

**REQUEST FOR PROPOSALS
CITY BANKING SERVICES
SUNSET CITY, UTAH**



PROJECT OVERVIEW

The City of Sunset (City) requests proposals from local qualified financial institutions (Proposers) for comprehensive commercial banking services.

PROJECT DESCRIPTION

The Sunset City Treasurer is requesting proposals from qualified financial institutions for commercial banking services. The City intends to maintain all banking services outlined in this RFP with one financial institution. Wells Fargo currently provides banking services to the City. This request is to validate and compare the services of the market to ensure that the City is receiving the optimum level of service at a competitive price.

This RFP is intended to provide interested respondents with sufficient minimum requirements. The requirements in the Proposal Format for this Request For Proposals (RFP) are not intended to limit a proposal's content or creativity. Proposers may submit innovative ideas, new concepts, and optional features in response to this RFP. Proposers are encouraged to expand upon the specifications to give additional evidence of their ability to provide the services requested in this RFP. However, Proposers must address the needs and requirements stated in the Proposal Format of this RFP.

The award of additional features beyond the minimum requirements is at City's sole discretion and will be identified in the resulting contract if deemed appropriate by City and falls in line with the initial RFP.

The City will make every effort to administer the proposal process following the terms and dates outlined in this RFP. However, the City reserves the right to modify the activities, timeline, or any other aspect of the process at any time and as deemed necessary by City staff. By requesting proposals, the City is in no way obligated to award a contract or pay the expenses of the proposing financial institution in connection with the preparation or submission of a proposal. The awarding of a contract shall be contingent on the availability of funds and the requisite staff and City Council approvals.

PROJECT SCHEDULE

The anticipated project schedule below is subject to change and may be modified at the discretion of the City. Implementation timelines will be negotiated with the awarded financial institution.

Date	Milestone
[July 11, 2025]	RFP Released

Date	Milestone
[July 22, 2025]	RFP Questions Due
[July 28, 2025]	RFP Responses Due
[July 28 – August 6, 2025]	Proposals Reviewed and Interviews Scheduled
[August 11 – August 15, 2025]	Contract Negotiation
[August 19, 2025]	Contract Award
[August 2025 – September 2025]	Conversion and Implementation
[October 1, 2025]	Anticipated Contract Start – Could be sooner

MANDATORY MINIMUM REQUIREMENTS

The proposing financial institution must meet the qualifications described in this section to submit a proposal. Proposals that do not meet these requirements will be deemed as Non-Responsive and will not be considered. Affirmation is required in Attachment A.

1. Full-Service Branch Within City Limits

- a. Be a Federal or State of Utah chartered financial institution; and
- b. Have a full-service branch located near the city limits of Sunset City.

2. Qualified Public Depository

- a. Be a qualified depository for public funds according to the Utah State Money Management Act Section 51-7-11; and
- b. Be a member of the Federal Reserve System and must have access to all Federal Reserve services (e.g., check processing, electronic funds transfer, etc.); and
- c. Be insured by the Federal Deposit Insurance Corporation (FDIC).

3. Legal Compliance

- a. Represents and warrants that the institution is familiar with local laws and ordinances, and will conform to all local, state, and federal laws, including but not limited to all anti-discrimination laws.

4. Technology

- a. The ability to supply web-based information reporting systems and allow multiple users with different security level access; and b. Provide electronic notifications, electronic images of cleared checks front and back, direct deposit services, wire transfers, cashier's checks, and automatic clearinghouse transfers.
-

PROPOSAL FORMAT

The proposals should contain the following information in the general order listed:

1. Signed Introductory Letter

Include a statement that your firm agrees to all the requirements and conditions stated in the RFP document.

2. Table of Contents

The table of Contents should follow the RFP format.

3. Institution's Profile

Please provide the following information:

a. **Institution Overview** - General overview of the institution, certification of qualifications, customer service philosophy, and identification of the primary office or branch that the City will be assigned to and where the City will conduct its business.

b. **Experience** – Institution's direct experience in servicing public sector clients, the number of public agency clients, and the dollar amount of public funds on deposit.

c. **Relationship Management** – Identify officers responsible for the City's accounts, each person's role and responsibilities, and the relevant credentials and experience of each person on the relationship management team. List the physical location of proposed bank officers (i.e., Sunset, Salt Lake, etc.).

4. References

a. Provide a current list of public agency clients within the State of Utah. b. Provide three (3) public agency references for whom you have provided banking services similar to those required by the City. Include for each reference a contact name, title, name of customer, telephone number, e-mail address, and number of years as a customer.

5. Business Checking Accounts

Sunset City maintains one business bank account.

