



**City of Abilene**  
P.O. Box 519  
Abilene, KS 67410  
Phone: 785 263-2550  
Ron@abilenecityhall.com

## REQUEST FOR PROPOSAL/BID: Solar PV Design & Installation

<b>Bid Issue Date:</b>	May 12, 2023
<b>Bid Due Date:</b>	June 6, 2023
<b>Buyer:</b>	City of Abilene Abilene, Kansas

Requests for Proposals/Requests for Bids (“Request for Proposal/Bid” or “RFP/RFB”) are made up of the following documentation which is attached herein:

- **BIDDER/PROPOSER ACKNOWLEDGEMENT**
- **DEFINITIONS**
- **SECTION 1 - SCOPE OF WORK**
- **SECTION 2 - GENERAL INSTRUCTIONS**
- **SECTION 3 - BID/PROPOSAL RESPONSE FORMAT**
- **SECTION 4 - ADDITIONAL TERMS & CONDITIONS**

## BIDDER/PROPOSER ACKNOWLEDGEMENT

By signing below, the bidder/proposer (the “Contractor”) hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements, specifications, terms and provisions of this RFP/RFB. **The Contractor further agrees that the language of this RFP/RFB shall govern in the event of a conflict with the Contractor’s submitted response to this RFP/RFB, including all documents appended to the response, unless expressly agreed to by the parties in a final, award contract (the “Response”), as provided for in Section 4 - Additional Terms & Conditions.** The Contractor further agrees that upon receipt of an authorized purchase order from the City of Abilene) or when a final, award contract is signed by an authorized official of the City of Abilene (the “City”) and the Contractor (“Award Contract”), a binding contract shall exist between the Contractor and the City.

### SIGNATURE REQUIRED

CONTRACTOR INFORMATION	
<b>LEGAL BUSINESS NAME</b>	<b>DBA (if applicable)</b>
<b>STATE OF INCORPORATION</b>	<b>TAX ID INFORMATION (please specify one)</b>
	<b>TIN</b>
	<b>FEIN</b>
	<b>SSN</b>
	<b>OTHER</b>
<b>STREET ADDRESS</b>	<b>CITY, STATE, ZIP</b>
<b>COMPANY WEBSITE</b>	<b>CONTRACTOR CONTACT INFORMATION</b>
	<b>PHONE</b>
	<b>EMAIL</b>
	<b>FAX</b>
AUTHORIZED INDIVIDUAL OF THE FIRM	
<b>NAME &amp; TITLE</b>	<b>CONTACT INFORMATION</b>
	<b>PHONE</b>
	<b>EMAIL</b>
	<b>FAX</b>
<b>SIGNATURE OF AUTHORIZED INDIVIDUAL</b>	<b>DATE</b>

## DEFINITIONS

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- “Agreement” means all of the following (1) this RFP/RFB, (2) Response, including all documents appended to the response and expressly agreed to by the parties as set out in the Award Contract, (3) any purchase order, and (4) Award Contract, as applicable.
- “Award Contract” means a final, award contract signed by an authorized official of the City of Abilene and the Contractor.
- “Business Days” means Monday through Friday, 8:00am to 5:00 pm Central Standard Time, when the administrative offices of the City are open for business and excludes Federal and State of Kansas holidays.
- “Contractor” means the bidder/proposer.
- “Contractor Party” means the contractor, including its respective officers, directors, partners, employees, insurers, agents, subcontractors, invitees or others acting under its direction or control.
- “Conviction for a Criminal or Civic Offense” is defined in Section 2.6.
- “Force Majeure Event” means acts or events beyond reasonable control, including acts of God, acts of civil or military authority, including governmental restrictions and regulations, fires or other casualty, floods, earthquakes or other natural disasters, epidemics, pandemics or disease outbreaks, war, riots, or strikes.
- “City” means the City of Abilene.
- “Potentially Responsive” means a Response that appears, on its face, to comply with the directions in Section 3 - Bid/Proposal Response Format, is complete and prepared in a simple and straightforward manner, compliant with terms and conditions of this RFP/RFB and that does not prevent the City from complying with Kansas law or the law.
- “Nonresponsive” means a bid Response which may not comply with the directions in Section 3 - Bid/Proposal Response Format, or is unspecific, incomplete, or is prepared in an unorganized or complicated manner, or is noncompliant with terms and conditions of this RFP/RFB or that may prevent the City from complying with Kansas law or the law.
- “Response” means the contractor’s submitted response to this RFP/RFB, including all documents appended to the response and expressly agreed to by the parties in a final, award Contract.

