

REQUEST FOR PROPOSAL
Financial Audit of
PRICE CITY

PURPOSE OF REQUEST FOR PROPOSAL

The purpose of this request for proposal (RFP) is to enter into a contract with a qualified independent auditing firm (Contractor) to provide audit services.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements. It is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

BACKGROUND

Price City (the Entity) was incorporated in 1911. The Entity uses five Governmental Funds: General Fund, Drug Task Force Special Revenue Fund, Community Development and Urban Renewal Agency Special Revenue Fund, Capital Projects Fund, and Debt Service Fund. The Entity also maintains five Enterprise Funds: Water/Sewer Fund, Electric Fund, Economic Vitality Fund, Swimming Pool Fund, and Storm Water Fund. The Entity has one Internal Service Fund to account for its information systems and one Trust and Agency Fund. The Community Development and Urban Renewal Agency Special Revenue Fund is a blended component organization that is part of the reporting entity as defined by Governmental Accounting Standards Board (GASB) Statement 61.

Total government-wide revenue for all funds and component organizations was \$20,062,251 for the fiscal year ended June 30, 2018. The Entity uses Caselle Connect software for its accounting applications.

The Entity is required by State law to provide an annual audit of its financial statements by a Certified Public Accountant in accordance with generally accepted auditing standards.

This requirement includes: 1) a financial statement audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, 2) a State Compliance Audit in accordance with the *State Compliance Audit Guide* issued by the Office of the Utah State Auditor, and 3) depending on levels of federal funding, a Single Audit in accordance with the Single Audit Act and Uniform Guidance.

Prior year reports for the Entity can be found on the Office of the Utah State Auditor's website at: <https://secure.utah.gov/auditor-search/?p=localgov>.

SUBMITTING YOUR PROPOSAL

NOTICE: By submitting a proposal in response to this RFP, the offeror is acknowledging that the requirements, scope of work, and evaluation process outlined in the RFP are fair, equitable, not unduly restrictive, and understood and agreed to. Any exceptions to the content of the RFP must be protested to the Entity prior to the closing date and time for submission of the proposal.

Proposals must be received by the submission deadline of May 29, 2019, no later than 5:00 p.m. MDT. Proposals received after the deadline will be late and ineligible for consideration.

One original and three copies of your proposal must be submitted to the Entity at the address below:

Lisa Richens, Finance Director
185 East Main
Price, Utah 84501

Selection of the Contractor will be made by June 12, and all offerors submitting proposals will be notified immediately as to the selection results. Please provide the email address to which you would like the notification sent.

LENGTH OF CONTRACT

The audit contract resulting from this RFP will cover the annual audit for the fiscal year ending June 30, 2019. At the end of the initial term of the agreement, the Entity, at its own discretion, may extend the contract up to five additional one-year terms, subject to an annual performance evaluation, budget appropriations, and the needs of the Entity.

The Entity reserves the right to review the contract on a regular basis regarding performance and cost analysis and may negotiate price and service elements or terminate the contract during the term of the contract.

STANDARD CONTRACT TERMS AND CONDITIONS

Any contract resulting from this RFP will include but not be limited to the Standard Terms and Conditions (see Attachment A). Exceptions and or additions to the Standard Terms and Conditions are strongly discouraged.

Exceptions and additions to the Standard Terms and Conditions must be submitted with the proposal. Exceptions, additions, service level agreements, etc. submitted after the date and time for receipt of proposals will not be considered. Website URLs, or information on website URLs must not be requested in the RFP document and must not be submitted with a proposal. URLs provided with a proposal may result in that proposal being rejected as non-responsive. URLs are also prohibited from any language included in the final contract document.

The Entity retains the right to refuse to negotiate on exceptions should the exceptions be excessive or not in the best interest of the Entity, or if the negotiations could result in excessive costs to the Entity or could adversely impact existing time constraints.

The procurement shall be conducted subject to the Entity's procurement policy.

DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION)

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the Entity. However, the Entity may award a contract based on the initial proposals received without discussion with the offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offerors' expense.

DETAILED SCOPE OF WORK

A. REPORTING REQUIREMENTS

The Contractor shall perform the following engagements for the Entity for the fiscal year ending June 30, 2019.

1. Financial Report – Management prepares the Entity’s financial report including all financial statements, combining statements, required supplementary information, footnotes, and management’s discussion and analysis. Management also completes the GASB 34 conversion and the schedule of expenditures of federal awards and implements new GASB standards.