The City maintains account that supports both disbursement and deposit functions. This account is used to manage all accounts payable, payroll, and ACH/EFT payments. Accounts payable disbursements are processed weekly through a combination of electronic funds transfers and check issuance. Payroll is issued bi-weekly, primarily through direct deposit, with occasional paper checks as needed. The City's primary method for disbursing funds is electronic transfer. This same account also serves as the City's depository, receiving cash deposits, scanned check batches, and ACH/EFT payments from various online payment vendors. The only debits to the account, aside from disbursements, are banking service charges and withdrawals by online payment vendors, which are taken from the same account into which they deposit funds.

Provide answers to the following questions:

a. Describe the financial institution's cash deposit requirements.

- i. How should the coin and currency deposits be bundled?
 - ii. Is there a fee for depositing loose or rolled coins?
- b. Provide examples of the reports for the account analysis statement and the bank statement.
- c. Describe in detail the financial institution's procedures for handling deposit adjustments.
 - i. What documentation on discrepancies does the bank provide?
 - ii. Is the documentation different for cash deposits and check deposits?
 - iii. What is the minimum adjustment amount?
 - iv. How soon would support documentation of a deposit discrepancy be provided to the City?
- d. Describe the financial institution's return item handling and notification procedures.
 - i. How long does it take for the returned items to be sent to the City?
 - ii. Can returned items be automatically re-deposited? If so, how many times?
- e. Provide the options available to maximize the city's earning potential from account balances.
 - i. Can the financial institution set up sweep investment accounts and zero-balance accounts as outlined for Sunset's accounts?
 - ii. For investment sweeps, are monthly earnings statements available?

6. Online Banking

Most of the City's banking will be done online and the financial institution will need to have a robust online banking portal. The financial institution's online banking services should include, at a minimum, the following capabilities:

- a. Secure, dual administration (separation of duties) for initiating and approving wire transfers, ACH transfers, template setups, etc.
- b. Ability to create and administer multiple users accounts with varying levels of access and permissions to online banking tools. This should be accomplished completely online without the need to call the bank to adjust user access or permissions.
- c. Wire transfers and ACH/EFT transfers
- d. Positive Pay capabilities and file upload of new or canceled positive pay issues.
- e. Ability to download PDF electronic bank statements and the ability export account transaction data to Excel on demand.
- f. Daily detailed account reporting showing beginning and ending ledger balances, collected balances, and available balances. Provide a sample of the prior day and intra-day reports that would be the best example of the system's capabilities.
- g. Image viewing of checks, front and back for 4 years of check history as per Utah record retention law

i. If a new banking services provider is chosen, can images from the previous provider be integrated into the new provider's database and made searchable online?

ii. Has your financial institution ever had a successful conversion of check images from one financial institution to another within the government sector? If so, please tell us where and provide a reference we may contact.

h. Stop payments

i. Funds transfers between accounts

j. Viewing of float information on all deposited items

k. Electronic notification of transactions

l. Viewing information on refunds, voids, or deletions of deposits or receipts

m. Information is to be available for a minimum of 90 days

n. Ability to remotely scan checks via a desktop deposit tool in daily batches

i. Will our current check scanning equipment suffice for this or will the City be required to purchase new check scanners? The City currently uses Digital Check Teller Scan TS240.

7. EFT Services, Direct Deposit, and Wire Transfers

The City processes direct deposits of payroll up to three times per month. The payroll files are sent to the bank through the online banking portal for paydays that occur bi-weekly.

Electronic payments to vendors through accounts payable are done up to twice a month. A payment file is uploaded through the banking portal and the EFT payments are scheduled.

Utility payments are uploaded via Forte and Invoice Cloud for direct debit from customers' accounts with the customer's permission.

Wire transfers, although infrequently used, should be available through the online banking portal. Wire transfers are typically reserved for larger transaction amounts or for transaction types that require a wire transfer.

All electronic payments should require a dual approval process; one person uploads or enters the payment information and another to review and approve it. At no time should any single person be able to approve their own EFT submissions.

Provide answers to the following:

a. Describe the financial institution's ACH and Direct Deposit online banking service.

i. What are the different ACH file transmission options available to the City?

ii. What are the transmission deadlines for ACH files? When (day and time) does the financial institution need the file from the City?

iii. What are the hours of operation of the ACH unit?

- b. Detail the financial institution backup plans for data transmissions. The City requires immediate notification of any changes or problems and the ability to re-send or delete a file.
- c. What screening measures does the financial institution use to minimize errors on files sent to you?
- d. How does the financial institution handle payment file, payment batch, and item reversals and deletions?

8. Positive Pay Services

Describe the financial institution's ability to provide Positive Pay services.

- a. What type of data transmission can the financial institution accept?
- b. What is the deadline for the transmission of check issuance files to the financial institution?
- c. How much time will the City have to review discrepancies and notify the financial institution to pay or reject?
- d. How is the City notified?