## SECTION 1 - SCOPE OF WORK

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Section 1 - Scope of Work provides Contractors a description of the goods/services being purchased under this RFP/RFB. This RFP/RFB, Response, including all documents appended to the response and expressly agreed to by the parties as set out in the Award Contract, any purchase order, and Award Contract, as applicable, will hereafter be collectively referred to as the "Agreement".

### 1.1 SCOPE OF WORK

The City intends to contract for solar PV systems to be installed on the roof or nearby ground of multiple buildings:

1. The City is looking for long-term energy solutions. The intent is to maximize the value via a design/build approach where the bidder/proposer will provide the design and engineering specs based on specific PV solar sizes.
2. Attachment A, has a list of accounts and addresses that need to be reviewed and analyzed.
3. The City will initially target these three (3) sites for solar PV systems based upon a cost-benefit analysis. This analysis needs to include preliminary drawings of the sites with the solar panel location, turnkey pricing with available incentives, annualized solar PV production model over 25 years and the associated utility savings. Details of the utility savings would need to be provided to validate the estimated savings. Only Tier 1 equipment will be considered.
4. Additional sites will be considered upon completion of this initial project and completion of the City's Comprehensive Plan in January 2024.
5. The systems will tie into the respective building's electrical system with the intent of entering into either a Net Metered or Parallel Generation agreement with Evergy, depending on the cost-benefit. Installations of this project will begin after a City Purchase order is issued.

#### **Design & Pre-Install**

1. System design by bidding solar engineer. Submit design for structural and electrical engineering stamps as required.
2. Submit system design to utility company for approval of Net Metering and/or Parallel Generation. Interconnection application submitted to utility company
3. All project permits filed and submitted
4. Installation scheduled with client
5. Heritage Commission/State Historical Preservation Office notification/approval to applicable sites

#### **Installation**

1. Install
2. System test performed for proper function.
3. Inspections scheduled if needed
4. Submit necessary documentation to utility company

#### **Post-Installation**

1. Utility company inspection integrations
2. Contractor completes final system checks, energizes system, and provides operational walk-thru with clients
3. Contractor provides system monitoring and alerts training, and documentation.

#### **Specifications:**

1. **The Solar PV System.** The Solar PV system will be rated the size in kW direct current. Solar Panels selected must be Tier 1 panels with necessary rapid shutdown devices.
2. **The Roof and Mounting System.** The solar panel installation shall include all necessary roof protection as required. All roof penetrations and any other roofing related work is to be completed by an authorized warranted Roofing applicator of applicable building products without exception. If the Solar Panels are to be ballasted (non-degradable material), utilizing equipment (including pads or membranes) that is designed for compatibility with identified roof system is required.

3. **The Electrical System.** The electrical service panel that the inverter(s) will back feed will have adequate space for the inverter interface circuit breaker(s); If there is not adequate space contractor will provide sub panel for incoming power from inverters. The electrical service panel bus bar rating will not be exceeded beyond what the National Electric Code allows. The building's electrical service panel complies with all local electrical codes. A utility accessible disconnect will be installed near the service entrance. EMT conduit will be installed from the roof area and run to the inverter near the service panel.
4. **The Monitoring System.** Contractor will provide an internet monitoring system, available to the City through the City's own internet connection or access. Monitoring system will include an online dashboard.
5. **Installation.** Contractor will comply with OSHA requirements for job site safety and all materials and trash will be removed from the job site once work is completed. NABCEP certification is preferred.
6. **Experience:** The City is seeking contractors with a minimum of 10 years direct experience designing & installing commercial rooftop solar PV systems of similar scope and capacity.
7. **Minimum Warranty:** The City prefers, at a minimum, a 2-year workmanship warranty, 25-year panel warranty, 10-year inverter warranty, 10-year rack warranty.
8. **Financing:** The City prefers to finance all or a portion of the purchase price with a 100% non-debt, 15-year municipal lease-purchase, with a fixed rate, but will consider any financing/payment options proposed. The City shall be able to retain all environmental benefits, including renewable energy certificates (RECs). The City shall be able to keep the federal ITC direct pay.
9. **Performance Guarantee:** Contractor will provide a performance guarantee rate valued at \$0.10/kWh.
10. **Service & Maintenance:** Contractor will provide a service and maintenance contract for materials and workmanship.