The Contractor shall audit the financial statements and records of the Entity and shall issue an auditor’s opinion on those financial statements and an in-relation-to opinion on combining and supplementary information. Such financial statements shall be prepared in conformity with accounting principles generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*.

The Contractor will be involved in typing and printing the financial statements. The Entity will provide spreadsheets and documents used in drafting the statements. Provide a separate cost for this service.

2. Independent Auditor’s Report on Internal Control Over Financial Reporting and on Compliance and Other Matters – The Contractor shall issue a report on internal control over financial reporting and on compliance and other matters in accordance with *Government Auditing Standards*.
3. Reports Required for the Uniform Guidance Audit – If a Single Audit is applicable, the Contractor shall prepare all necessary audit reports and schedules required by Uniform Guidance.
4. Report Required for State Compliance Audit – The Contractor shall prepare and include a statement expressing positive assurance of compliance with State fiscal laws and other financial issues related to the expenditure of funds received from federal, state, or local governments identified in the *State Compliance Audit Guide*, issued by the Office of the Utah State Auditor. *(This statement is in addition to the compliance opinion required as part of a single audit.)*
5. Management Letter – As appropriate, the Contractor shall prepare a comprehensive management letter including the audit findings and recommendations relative to the internal control over financial reporting, compliance with laws and regulations, as applicable, and adherence to generally accepted accounting principles.

The Contractor shall request written responses from Entity officials for each recommendation and shall include such responses in the reports. If the Entity declines the opportunity to respond, the Contractor shall so state in their report.

6. Reporting Deadlines – The audits must be completed and 10 copies of each of the reports must be submitted to the Entity by December 31, 2019. An electronic copy must be also be submitted. The Contractor must submit the complete reporting package to the Office of the Utah State Auditor’s online reporting system, reporting.auditor.utah.gov, within 180 days after the end of the fiscal year.

PROPOSAL REQUIREMENTS

Interested offerors should include the following information in their proposal to perform the audits.

A. Profile of the Independent Auditor

Provide general background information which includes:

1. The organization and size of the offeror, and whether it is local, regional, national or international in operations.
2. The location of the office from which the work is to be done and the number of professional staff, by staff level, employed at that office.
3. A positive statement that the following mandatory criteria are satisfied:
 - (a) An affirmation that the offeror is properly licensed for practice as a certified public accountant in the State of Utah.
 - (b) An affirmation that the offeror meets the independence requirements of AICPA Rule 101 and the *Government Auditing Standards*.
 - (c) An affirmation that the offeror meets the continuing professional education and external quality control review requirements contained in the current version of the *Government Auditing Standards*.
 - (d) An affirmation that the offeror has not recently received a “fail” designation from a review performed by the Office of the Utah State Auditor.
4. A copy of the offeror’s most recent peer review report.
5. A copy of the offeror’s most recent review letter issued by the Office of the Utah State Auditor. If offeror has never been reviewed by the Office of the Utah State Auditor, please indicate such.
6. Whether the offeror, any principals of the offeror, or any affiliate to the offeror is the focus of any pending or ongoing litigation, formal investigation, or administrative proceeding related to attestation services. If yes, please describe.

B. Offeror's Qualifications

1. Identify the audit partners, audit managers, field supervisors and other staff who will work on the audit, including staff from other than the local office. Résumés should be included which outline relevant experience and continuing professional education for the staff auditors up to the individual with final responsibility for the audit.
2. Describe the recent local office auditing experience similar to the type of audit requested.
3. If other auditors are to participate in the audit, those auditors should be required to provide similar information.

C. Offeror's Approach to the Audit

Submit a general audit work plan to accomplish the scope defined in these guidelines. The audit work plan should demonstrate the offeror's understanding of the audit requirements and the audit tests and procedures to be applied in completing the audit plan. The plan should detail the expected number of audit hours for the financial audit and compliance audit separately on an annual basis for the fiscal year being audited. A single audit will likely not be required for the fiscal year ending June 30, 2019. The plan should also identify the breakdown of total hours between staff, in-charges, and higher levels. The planned use of specialists, if any, should also be specified.

D. Time Requirements

Detail how the reporting deadline requirements of the audit will be met.