9. Conversion

The City requires a smooth and low-cost transition to a new financial institution.

- a. Describe the financial institution's plan to implement the proposed services and to ensure a smooth, error-free conversion. Detail all costs and the responsible party (financial institution or City) associated with the conversion of all new services.
- b. Indicate your plans for educating and training City employees in the use of your system(s).
- c. Describe in detail how the financial institution handles problem resolution, customer service, day-to-day contact, and ongoing maintenance for governmental clients. Please be specific about exactly whom the City will be calling and working with for the above-described situations.

10. Pricing

Provide pricing of analyzed charged by service category on the Price Proposal Sheet Attachment A. The categories listed in the Price Proposal Sheet Attachment A are listed below.

- a. Balance & Compensation Information
- b. General Account Services
- c. Depository Services
- d. Paper Disbursement Services
- e. Paper Disbursement Reconciliation Services
- f. General ACH Services
- g. Wire & Other Funds Transfer Services
- h. Information Services (i.e. Alerts, Statements, etc.)

k. Investment/Custody Services (Sweep)

If your financial institution offers an earning allowance on deposited funds, please explain the service and how it will benefit the City. Provide your institution's Earned Credit Rate on the Price Proposal Sheet Attachment A.

Provide your institution's Government Sweep Interest Rate on the Price Proposal Sheet Attachment A.

11. Disaster Recovery

a. Describe your institution's formal disaster recovery plan.

b. How quickly will backup facilities be activated?

12. Additional Services

The proposer institution may submit optional proposals for other services, or modifications of services discussed above if the institution feels it has an enhanced value to the Treasurer. Under this category, the institution's presentation should be concise with a detailed listing of costs associated with offerings.

SUBMITTAL REQUIREMENTS

Submit your proposals electronically through the Utah Public Procurement Place (U3P) or by emailing nsupp@sunsetut.gov by 5:00pm current Mountain Time on July 25, 2025. Proposals submitted electronically through the Utah Public Procurement Place may require uploading of electronic attachments. The U3P will accept a wide variety of document types as Word, Excel, and PDF attachments but not all. You MAY NOT submit documents that are embedded (zip files), movies, wmp and mp3 files or password protected files, etc. Such actions may cause your proposal(s) to be deemed as "Non-responsive".

When submitting an offer electronically through the U3P, please allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time listed in the offer. If you are in the middle of uploading your documents at closing time, the system will stop the process and your offer will not be received by the system. It is recommended that the submission process be completed the day prior to the due date, with the knowledge that any changes/updates will be accepted up to the due date and time.

Jaggaer customer support may be contacted at (800) 233-1121 for guidance on the U3P site.

Offerors are responsible for ensuring that their U3P registration information is current and correct. Stakeholders shall not be responsible for missing or incorrect information contained in the Proposers' registration in the U3P. Incorrect or missing Proposer registration information may result in failure to receive notification from the U3P regarding this procurement.

Proposals received after this deadline will be late and ineligible for consideration. Following the deadline, the names of those responding to the RFP may be made public.

It is the intention of the City to issue a purchase order (or contract) with reasonable promptness, to the highest scoring responsive and responsible offeror that meets the RFP requirements and specifications; however, the City does not guarantee to make any purchase based upon this RFP.

An evaluation committee shall review the submittal material.

There should be no contact made with members of the Sunset City Council, the Mayor, or any other city official or department personnel other than the designee regarding this RFP.

If only one proposal is received in response to the RFP, the purchasing agent, based on feedback from the department, may re-solicit for the purpose of obtaining additional proposals.

QUESTIONS

Questions arising subsequent to the issuance of this RFP, that could have a significant impact on the responses to the RFP, should be submitted in the RFP Question and Answer section Ref Number #GJ25-154 at the U3P. U3P will then email the answer to all Offerors that downloaded the RFP.

Only written clarifications and addenda issued by the Purchasing Department will be binding for RFP evaluation and award of a contract or purchase order.

SELECTION OF OFFEROR (Two-Stage Scoring/Ranking Process)

Scoring Stage 1

The evaluation process may be based on these factors. The evaluation process may include numeric scoring.

1. Responsiveness to the RFP - 5 Points
2. Quality of Services Provided - 25 Points
3. Online Banking Services - 25 Points
4. Proposed Conversion Plan - 10 Points
5. Pricing Proposal - 25 Points
6. Additional Services - 10 Points

Cost formula: $25 (2 - (\text{Proposed Price} / \text{Lowest Proposed Price}))$.

Final Ranking Stage 2 - Discussions with Vendors (Oral Presentation)

An oral presentation and demonstration by a Proposer will be required for up to the three (3) highest-scoring Proposers. Oral presentations will be made at the Proposers expense.

