONDER will not bill and may not be paid for any expense that was incurred prior to the time that the contract is signed by all parties.

#### **XV. MISCELLANEOUS RESERVATION OF RIGHTS**

The COMMISSION reserves the right not to award a contract to any of the RESPONDERS who respond to this RFP, to cancel this RFP at any time, or to issue a new RFP for the same or similar services.

#### **XVI. RESTRICTIONS ON PUBLICITY**

A successful RESPONDER may not, without the prior written approval of the COMMISSION, do any of the following:

1. Make any announcement regarding the award of the contract relating to this RFP.
2. Refer to the COMMISSION or the LEGISLATURE, or use any data, pictures, or other representation of the COMMISSION or the LEGISLATURE, in its advertising, marketing, or other promotional efforts.

#### **XVII. GOVERNING LAW**

This RFP is subject to the laws of the state of Utah, including Utah Code Title 63G, Chapter 6a, Utah Procurement Code.

## ATTACHMENT A

### STANDARD TERMS AND CONDITIONS

In addition to the terms and conditions included in the RFP, the following terms and conditions will be included in the contract between the CONTRACTOR and the COMMISSION:

#### 1. TERMINATION

1.1 This CONTRACT may be terminated for cause by CONTRACTOR in advance of the specified termination date, upon the CONTRACTOR giving written notice of the COMMISSION's default. The COMMISSION will be given (30) thirty working days after notification to correct and cease the violations, after which, if the violations are not corrected or ceased, the contract may be terminated for cause.

1.2 The COMMISSION may terminate this CONTRACT at any time when:

1.2.1 the FEDERAL LAND VALUATION MODEL is no longer needed, or there is no longer a need to MAINTAIN the FEDERAL LAND VALUATION MODEL; or

1.2.2 the COMMISSION is not satisfied with the RESPONDER or the FEDERAL LAND VALUATION MODEL provided or with the manner in which the RESPONDER MAINTAINS the FEDERAL LAND VALUATION MODEL.

1.3 The following terms will survive termination of the CONTRACT: (to be specified before the CONTRACT is signed).

#### 2. DEFAULT AND REMEDIES

If CONTRACTOR breaches this CONTRACT, the COMMISSION may do one or more of the following:

2.1 Exercise any remedy provided by law; or

2.2 Suspend CONTRACTOR from receiving future bid/proposal solicitations.

#### 3. INDEPENDENT CONTRACTOR RELATIONSHIP

3.1 CONTRACTOR is an independent contractor and, except as expressly authorized by this CONTRACT or by the COMMISSION, is not authorized, expressly or by implication, to bind the LEGISLATURE, the State of Utah, the COMMISSION, or any member, office, officer, department, agent, official, or employee of the LEGISLATURE, the State of Utah, or the COMMISSION to any contract,



settlement, liability, or understanding or to perform any act as agent for the LEGISLATURE, the State of Utah, the COMMISSION, or any member, office, officer, department, agent, official, or employee of the LEGISLATURE, the State of Utah, or the COMMISSION.

3.2 Except as otherwise expressly provided in this CONTRACT, CONTRACTOR is solely responsible to pay for all of CONTRACTOR's expenses and to pay each employee or subcontractor of CONTRACTOR all salary, wages, payments, expenses, fees, taxes, costs, insurance, and benefits of any kind relating to an employee or subcontractor of CONTRACTOR.

#### 4. ASSIGNMENT PROHIBITED

CONTRACTOR may not assign this CONTRACT or any duty or benefit relating to this CONTRACT without the prior written permission of the COMMISSION.

#### 5. GOVERNING LAW

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

#### 6. EQUAL OPPORTUNITY

CONTRACTOR agrees to abide by the provisions of:

- 6.1 Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. Sec. 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;
- 6.2 Executive Order 11246, as amended, which prohibits discrimination on the basis of sex;
- 6.3 45 C.F.R. 90, which prohibits discrimination on the basis of age;
- 6.4 Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, as applicable, which prohibit discrimination on the basis of disabilities; and
- 6.5 Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace.