E. Comprehensive Not-To-Exceed Fee

Supply the billing rates, estimated number of billable hours, other billable expenses and a comprehensive "not-to-exceed" fee for the audit, inclusive of travel, per diem and all other out-of-pocket expenses. The not-to-exceed fee information requested above should be provided as a **separate amount**. The Entity-option annual contract extensions will be negotiated before the start of each extension. Please provide a separate estimate for hours and fees for single audit services should those services be required.

CONTRACTUAL ARRANGEMENTS

A. Document Retention – The Contractor shall retain all work papers and reports pertaining to the audit for a minimum of six years from the audit report release date and make such documents available for inspection by the Entity or government auditors. The firm will be subject to the Office of the State Auditor work paper review process (done for all government contract auditors). The results of that review will be added to the OSA website.

B. Compensation for Services – Progress payments may be made during the audit period based upon percent of work completed. Final payment for the audit will be made upon receipt of the audit reports.

C. Availability of Staff – The Entity's staff will be available to prepare schedules, trial balances, bank and debt confirmations, and provide documentation to assist the auditor as their schedules permit during the course of the audit. Various balance sheet reconciliations will be provided to the auditors at the start of audit fieldwork.

D. Other Significant Contract Provisions –

1. Immediately inform the Entity's management regarding any indication of fraud, errors, or illegal acts that may come to their attention in connection with the audit.
2. The Contractor must hold an exit conference with the Entity.
3. Notify the Entity, in writing, prior to changes of partner, manager, supervisor or senior personnel obligated in the proposal.

4. Provide the Entity with a Letter of Engagement in accordance with professional standards to specify the responsibilities of the Contractor and the Entity as they relate to the conduct of the audits. The terms of the Letter of Engagement shall be consistent with the terms of the Contract. In the event there are inconsistencies, the terms of the Contract shall govern and control.
5. Carry and maintain liability insurance, add the Entity as an additional insured, and provide proof of this insurance to the Entity, as required by No. 16 of the Standard Terms and Conditions for Services (Attachment A).

EVALUATION OF PROPOSALS

A committee will evaluate proposals against the following weighted criteria:

% OF SCORING WEIGHT	EVALUATION CRITERIA
Mandatory	Licensing, independence, CPE, peer review, and ability to meet audit deadlines.
20%	<u>Technical Experience of the Independent Auditing Firm</u> – Considering governmental audit experience, including number and size of past and current governmental clients (with specific emphasis on municipal clients); size and structure of the firm; and results of most recent peer review and review from the Office of the Utah State Auditor, if applicable.
20%	<u>Qualifications of Staff</u> – Years of governmental auditing experience (with specific emphasis on municipal clients); and knowledge of GASB standards.
25%	<u>Responsiveness of the proposal</u> in clearly stating an understanding of the audit services to be performed: <ul style="list-style-type: none">(1) Appropriateness and adequacy of proposed procedures.(2) Reasonableness of time estimates, timing of audit, and total audit hours.(3) Appropriateness of plan to meet stated deadlines.(4) Appropriateness of assigned staff levels.(5) Availability and responsiveness of audit staff.
35%	<u>Cost of the Audit</u> and expected audit hours by staffing levels.

Right to Reject – The Entity reserves the right to reject any and all proposals submitted and to request additional information from all offerors. Any contract awarded will be made to the offeror who, based on evaluation of all responses (applying all criteria and oral interviews if necessary), is determined to be the best to perform the audit. The Entity is not liable for any expense incurred by offerors in preparing for and responding to this RFP.

CONTACT INFORMATION

The individual listed below may be contacted for information. However, before making contact we request you review the Entity's prior year financial statements and auditor's reports which can be found on the Office of the State Auditor's website at auditor.utah.gov, specifically at the following link: <https://secure.utah.gov/auditor-search/?p=localgov>.

Lisa Richens, Finance Director
Phone: 435-636-3167
Email: lisar@priceutah.net

ATTACHMENT A: PRICE CITY STANDARD TERMS AND CONDITIONS FOR SERVICES

This is for a contract 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) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" may include any purchase orders that result from this Contract.
 - c) "**Contract Signature Page(s)**" means the cover page(s) that the Entity and Contractor sign.
 - d) "**Contractor**" means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) "**Services**" means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services include, but are not limited to, all of the deliverable(s) (including supplies, equipment, or commodities) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.
 - f) "**Proposal**" means Contractor's response to the Entity's Solicitation.
 - g) "**Solicitation**" means the documents used by the Entity to obtain Contractor's Proposal.
 - h) "**Entity**" means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
 - i) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - j) "**Subcontractors**" means subcontractors or subconsultants 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 Contract, including Contractor's manufacturers, distributors, and suppliers.