Advanced Proposers will be interviewed and ranked (1 to # of Proposers invited to Stage 2) based upon but not limited to the Demonstration of financial system functionality, performance quality, customer service, ease of use, methodologies, and questions and answers provided during the presentation.

The highest-ranked Vendor (#1 ranking) may be awarded a contract upon successful negotiations. Should negotiations fail, the City reserves the right to open negotiations with the next highest-ranked Proposer until a successful negotiation has been completed.

INSURANCE REQUIREMENTS

Provider and Sub providers (if any) shall at all times during the term of this Agreement, without interruption, carry and maintain insurance from an insurance company authorized to do business in the State of Utah, with an AM Best rating of A and a financial size category of X, with the types and limits of insurance as set forth in this Section.

The Provider shall provide a Certificate of Insurance with a copy of all endorsements and declarations to the City five (5) days after a request by the City; if no request has been made by the City, the Provider shall provide a Certificate of Insurance to the City no later than thirty (30) days after the execution of the Agreement entered into by the Parties.

The provider must add the City as an additional insured for ongoing and completed operations. The provider expressly agrees to waive all rights of subrogation on the part of the insurer against the City. Failure to provide proof of insurance, as required, will be deemed a material breach of the Agreement.

The Provider shall not cancel or allow the insurance policy to expire unless written notice has been given to the City at least thirty (30) days prior to the cancellation or expiration. The Provider's failure to maintain the insurance requirements below for the term of the Agreement will be grounds for immediate termination of the Agreement.

The liability limits in this Section are the minimum requirements. To the extent the Provider maintains or causes to be maintained on its behalf, liability limits that are higher than the minimum limits stated in this Section, higher liability limits shall be required of the Provider.

A. General Liability Insurance

Bodily injury and property damage in the amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. General property damage liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

B. Cyber Liability Insurance

Cyber Liability Insurance for Provider's liability arising out of the handling, storage, or access to protected information, and shall respond to the loss or theft of protected information, including all legal and forensic expenses, voluntary notifications, credit monitoring expenses, and subsequent third-party liability claims arising from the cyber event. Coverage shall apply to business associates and subcontractors. Limits shall be provided not less than \$2,000,000 for each claim.

C. Workers' Compensation

Statutory workers' compensation insurance (Part A). Such insurance shall also include employer's liability (Part B) insurance with a limit of no less than \$1,000,000 for each accident, disease, and employee. No owner or officer may be excluded from coverage.

D. Crime Insurance or Bankers Bond

In the event the contractor should have direct access to city funds, crime insurance shall be maintained in an amount not less than \$10,000,000 and including the following insuring agreements:

- Employee Theft
- Forgery or Alteration
- Theft of Money & Securities
- Theft of Money & Securities In-Transit
- Money Orders and Counterfeit Currency
- Computer Crime
- Funds Transfer Fraud
- Theft of Client Funds
- Social Engineering Fraud (Impersonation Fraud)

The selected COMPANY's General Liability insurance shall at all times name the City of Sunset, its officers, employees, and volunteers as additional insured for ongoing and completed operations, on a primary and non-contributory basis with respect arising from any work that results from this bid/contract. The COMPANY shall waive subrogation (rights of recovery) against the City on their General Liability, and Workers' Compensation policies.

Claims-Made Policies: If any policies are written on a claims-made basis, the policy shall provide the COMPANY the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period (Tail) of not less than two years. The COMPANY agrees to purchase such an extended reporting period if needed to ensure continuity of coverage. The COMPANY'S failure to purchase such an extended reporting period as required by this paragraph shall not relieve it of any liability under this Contract. The retroactive date of any such policy shall be no later than the date this Contract is executed by the parties hereto. If the COMPANY purchases a subsequent claims-made policy in place of any prior claims-made policy, the retroactive date of such subsequent policy shall be no later than the date this Contract is executed by the parties hereto. The Provider agrees to maintain and evidence any claims made policies for four years beyond the expiration date of this contract.

FORMATION OF THE CONTRACT WITH THE SELECTED APPLICANT

After selecting an applicant, the City may conduct additional negotiations with the applicant to arrive at a best and final offer. When both parties are in agreement, a contract will be entered into and executed by the Mayor. The selected applicant will be bound by the provisions of the Sample Contract attached to this RFP.

TERM OF AGREEMENT

The successful Vendor may be issued a contract for a period defined in the winning Consultant's project schedule. Upon mutual agreement of the City and Consultant, the agreement may be renewed for an additional negotiated term as needed to complete the procurement and implementation of banking services.