## 7. INCORPORATION OF PROVISIONS OF RFP AND RESPONSE TO RFP

The provisions of the RFP, including all addenda to the RFP, and CONTRACTOR's proposal submitted in response to the RFP, are hereby incorporated into this CONTRACT by reference. If any conflict exists between the RFP, CONTRACTOR's proposal, and this CONTRACT, the terms and conditions of the following shall prevail in the following order of preference:

- 7.1 this CONTRACT;
- 7.2 the RFP;
- 7.3 CONTRACTOR's proposal.

## 8. LAWS AND REGULATIONS

CONTRACTOR and any and all hardware, software, supplies, services, equipment, and construction proposed or furnished under this CONTRACT shall comply fully with all applicable federal and state laws and regulations.

## 9. PATENTS, COPYRIGHTS, ETC.

CONTRACTOR releases and shall protect, indemnify, and hold harmless the COMMISSION and the LEGISLATURE from liability of any kind or nature relating to CONTRACTOR's use or provision of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in the performance of this CONTRACT.

## 10. RECORDS ADMINISTRATION

CONTRACTOR shall maintain, or supervise the maintenance of, all records necessary to properly account for the payments made to CONTRACTOR for costs authorized by this CONTRACT. CONTRACTOR shall retain these records for at least four years after the CONTRACT terminates. CONTRACTOR agrees to allow state and federal auditors and legislative staff access to all the records relating to this CONTRACT, for audit, for inspection, and for the monitoring of services. Such access will be during normal business hours, or by appointment.

## 11. CONFLICT OF INTEREST

CONTRACTOR certifies that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of the COMMISSION or the LEGISLATURE to secure favorable treatment with respect to being awarded this contract.

## 12. DEBARMENT

CONTRACTOR certifies that neither CONTRACTOR nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this CONTRACT by any governmental department or agency. CONTRACTOR will notify the COMMISSION within 30 days if debarred by any governmental entity during the term of this CONTRACT.

## 13. INDEMNITY CLAUSE

CONTRACTOR releases, protects, defends, indemnifies, and holds harmless the COMMISSION and the LEGISLATURE from and against any damage, cost, or liability, including reasonable attorney fees for any and all injuries to persons or property, or claims for money damages, arising from acts or omissions of the CONTRACTOR and the CONTRACTOR's employees, subcontractors, and volunteers.

## 14. NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this CONTRACT, CONTRACTOR acknowledges that the COMMISSION cannot contract for the payment of funds not yet appropriated. The COMMISSION may, without penalty or liability of any kind, terminate this CONTRACT by providing 30 days' written notice to CONTRACTOR that this CONTRACT is terminated due to the non-appropriation of funds. If this CONTRACT is terminated under this provision, the COMMISSION will pay all amounts due to CONTRACTOR through the date of termination and will not be liable for any future commitments, penalties, or damages of any kind.

## 15. FORCE MAJEURE

Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God, and/or war that is beyond that party's reasonable control. The COMMISSION may terminate this CONTRACT after determining that such delay or default will prevent successful performance of the contract.

## 16. MERGER

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



## 17. MODIFICATION OF CONTRACT

This CONTRACT may be modified only in a written document signed by the COMMISSION chairs (or such other person certified as having the authority to bind the COMMISSION), on behalf of the COMMISSION, and CONTRACTOR's agent (or such other person certified as having the authority to bind CONTRACTOR), on behalf of CONTRACTOR.

## 18. AUTHORITY TO BIND

CONTRACTOR and the person who signs this CONTRACT on behalf of CONTRACTOR represent that the person who signs this CONTRACT has the authority to bind CONTRACTOR, and does, by signing this CONTRACT, bind CONTRACTOR to the terms and conditions of this CONTRACT.

## 19. PUBLIC INFORMATION

This CONTRACT and documents relating to this CONTRACT are subject to release in accordance with Utah Code, Title 63G, Chapter 2, Government Records Access and Management Act.

## 20. SEVERABILITY

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