## Technical Requirements

### 1. System design and engineering

The selected proposer shall design the system to optimize the cost-effective generation of electricity as determined from avoided utility electric costs at the facility, taking into consideration site conditions including but not limited to, existing electrical demand and load patterns, visual aesthetics, and building structural systems. The solar PV system shall conform to industry best practice; meet the requirements of any utility rules, standards, and interconnection agreements; and meet all applicable national, state, and local electrical, building and safety codes, including fire codes. We require following Code requirements in association with 2018 IBC and 2017 NEC as supplemented and/or amended. Additionally, all requirements from the State Historic Preservation Office if the site is listed on their historic registrar. All equipment components must be UL certified.

The selected Contractor shall be responsible for all design, engineering, and permitting costs including but not limited to: engineering studies and reports, building and construction permits, and insurance.

### 2. Installation

The selected Contractor shall supply all equipment, materials and labor necessary to install the solar PV system and where appropriate integrate them with the existing building electrical system, complying with the City's engineering specifications.

The selected Contractor shall secure all necessary and required permits, approvals and utility interconnection agreements. No portion of the work shall commence without the appropriate approval or authorization. The selected Contractor shall provide regular and periodic written progress reports and updates relating the status the system installation.

The selected Contractor shall be responsible for safeguarding City assets and is responsible for any damage sustained during the installation process and the remainder of the agreement.

The selected Contractor shall be responsible for all costs related to the construction and installation of the solar PV system including but limited to: site clearance and preparation, foundations, duct banks, racks, panels, inverters, wiring, meters, and security features. The selected Contractor racking system for flat ballasted roof mounted systems shall have a sacrificial layer included following the racking systems manufacturers' recommendation and the roofing manufacturer's recommendation between racking/ballast and roof. Screws, wiring, and any other material that could puncture the roof shall be cleaned up daily.

### **3. Interconnection**

The selected Contractor shall supply all required materials and equipment and perform all work required to interconnect the solar PV system to the transmission and distribution system. The selected Contractor will complete all application, study, and testing necessary to complete the interconnection process. The selected Contractor shall provide regular and periodic written progress reports and updates relating the status of the system interconnection. The City reserves the right to review, comment on and request modifications on how the solar PV system interconnects to the site's distribution system.

### **4. Commissioning and Acceptance Testing**

The selected Contractor shall provide services related to the start-up and testing of each system in accordance with accepted industry standards and utility agreements. The selected Contractor shall notify the City of the scheduled startup date, so that the City staff may observe and verify the systems' performance. Inspection will be by Owner or Owner's representative. The selected Contractor shall be responsible for all costs related to the start-up, testing and commissioning of the solar PV system.

### **5. Monitoring and reporting**

The selected Contractor shall provide remote data acquisition and monitoring equipment for each system that will allow the City to monitor, analyze and display historical and live solar electricity data via a web-based interface. The regularly collected data should include, but not be limited to: Instantaneous electricity generation (kW AC); and accumulated net electricity production (kWh AC).

The selected Contractor(s) shall be responsible for all costs related to system monitoring and reporting including but not limited to: Web-based performance monitoring. The contractor is responsible for at least 5 years of monitoring, but 10 years is preferred.

## **1.2 TERM OF AGREEMENT**

The term of the Agreement will begin on the date of the signed contract and continue until all deliverables, equipment, and services have been satisfactorily furnished as specified in this Section 1 and the Award Contract.

## **1.3 EVALUATION CRITERIA**

In evaluating Proposals, the City will consider the Proposers' qualifications, understanding of the project and proposed solution, experience, references, cost proposal, ability to meet the project deadlines, and overall ability to satisfy the City's needs. The City may also consider operating, maintenance and supply costs, service response time, performance data, guarantees of materials and equipment and any other such data at the City's discretion. The City may award a Contract on the basis of initial Proposals received. However, the City reserves the right to request additional information from any or all Proposers, or to enter into contract negotiations with one or more selected

Proposers. Therefore, each Proposal submitted should contain the Proposer's best terms. Without limiting the foregoing, the City may consider the following criteria in evaluating Proposals:

- A. Scope & System Design -Understanding of the scope and work required as evidenced by the proposal; scope of services & system design offered and the extent to which they meet or exceed the requirements of the City.
- B. Qualifications, Certifications, & Resources – Qualifications, certifications, sales and support offered; Total resources of the provider that can be applied to the advantage of the City including key personnel, resumes and applicable certifications.
- C. Experience, References - Previous experience with similar or like services as outlined in this RFP; List minimum of three (3) or more related Rooftop Solar PV Design and Installation Services projects using similar technique and materials proposed; References and one (1) example of a projects performed for a municipality.
- D. Costs/value
- E. Schedule and completion date(s).