REPRESENTATION REGARDING ETHICAL STANDARDS

By submitting a proposal in response to this Request for Proposals, the offeror, or contractor represents that they have not: 1) provided an illegal gift or payoff to a city officer or employee or former city officer or employee, or his or her relative or business entity; 2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than as exempted in the city conflict of interest ordinance; or 3) knowingly influenced (and hereby promises that it will not knowingly influence) a city officer or employee or former city officer or employee to breach any of the ethical standards set forth in the city conflict of interest ordinance, title 1, chapter 17 of the Sunset city code.

OTHER REQUIRED INFORMATION & MATERIALS

For all service-related purchases, the contractor will be required to sign the City Agreement for Services. A draft copy is provided below.

A. Exceptions

If the offeror takes exception to any term, condition, or requirement set forth in this Request for Proposal or the Agreement and any of its Exhibits and Attachments, said exceptions must be clearly identified and included in the response to this RFP. The City may not accept exception requests after the due date has expired and responses have been received.

1. Exceptions or deviations to any of the terms, conditions, or requirements must not be added to the proposal pages but must be submitted as a separate document accompanying the offeror's proposal identified as "Exceptions."

However, any exceptions submitted may render the submission non-responsive to the requirements listed. The City shall be the sole determiner of the acceptability of any exception. Therefore, we encourage you to SUBMIT your questions or concerns using the Question-and-Answer process as defined in the RFP (Questions and Clarification), rather than submitting Exceptions as part of your proposal. If allowed by the City, exceptions will be considered in the evaluation, award processes, and any future contract negotiations.

B. Banking Services Agreement

If the Provider prefers or requires the use of their banking services agreement, the Provider(s) must provide a copy of their agreement for consideration at the time of their RFP response submittal. If considered, the City will need to negotiate various terms and conditions that align with and protect the City as a governmental entity.

C. Right to Reject

The City reserves the right to reject any banking services agreement in part or in full without further consideration and to deem said proposal as Non-Responsive.

PROTECTED INFORMATION

(a) The Government Records Access and Management Act (GRAMA), codified as Utah Code Ann., Subsection 63G-2-101, et seq., as amended, allows for limited protection of disclosure of certain confidential records. Subject to Subsection (b), all information contained in any RFPs submitted to the City shall be classified as public, but only after the City has awarded and executed a Contract with the winning Vendor.

(b) Any Claim of Business Confidentiality submitted pursuant to Utah law and in accordance with GRAMA may, in the sole discretion of the City, be classified as protected information. By submitting this RFP, the Vendor agrees to be bound by the City's classification of its information submitted with its RFP and releases from liability and agrees to indemnify the City for any disclosure of confidential information. The Vendor must clearly identify and describe in the Executive Summary and in the body of the proposal any specific information for which an offeror claims business confidentiality protection as "PROTECTED".

(c) The City reserves the right to classify as a public record any proposal submitted that does not comply with the GRAMA statute without further discussion with the Vendor. The City may decline to designate any information as PROTECTED if the Vendor uses a blanket claim of business confidentiality and/or fails to adequately describe or specify its confidentiality claims in sufficient detail, as determined in the City's sole discretion.

(d) All materials submitted become the property of the City, including originals, and will not be returned. Materials may be evaluated by anyone designated by Sunset City as part of the proposal evaluation committee.

APPLICABILITY OF CITY CODE

The Sunset City Code applies to this proposal process, including, but not limited to, Title 1 Chapter 17 of said code.

REJECTION OF PROPOSALS

The City reserves the right to reject any or all proposals received, and to select the proposal deemed to be the most advantageous and in the best interest of the City. Non-acceptance of a proposal will mean that one or more others were deemed more advantageous to the City or that all proposals were rejected.

INCURRING COSTS

Sunset City will not be liable for any cost that applicants may incur in the preparation of their proposals. Proposals should be concise, straightforward, and prepared simply and economically. Expensive displays, bindings, or promotional materials are neither desired nor required.

Contact Information: Nicole Supp, City Recorder/Office Manager, City of Sunset, 200 W 1300 N, 801-614-9102, nsupp@sunsetut.gov

This RFP document is subject to modification.





AGREEMENT FOR SERVICES

This Agreement for Services ("Agreement") is entered into between the City of Sunset (the "City"), a municipal corporation, and [Name of Contractor] ("Contractor"):

The parties agree as follows:

1. **Scope of Work:** The Contractor shall perform, or cause to be performed, the services according to the terms and conditions set forth in the City's solicitation.
2. **Solicitation of Services:** The City solicited bids, proposals, or quotes for services identified in the Scope of Work. Contractor timely and properly submitted a bid, proposal, or quote meeting the City's solicitation requirements.
3. **Term:** This initial term will begin on the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature). The term of the Agreement shall terminate [on date OR number of years]. This Agreement may be renewed for [# of optional renewals] additional [# of years]-year terms upon a written agreement, signed by both parties.
4. **Payment:** In consideration of performing and completing the scope of work identified herein, City shall pay Contractor in an amount not-to-exceed [dollar amount].
5. **Entire Agreement:** The following attachments are incorporated herein by reference and shall be part of the Agreement:
 - a. Attachment A: Standard Terms and Conditions
 - b. Attachment B: City's Solicitation
 - c. Attachment C: Contractor's Bid/Proposal/Quote
 - d. Attachment D: Insurance Certificate

