

## WEBSITE MAINTENANCE AGREEMENT

THIS WEBSITE MAINTENANCE AGREEMENT (the "Agreement") is entered into this 1<sup>st</sup> day of May 2019 (the "Effective Date") by and between the Utah Association of Counties ("UAC"), whose address is 5397 South Vine Street, Murray, Utah, 84107, and Tooele County, (the "County"), whose corporate address is 47 South Main Street, Tooele, Utah 84074. UAC and the County are sometimes referred to collectively as the "**Parties**" and individually as a "**Party**."

The Parties agree that the following Recitals are true and accurate to the best of their knowledge.

### RECITALS

A. UAC is a Utah non-profit corporation organized and operated pursuant to the Utah Nonprofit Corporation Act and the Cooperative Association Act. UAC is a tax exempt entity pursuant to section 501(c)(4) of the Internal Revenue Code. The primary purpose of UAC is to promote social welfare through better county government and, through cooperative and mutual efforts, maintain counties as an essential part of the government structure. Another purpose of UAC is to provide administrative support to counties in delivering services required by law and to pool resources for counties to provide such services where there is a benefit to doing so.

B. The County is a body corporate and politic of the State of Utah.

C. Each county in the State of Utah is a member of UAC, including the County itself. The Officers of UAC are elected officials from member counties, including perhaps the County itself. The Directors of UAC are officials employed by Utah counties, including perhaps the County itself.

D. The Parties recognize that the website maintenance services that are the subject of this Agreement fall within the purpose of UAC, and that having such services provided by UAC to the County would promote social welfare, improve county government, and be economically advantageous for the County and its citizens.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **1. Website Related Services to Be Provided by UAC to the County.**

a. During the term of this Agreement, UAC shall provide (or cause to be provided) the following general website services (“Services”) to the County:

- i. Development of a new website or re-design of an existing website if not previously developed or designed under a prior agreement with UAC
- ii. Ongoing training (over-the-phone or by email) regarding the Website—including how to add new content (text, photos, documents, etc.).
- iii. Routine plugin or framework updates of the Website as a security and performance measure.
- iv. Assistance to County personnel in diagnosing and repairing technical issues with the Website.
- v. Provide backup service of the Website.

b. Unless agreed otherwise in writing, UAC will provide the Website Services remotely and will not need to visit the County in order to provide the services.

c. To the extent the County needs services that are outside the scope of the Website Services, it is anticipated that the County will consider using UAC to perform such services. In that event, UAC will bill the County separately for the provision of such services at reasonable terms to be determined by the Parties.

d. Services will be initiated by the County providing to UAC, or UAC’s third-party contractor, a work order describing the work being requested.

**2. Third-Party Contractors.** The County agrees that UAC may use a third-party contractor (or contractors), of its choosing, in order to provide some or all of the Website Services. UAC will coordinate and communicate with such third-party contractors, and, when necessary and appropriate, act as a liaison between the County and the contractor(s). Nothing prohibits the contractor(s) from communicating with the

County directly, or vice-versa. The County agrees that, for 3 years from the Effective Date, it will not contract directly with any of the third-party contractors retained by UAC to perform any services related to the Website—unless UAC terminates the Agreement before the end of the 3-year Term. Unless stated otherwise, the rights of UAC under this Agreement also apply to its third-party contractor(s), and such third-party contractors shall honor the rights of the County under this Agreement.

### **3. Deadlines and Deliverables.**

a. UAC or UAC's third-party contractor shall respond to and acknowledge work orders submitted by the County within 24 hours on week days and 72 hours on weekends or holidays. Upon response by UAC, a timeline or estimate for repair will be given to the County. Further updates on progress will be given as needed or helpful to the County for each issue. UAC will use its best efforts to resolve such issues as promptly as is reasonably possible.

b. The County shall have 20 days to review and approve any Website Services, or other work provided by UAC. If the County is unsatisfied with UAC's Website Services or other work, the County shall provide notice to UAC, and any third-party contractor(s) that the County knows was involved in the provision of the Website Services or other work, of its dissatisfaction within 20 days after the provision of the particular service or work, or within 20 days of UAC's attempts to resolve the issue, or as soon as reasonably possible after the County learns of the problem. If the County delays in providing such notice, additional costs and fees may be chargeable to the County by UAC.

c. UAC warrants its services and work for 45 days after delivery/performance (the "Warranty Period"), provided no one other than UAC has been handling any code provided by UAC. If defects are found after the warranty period, UAC and the County will work together to explore options on how to best remedy the situation. See Section 10, below.

**4. Compensation to UAC.** UAC will bill the County on the first business day of each month, in the amount of \$450.00 to provide the Website Services. UAC recognizes receipt of \$1750.00 paid by the County under a prior agreement and agrees to apply the credit in full, at which time monthly payments will commence once again. Monthly payment shall be due 30 days from the date of the invoice (or a different time as clearly stated in the invoice). If the deadline for making any payment is on a weekend or legal holiday, payment shall be due on the next business day. Failure by the County to make any payment within five business days of when it is due shall, notwithstanding any other provisions of this Agreement, constitute adequate grounds for UAC to immediately terminate the Agreement.