#### 1.4 SPECIFIC PROJECT AND PRICING INFORMATION REQUESTED

Provide turnkey total cost to perform the work outlined above in your Technical Proposal for pricing based on Kansas law (no prevailing wages).

## **SECTION 2 - GENERAL INSTRUCTIONS/PROCUREMENT PROCESS**

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### **2.1 GENERAL INFORMATION**

#### **A. REQUEST FOR PROPOSAL/BID OVERVIEW**

The City is issuing this RFP/RFB for the purpose of soliciting bids/proposals in the form of the Contractor's Response for goods/services. The specific scope of work is described in Section 1 - Scope of Work (the "Scope of Work"). Contractors will execute and submit all Responses in accordance with these general instructions and the applicable provisions of the specifications of the Scope of Work.

#### **B. ADDITIONAL CONSIDERATIONS**

The words "**must,**" "**will,**" or "**shall**" as used in this RFP/RFB indicate that a certain feature, component, or action is a mandatory condition. Failure to fulfill mandatory requirements shall make the Proposer's Proposal/Bid Response to be considered unacceptable and not given consideration for contract award, unless waiver of minor technicality or determination in the City's best interests to waive the requirement.

The word "**Should**" as used in this RFP/RFB indicates that a certain feature, component and /or action is desirable, but not mandatory. Meeting or fulfilling desirables is usually given positive consideration in the subjective evaluation.

### **2.2 RESPONSE INSTRUCTIONS**

To aid in the evaluation process, it is required that Responses comply with the directions in Section 3 - Bid/Proposal Response Format. Failure to comply with this bid/proposal response format may be considered Nonresponsive and may result in rejection of the Response. Additionally, the City may determine an otherwise Potentially Responsive Response as Nonresponsive if Contractor has failed to satisfactorily perform in previous City contracts. The Response should be specific and complete in every detail and prepared in a simple and straight-forward manner.

Contractors are expected to examine the entire RFP/RFB, including all specifications, standard provisions, and instructions. Failure to do so will be at the Contractor's risk. Each Contractor shall furnish the information required by the RFP/RFB. Periods of time, stated in number of days, in the Solicitation or in the Contractor's Response, shall be in calendar days. Propose your best price.

### **2.3 SUBMISSION OF RESPONSES**

- A. All Responses shall be received in the City Manager's office located at 419 N Broadway St, Abilene, KS by June 6, 2023 at 2:00 pm (Central Standard Time). Responses may be hand-delivered, sent via electronic mail or sent via United States Postal Service to the above-referenced address. Fax Responses will not be accepted. Responses received after the specified time and date will be returned unopened.
- B. All Responses shall be valid and constitute an irrevocable offer to contract on the terms and provisions contained herein for 60 days after opening, but the City reserves the right to accept or reject Responses on each item or service separately or, to reject any Responses, to waive informalities or irregularities, and to contract in the best interest of the City.
- D. The submission of a Response constitutes the agreement of Contractor that any Award Contract to be drawn as the result of an award herein shall be prepared by the City and shall include at a minimum, all terms and provisions set forth in this RFP/RFB. The submission of a Response shall further constitute the agreement of each Contractor that it will not insist on the use of standard contract agreements, documents, or forms, that it waives any demand for the use of its standard agreements, except as otherwise expressly indicated in a written Response.
- E. Anytime the City is closed on days other than scheduled holidays, any opening scheduled for that day will be held on the next normal Business Day at the scheduled time. Any time opening hours of the City are delayed, solicitation openings will be delayed by the same amount of time. It shall be the Contractors' responsibility for making themselves aware of these situations.
- F. Unless otherwise specified, only one price, brand and/or model may be proposed for each item or service in the RFP/RFB. Contractors must determine their single best offering based on the quality specified. Responses not conforming to this requirement will be rejected.

## 2.4 ALTERNATE BRANDS/SPECIFICATIONS

- A. Brand names and specifications referenced in the RFP/RFB are meant to establish a minimum standard of quality, performance or use desired. Unless otherwise noted, Responses on “equals” may be considered provided Contractor clearly identifies the alternate product or service to those specified in the RFP/RFB and furnishes descriptive literature and other proof required by the City to determine that the “equal” being proposed meets the minimum essential specifications.
- B. When brand names or specifications are not changed, it is assumed that Contractor’s Response is as specified.
- C. Samples, when required by the City, must be furnished free of charge, including freight to and from the City.