CONTRACTOR

Date:

By: _____

Title: _____

CITY OF SUNSET CITY

Mayor

Date

ATTEST:

City Recorder

Date

APPROVED AS TO FORM:

City Attorney's Office

Date

ATTACHMENT A

(STANDARD TERMS AND CONDITIONS FOR SERVICES)

This is for an Agreement for Services (including professional services), meaning the furnishing of labor, time, or effort by a Contractor.

1. **Definitions:** The following terms shall have the meanings set forth below:
 - a) "City" means the municipal corporation, including all departments, divisions, offices, or other organizations.
 - b) "City Officials" means elected officials, employees, and agents of the City.
 - c) "Confidential Information" means information that is deemed as confidential under applicable state and federal laws, including personal information. The City reserves the right to identify, during and after this Agreement, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - d) "Solicitation" means the documents used by the City to obtain a Contractor's bid, proposal, or quote.
 - e) "Subcontractors" means businesses, individuals, organizations, associations, and other agents of the Contractor at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent Contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Agreement, including Contractor's manufacturers, distributors, and suppliers.
2. **Governing Law and Venue:** This Agreement shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Agreement shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in West Jordan City, in the Third Judicial District Court for Salt Lake County.
3. **Laws and Regulations:** At all times during this Agreement, Contractor and all services performed under this Agreement will comply with all applicable federal, state, and city constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
4. **Records Administration:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the City to Contractor under this Agreement. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, federal and state auditors, and City staff and agents, access to all such records.
5. **Conflict of Interest:** Contractor represents that none of its officers or employees are officers or employees of the City or the State of Utah, unless disclosure has been made to the City.
6. **Independent Contractor:** Contractor's legal status is that of an independent Contractor, and in no manner shall Contractor be deemed an employee or agent of the City and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an Independent Contractor, shall have no authorization, express or implied, to bind the City to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the City. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
7. **Release and Indemnification:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors. Contractor shall release the City, its agents, elected officials, officers, and employees (collectively, "City officials") from all loss, liability, damage, damages, claims, demands, judgments, and attorneys' fees and costs (collectively, "liabilities") arising out of or related to the City officials' negligent acts, errors, and omissions. Contractor shall fully indemnify the City, its agents, elected officials, officers, and employees from all liabilities arising out of or related to the intentional or negligent acts, errors, and omissions of the Contractor and the performance of this Agreement. This section includes the right of the City to be released by Contractor and indemnified against third parties from any liabilities brought against the City for intellectual property infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability that such limitations of liability will not apply to this section. This release and duty to indemnify shall be ongoing and survive the termination or expiration of this Agreement up and until all such statute of limitations for claims, actions, and demands have expired.
8. **Limitation of Liability:** If a judicial body determines that the release of liability and indemnification provision, or any part thereof, violates federal, state, or local laws, City officials shall not be liable for loss, liability, damage, damages, claims (third-party or otherwise), demands, judgments, and attorneys' fees and costs, arising out of or related to, the intentional or negligent acts, errors, and omissions for an amount more than 20% of the contract price. This limitation of liability shall be ongoing and survive the termination or expiration of this Agreement up and until all such statute of limitations for claims, actions, and demands have expired.
9. **Amendments/Change Orders:** This Agreement may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Agreement. Automatic renewals will not apply to this Agreement. Any changes in the scope of services to be performed under this Agreement shall be in the form of a written amendment to this Agreement, mutually agreed to and signed by both parties, specifying any such changes to time, price, or other factors arising from the changes in the scope of services. Unless the City and the Contractor have agreed in writing before the performance of additional services, the City shall not be obligated to pay for the additional services and Contractor waives all rights to seek payment for additional services.

10. **Debarment:** Contractor certifies that it is not presently, nor has it ever been, debarred, suspended, or proposed for debarment by any governmental department or agency, whether International, national, state, or local. Contractor must notify the City within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any Agreement by any governmental entity during this Agreement. Contractor shall be bound by the Debarment and Suspension section(s) of the West Jordan City Code that is in effect at the time the City seeks to debar or suspend the Contractor from further bidding or other work.
11. **Termination:** Unless otherwise stated in this Agreement, this Agreement may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Agreement may be terminated for cause immediately and is subject to the remedies listed below. This Agreement may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon thirty (30) days written termination notice being given to the other party. The City and the Contractor may terminate this Agreement, in whole or in part, at any time, by mutual agreement in writing. On termination of this Agreement, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services ordered prior to date of termination.