2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah/Entity. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah or other appropriate court. Venue shall be in Price City in the Seventh District Court of Carbon County.

3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal, state and local constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.

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 Entity to Contractor under this Contract. 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, the State of Utah, federal auditors, and Entity staff, access to all such records.

5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.

- c. Contractor's failure to comply with this section will be considered a material breach of this Contract.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Entity, unless disclosure has been made to the Entity.
 7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Entity.
 8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Entity from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the Entity. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
 9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits 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; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
 10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
 11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
 12. **TERMINATION:** Unless otherwise stated in this Contract, this Contract 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 Contract may be terminated for cause immediately and is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon sixty (60) days written termination notice being given to the other party. The Entity and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, 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 Contract 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 Entity is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. In no event shall the Entity be liable to the Contractor for compensation for any services neither requested by the Entity nor satisfactorily performed by the Contractor. In no event shall the Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Entity for any damages or claims arising under this Contract.

13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Entity, if the Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the Entity's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

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

14. **SUSPENSION OF WORK:** Should circumstances arise which would cause the Entity to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the Entity.
15. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the Entity's funds and used in the exercise of the Entity's essential functions as a State of Utah local government entity. Upon request, the Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
16. **INSURANCE:** Contractor shall at all times during the term of this Contract, without interruption, carry and maintain commercial general liability insurance from an insurance company authorized to do business in the State of Utah. The limits of this insurance will be no less than one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) aggregate. Contractor also agrees to maintain any other insurance policies required in the Solicitation. Contractor shall provide proof of the general liability insurance policy and other required insurance policies to the Entity within thirty (30) days of contract award. Contractor must add the Entity as an additional insured with notice of cancellation. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.
17. **WORKERS' COMPENSATION INSURANCE:** Contractor shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, Contractor must submit proof of certificate of insurance that meets the above requirements.
18. **PUBLIC INFORMATION:** Contractor agrees that this Contract, 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 State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Entity express permission to make copies of this Contract, 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 Entity, 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 Entity is not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
19. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Entity, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.
20. **ACCEPTANCE AND REJECTION:** The Entity 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 Contract prior to acceptance of the Services by the Entity.
If Contractor delivers nonconforming Services, the Entity 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 Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.
21. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services to the Entity. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The Entity has the right to adjust or return any invoice reflecting incorrect pricing.
22. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail. If payment has not been made after sixty (60) days from the date a correct invoice is received by the Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Entity within ten (10) business days of receipt of final payment, shall release the Entity from all claims and all liability to the Contractor. The Entity's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the Entity may have against Contractor.
23. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the Entity and anyone for whom the Entity may be liable as a result of Contractor's failure to timely perform the Services required under this Contract.

24. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.
25. **PERFORMANCE EVALUATION:** The Entity may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
26. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the Entity for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the Entity), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
27. **REVIEWS:** The Entity 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 Contract.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Entity.
29. **REMEDIES:** Any of the following events will constitute cause for the Entity to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The Entity 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 Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Entity; or (v) demand a full refund of any payment that the Entity has made to Contractor under this Contract for Services that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.
31. **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 Contract; (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 Entity 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, hold harmless, and defend the Entity, including anyone for whom the Entity 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 Contract, Contractor will return all copies of Confidential Information to the Entity 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 Contract.
32. **PUBLICITY:** Contractor shall submit to the Entity for written approval all advertising and publicity matters relating to this Contract. It is within the Entity's sole discretion whether to provide approval, which must be done in writing.
34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Entity harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Entity for 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, such limitations of liability will not apply to this section.
35. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Entity and Contractor agree 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 Contract, but specifically created or manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Entity.
36. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

37. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
38. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the Entity 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 Entity, 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.
39. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Entity, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Entity appoints such an expert or panel, Entity 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.
40. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the Entity's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the Entity must be in writing and attached to this Contract or it is rendered null and void.
41. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the Entity's right to enforce this Contract with respect to any default or defect in the Services that has not been cured.
42. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
43. **ENTIRE AGREEMENT:** This Contract 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.