## 2.5 PRICING

- A. Except as otherwise provided, prices must be firm and based on the units specified. The proposed price(s) shall include everything necessary for the execution and completion of the Agreement including, but not limited to, furnishing all materials, equipment, management, superintendence, labor and service, except as may be otherwise provided in the Agreement. Prices quoted by the Contractor shall include all freight and/or delivery charges, unless specified otherwise. In the event of a discrepancy between the unit price and the total price, the unit price will govern, and the total price will be adjusted accordingly. Contractor’s submission of a Response guarantees that prices have not been arrived at through collusion with other eligible contractors and without effort to preclude the City from obtaining the lowest possible competitive prices. The proposed price(s) shall not include any allowance for Kansas State sales or use tax.
- B. The City will evaluate the total price for the basic requirements with any option(s) exercised at the time of award. Evaluation of option(s) will not obligate the City to exercise the options(s).
- C. The City may reject a Response if it is materially unbalanced. A Response is materially unbalanced when it is based on prices significantly less than the cost for some goods/services or is based on prices that are significantly overstated for other goods/services.
- D. Please refer to Section 1 - Scope of Work for specific details on requested pricing information.

## 2.6 QUALIFICATIONS OF CONTRACTORS

Upon request by the City and as required by Section 4 - Additional Terms & Conditions, the successful Contractor shall furnish documentation satisfactory to the City which confirms qualification requirements. Any conviction for a criminal or civic offense that indicates a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor, must be disclosed. This includes: (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property; (c) conviction under state or federal antitrust statutes; and (d) any other offense to be serious and compelling as to affect responsibility as a state contractor.

## 2.7 BID/PROPOSAL RESPONSE CONFIDENTIALITY

In addition to the Confidentiality provision in Section 4 - Additional Terms & Conditions, each Contractor understands and agrees that each Response becomes the property of the City, and Contractor waives any right of access to such Response, except as provided for by law. The Kansas Open Records Act (K.S.A. 45-215 *et seq.*) may require public records be made available for examination by interested parties.

## 2.8 ORDER OF AUTHORITY

To the extent that the City’s documentation related to the RFP/RFB and Contractor’s Response contain terms, conditions or provisions that may be in conflict or be inconsistent with each other, their order of authority is set out in Paragraph 2 - Incorporation in Section 4 - Additional Terms & Conditions.

## 2.9 BASIS OF AWARD(S)

The City shall make the award to the Contractor whose Response will be most advantageous to the City, in the City’s sole discretion, with respect to price, conformance to the specifications, quality and other factors as evaluated

by the City. The City shall not in any event be required or constrained to award the Award Contract(s) to the Contractor(s) proposing the lowest price(s). The City may award the Award Contract(s) on the basis of initial Response received, without discussion; therefore, each initial Response should contain the Contractor's best terms from a cost and technical standpoint.

## 2.10 PROCUREMENT PROCESS

A. Bid/Proposal Response Classification: For the purpose of conducting discussions with individual Contractors, if required, Responses will initially be classified as “Potentially Responsive” or “Nonresponsive.” Discussions may be conducted with any or all of the Contractors whose Responses are found “Potentially Responsive.”

Contractors are cautioned that to be considered, any Responses must be Responsive but also compliant with all terms and conditions of this RFP/RFB. Compliance means that the Contractor understands and agrees that this RFP/RFB shall govern in the event of a conflict with the Contractor’s Proposal/Bid Response to this RFP/RFB, unless otherwise agreed in the Award Contract. Therefore, if a Contractor’s Proposal/Bid Response includes its organization’s pre-printed standard contractual requirements, terms and conditions, or license or service agreement, the City’s RFP/RFB will control over any conflicting terms. If a Contractor cannot agree to this, it should expressly indicate its requested or proposed exceptions or modifications to the provisions or requirements of the City’s RFP/RFB, in a written Response.

B. Evaluation Process: The City’s non-exclusive evaluation criteria, if applicable, are listed in the Section 1 - Scope of Work.

## SECTION 3 - BID/PROPOSAL RESPONSE FORMAT

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### 3.1 BID/PROPOSAL RESPONSE OUTLINE

Deliver one Response as a single document to the City Manager's Office. Please structure your Response, **specific to the following outline**, clearly identifying each section.