**5. Term, Termination and Breach of the Agreement.**

a. Term. The term ("Term") of this Agreement shall be three years, beginning on the Effective Date.

b. Renewal. The Agreement may be renewed at the option of the Parties, but neither Party shall have any obligation to renew the Agreement or otherwise negotiate a new agreement. If the County intends to renew the Agreement or otherwise contract with UAC for the provision of Website Services, UAC requests that the County provide written notice to UAC at least 60 days prior to the end of the Term. This Agreement shall renew automatically, unless terminated by the Parties in writing, at the end of the Term. During the Term, either Party may terminate the Agreement, with or without cause, upon (30) days written notice.

c. Breach. If either Party believes the other has materially breached its obligations under this Agreement, it shall provide written notice to the other Party of the alleged breach and allow that Party ten days from the date of the written notice to cure the breach. If the other Party does not cure the breach within ten days, the non-breaching Party may terminate this Agreement immediately through written notice to the other Party. If any legal proceedings occur as a result of an alleged breach by one of the Parties, the prevailing Party is entitled to an award of all reasonable expenses and fees (including reasonable attorney fees) it incurred as a result of the breach or the allegation of breach.

**6. UAC as an Independent Contractor.** The relationship of UAC to the County under this Agreement shall be that of an independent contractor. No agent, employee or servant of UAC or the County shall be deemed to an employee, agent or servant of the other Party as a result of this Agreement. None of the benefits provided by each Party to its employees, including but not limited to worker's compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other party by virtue of this Agreement. UAC and the County shall each be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the performance of this Agreement. UAC and the County shall each make commercially reasonable efforts, where appropriate, to inform third parties that UAC is acting as an independent contractor. Nothing herein shall create a partnership or joint venture relationship between the Parties.

**7. Conflicts of Interest.** The Parties acknowledge, as noted above, that officials from the County (either elected officials and/or employees) may also serve as officers and/or directors of UAC. In addition, officials from the County may serve on committees of UAC. If or Should such County officials fully disclose their involvement with the County to UAC, and their involvement with UAC to the County, the fact that

such individuals are serving in multiple roles shall not, in and of itself, give rise to a conflict of interest that would, in any way, impede the enforceability of this Agreement. If either Party believes that an agent of the County is involved in a UAC role (i.e., board member, committee member, etc.), such that his or her role with UAC creates a conflict of interest that materially jeopardizes either Party's performance of its obligations under this Agreement, that Party shall promptly provide written notice of such conflict of interest to the other Party.

## **8. Miscellaneous Provisions.**

a. Each person signing below represents and warrants:

i. that he/she is authorized to execute this Agreement for and on behalf of the Party for whom he/she is signing,

ii. that such Party shall be bound in all respects hereby, and

iii. that such execution presents no conflict with any other agreement of such Party.

b. This Agreement constitutes the entire agreement between the Parties relative to the subject matter hereof, and there are no representations, warranties, or agreements, or any conditions or contingencies, whether express or implied, or oral or written, except as set forth herein. This Agreement may be modified only in a writing executed by the Parties.

c. No assignment or delegation of this Agreement or of any of the rights or obligations hereunder by any Party hereto shall be valid without the prior written consent of the other Party or Parties.

d. This Agreement shall be governed by the laws of the State of Utah. Any litigation arising out of this Agreement shall be conducted in applicable courts in Salt Lake County, Utah, and the Parties expressly agree and consent to such jurisdiction and venue.

e. This Agreement shall be construed as if equally drafted by the Parties, and no rules of strict construction against any Party shall be applied.

f. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable provision(s) shall be limited or eliminated only to the extent necessary to remove such invalidity, illegality, or unenforceability, and the other provisions of this Agreement shall not be affected thereby.

g. All written notices or communications required or permitted to be given under this Agreement shall be deemed sufficient if delivered personally, via email, via facsimile, or mailed postage prepaid by first class, registered or certified mail posted in the United States and addressed as identified in the opening paragraph of this Agreement. Such notices or communications shall be treated as being effective when delivered, if delivered personally, by email or by facsimile. If sent by mail, they shall be treated as being effective at the earlier of actual receipt or seventy-two (72) hours after the same has been deposited in a regularly maintained receptacle for the deposit of United States mail.

Notice to UAC shall be delivered to:  
Utah Association of Counties  
5397 South Vine Street  
Murray, Utah 84107

Notice to the County shall be delivered to:  
Tooele County  
47 South Main Street  
Tooele, Utah 84074

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IN WITNESS WHEREOF, the Parties have voluntarily executed this Agreement as of the day and year stated above.

**UTAH ASSOCIATION OF COUNTIES, INC.**

By: Brandy Grace  
Its: COO

**TOOELE COUNTY**

By: Tom Tripp Tom Tripp April 29, 2019  
Its: County Commission Chair

**ATTEST:**

Marilyn K. Gillette  
MARILYN K. GILLETTE  
TOOELE COUNTY CLERK