Contractor shall be compensated for the services properly performed under this Agreement up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the City is limited to full payment for all services properly performed as authorized under this Agreement up to the date of termination.

12. **Nonappropriation of Funds, Reduction of Funds, or Changes in Law:** Upon thirty (30) days written notice delivered to the Contractor, this Agreement may be terminated in whole or in part at the sole discretion of the City, if the City reasonably determines that: (i) a change in Federal, State, or City legislation or applicable laws materially affects the ability of either party to perform under the terms of this Agreement; (ii) that a change in available funds affects the City's ability to pay under this Agreement; (iii) the City Council fails to fund the event. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal, State, or City funding, whether as a result of a legislative act, action by the Utah Judicial Council or by order of the President or the Governor.

If a written notice is delivered under this section, the City will reimburse Contractor for the services properly ordered until the effective date of said notice. The City will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

13. **Suspension of Work:** Should circumstances arise which would cause the City to suspend Contractor's responsibilities under this Agreement, but not terminate this Agreement, this will be done by written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the City.
14. **Insurance:** Contractor shall at all times during the term of this Agreement, without interruption, carry and maintain insurance from an insurance company authorized to do business in the State of Utah with the types and limits of insurance as set forth in this Section. The Contractor shall provide a Certificate of Insurance to the City five (5) days after a request by the City; if no request has been made by the City, the Contractor shall provide a Certificate of Insurance to the City no later than thirty (30) days after the execution of this Agreement. Contractor must add the City as an additional insured for ongoing and completed operations. Contractor expressly agrees to waive all rights of subrogation on the part of the insurer against the City. Failure to provide proof of insurance, as required, will be deemed a material breach of this Agreement. The Contractor shall not cancel or allow the insurance policy to expire unless written notice has been given to the City at least thirty (30) days prior to the cancellation or expiration. The Contractor's failure to maintain this insurance requirement for the term of this Agreement will be grounds for immediate termination of this Agreement.

The required limits shall be as follows:

- a) If the City's solicitation sets forth the coverage requirements for General Liability Insurance, Automobile Liability Insurance, Workers Compensation, and Professional Liability Insurance ("Four Insurances"), the Contractor shall be required to provide those limits.
- b) If the City's solicitation did **not** set forth coverage requirements for **any or all** of the Four Insurances, the Contractor shall be required to provide those minimum limits set forth below for **any** of the Four Insurances that were not included within the solicitation. Any insurance coverage limits set forth in the City's solicitation that conflict with any of the categories below shall be governed by that category set forth in the City's solicitation. The limits below shall only apply if such category is not included within the City's solicitation.
 - A. **General Liability Insurance.** Bodily injury and property damage in the amount not less than \$2,000,000 per occurrence and \$3,000,000 aggregate. General property damage liability insurance in an amount not less than \$2,000,000 per occurrence and \$3,000,000 aggregate. Products and Completed Operations liability in an amount not less than \$2,000,000 per occurrence and \$3,000,000 aggregate.
 - B. **Automobile Liability.** Automobile Liability Insurance with a \$2,000,000 per accident limit.
 - C. **Workers Compensation.** Statutory workers' compensation insurance (Part A). Such insurance shall also include employer's liability (Part B) insurance in a limit of no less than \$1,000,000 for each accident, disease, and employee. No owner or officer may be excluded from coverage.
 - D. **Professional Liability.** Professional errors and omissions insurance, if applicable, in the amount not less than \$3,000,000 per claim and \$3,000,000 aggregate.
15. **Public Information:** Contractor agrees that this Agreement, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the Governmental Records Access and Management Act ("GRAMA"). Contractor gives the City express permission to make copies of this Agreement, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the City, all of which must be in accordance with GRAMA, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The City is not obligated to inform Contractor of any requests for disclosure of this Agreement, related purchase orders, related pricing documents, invoices, or any documents not otherwise categorized by the City as "protected" or "controlled." Pursuant to GRAMA and in consideration of this Agreement, the City may, in its sole discretion, classify information on its own accord or in response to a Claim of Business Confidentiality. If any conflicts exist between this document and any other documents signed by the parties regarding confidentiality, this provision shall govern.

16. **Acceptance and Rejection:** The City shall have thirty (30) days after the performance of the services to perform an inspection of the services to determine whether the services conform to the standards specified in the Solicitation and this Agreement prior to acceptance of the services by the City.

If Contractor delivers nonconforming services, the City may, at its option and at Contractor's expense: (i) return the services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming services subject to the terms of this Agreement; or (iii) obtain replacement services from another source, subject to Contractor being responsible for any cover costs.

17. **Invoicing:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the services to the City. The prices paid by the City will be those prices listed in this Agreement, unless Contractor offers a prompt payment discount within its Proposal or on its invoice.
18. **Time is of the Essence:** The services shall be completed by any applicable deadline stated in this Agreement. For all services, time is of the essence. Contractor shall be liable for all reasonable damages to the City and anyone for whom the City may be liable, as a result of Contractor's failure to timely perform the services required under this Agreement.
19. **Performance Evaluation:** The City may conduct a performance evaluation of Contractor's services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
20. **Reviews:** The City reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Agreement.
21. **Assignment:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Agreement, in whole or in part, without the prior written approval of the City.
22. **Remedies:** Any of the following events will constitute cause for the City to declare Contractor in default of this Agreement: (i) Contractor's non-performance of its contractual requirements and obligations under this Agreement; or (ii) Contractor's material breach of any term or condition of this Agreement. The City may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the City may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Agreement; (iii) impose liquidated damages, if liquidated damages are listed in this Agreement; (iv) debar/suspend Contractor from receiving future Agreements from the City; or (v) demand a full refund of any payment that the City has made to Contractor under this Agreement for services that do not conform to this Agreement.
23. **Force Majeure:** Neither party to this Agreement will be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. The City may terminate this Agreement after determining such delay will prevent successful performance of this Agreement.
24. **Confidentiality:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Agreement; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the City of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify and hold harmless the City including anyone for whom the City is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Agreement, Contractor will return all copies of Confidential Information to the City or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Agreement.

25. **Publicity:** Contractor shall submit to the City for written approval all advertising and publicity matters relating to this Agreement. It is within the City's sole discretion whether to provide approval, which must be done in writing.
26. **Ownership in Intellectual Property:** The City and Contractor each recognize that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Agreement, but specifically created or manufactured under this Agreement shall be considered work made for hire, and Contractor shall transfer any ownership claim to the City.
27. **Warranty:** The Contractor agrees to warrant and assume responsibility for all products or services that it licenses, contracts, or sells to the City under this Agreement for a period of one year unless otherwise specified and mutually agreed upon elsewhere in this Agreement. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this Agreement unless otherwise specified and mutually agreed upon elsewhere in this Agreement. In general, the Contractor warrants that: (1) the product or services will do what the salesperson said it would do, (2) the product or services will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product or services will be suitable for the ordinary purposes for which such product is used, (4) the product or services will be suitable for any special purposes that the City of West Jordan has relied on the contractor's skill or judgment to consider when it advised the City about the product or services, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the City has not been warned. The City, at its sole discretion, may require the Contractor to repair or replace (at no charge to the City) the product or services whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product or services prove to be inadequate or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the City may otherwise have under this contract or provided under the Uniform Commercial Code of the State of Utah.
28. **Waiver:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
29. **Attorney's Fees:** In the event of any judicial action to enforce rights under this Agreement, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees, incurred in connection with such action.
30. **Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the City is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the City, or to any person in any official

capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

Further, by signing this Agreement, the bidder offeror, or Contractor represents that it has not: 1) provided an illegal gift or payoff to a city officer or employee or former city officer or employee, or his or her relative or business entity; 2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than as exempted in the city conflict of interest ordinance; or 3) knowingly influenced (and hereby promises that it will not knowingly influence) a city officer or employee or former officer or employee to breach any of the ethical standards set forth in the city conflict of interest ordinance, Title 1, Chapter 11, including article A, of the West Jordan City Code.

31. **Dispute Resolution:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The City, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the City appoints such an expert or panel, City and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
32. **Order of Precedence:** In the event of any conflict in the terms and conditions in this Agreement, the order of precedence shall be: (i) this Attachment A; (ii) the Agreement for Services; (iii) Attachment B; (iv) Attachment C; (v) Attachment D; (vi) Attachment E; (vii) Attachment F. Any provision attempting to limit the liability of Contractor or limits the rights of the City is rendered null and void, unless otherwise explicitly set forth in the Agreement for Services or in the Solicitation.
33. **Survival of Terms:** Termination of this Agreement shall not extinguish or prejudice the City's right to enforce this Agreement with respect to any default or defect in the services that has not been cured or for any term that explicitly survives the termination of this Agreement.
34. **Severability:** The invalidity or unenforceability of any provision, term, or condition of this Agreement shall not affect the validity or enforceability of any other provision, term, or condition of this Agreement, which shall remain in full force and effect.
35. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
36. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ATTACHMENT B

(City's Solicitation)

ATTACHMENT C

(Proposers Proposal)

ATTACHMENT D

(Certificate of Insurance)