- A. Bidder/Proposer Acknowledgement Sheet: Include a completed Bidder/Proposer Acknowledgement Sheet located at the beginning of this solicitation.
- B. Company Overview and History: Describe your company, officers, number of employees, and operating policies. State the number of years your organization has been in business.
- C. Past Performance (Experience): Describe Proposer's experience in performing the services requested in the RFP during the past 10 years. Describe firm's Rooftop Solar PV design and installation experience including project management capability, personnel experience, technical expertise, and certifications members of your team assigned to this project hold. Provide actual team member information who will be assigned to this project; and include what percentage of time staff will be on-site during the project and their availability for on-site meetings as needed.
- D. Project Approach: Please describe your approach/statement of work (SOW) to the Solicitation's Section 1 - Scope of Work, including any specific information requested. Provide detailed system design and technical specifications to include all components, supplies, materials, manufacturer specifications, installation, and operation guides/manuals.
- E. Products/Services Costs: Provide a turnkey total cost to perform the work per Section 1 - Scope of Work; Costs should be identified as one-time or continuing. All equipment must be stated as F.O.B. Destination, prepaid and allowed. Include any specific pricing requested in the RFP/RFB's.
- F. Schedule/Completion Date(s): Provide the proposed commencement and completion schedule(s) and completion date(s) to perform the work per Section 1 – Scope of Work.
- G. Cost-Benefit Analysis: Provide analysis that includes preliminary drawings of the sites with the solar panel location, annualized solar PV production model over 25 years and the associated utility savings. Details of the utility savings would need to be provided to validate the estimated savings.
- H. Warranties: Describe warranties provided by the manufacturer and the Contractor to include standard manufacturer warranties, design and installation warranties. Include discussions of any additional support provided after the sale.
- I. References: Provide three or more references from commercial projects within the last three years with respect to similar Rooftop Solar PV Design Installation projects. **Include one example of a related project performed for a municipality.**
- J. Insurance: Contractor shall include evidence of existing insurance coverages consistent as specified in Section 4 - Additional Terms & Conditions. Contractor shall be required to furnish performance and payment bonds to the City, as specified in Section 4 – Additional Terms and Conditions, if selected for a Contract Award.
- K. Contractor Exceptions: Contractor shall describe with specificity and clearly mark as an "Exception" any term or provision contained in the Response or any appended documents that is in conflict with the RFP/RFB. Exceptions contrary to law, or that prevent the City from complying with the law shall NOT be binding on the City, shall NOT be incorporated into the Agreement, and as such, shall NOT be requested by the Contractor at risk of such Response being rejected as Nonresponsive. Likewise, any provision in the Response that is in conflict with the RFP/RFB that is not marked as an exception and that has not been expressly agreed to by the parties in the Award Contract shall NOT be binding on the City and shall NOT be incorporated into the Agreement.

- L. Request for Proposal/Bid Sections Acknowledgment: Confirm you have read and understand **all** the information contained in Sections 1, 2, 3, & 4. Confirm you have read and understand all addenda (if applicable). *Responses that do not include acknowledgement of all sections or addenda, that contain exceptions to the City's Terms & Conditions, or that do not adhere to the above outline, may be considered nonresponsive and may be rejected at the City's discretion.*

## SECTION 4 - ADDITIONAL TERMS & CONDITIONS

### 1. AGREEMENT TO PERFORM WORK

Contractor hereby agrees to provide or furnish goods and/or services to the City as specified in the Scope of Work and in accordance with these terms and provisions of this Agreement. All of the Contractor's work shall be performed with the highest degree of skill in accordance with applicable laws and generally accepted practices and standards of similar professionals in the industry and completed in accordance with the Agreement. All times provided for in this Agreement, or in any other document executed hereunder, for the performance of any act will be strictly construed, with time being of the essence. Contractor's failure to deliver goods and/or services within the time specified in the Scope of Work will be cause for the City to cancel this Agreement, in its sole discretion, and obtain the goods and/or services from another vendor and seek any and all remedies available from Contractor.

### 2. INCORPORATION

These Additional Terms & Conditions are supplemented by additional documents, all of which are incorporated herein by this reference. These documents are as follows and, to the extent that the City's documentation related to this RFP/RFB and Contractor's Response contain terms, conditions or provisions that may be in conflict or be inconsistent with each other, their order of authority shall be as follows: (1) the Award Contract; (2) a purchase order, if any; (3) Additional Terms & Conditions; (4) City RFP/RFB Instructions/Procurement Process; (5) City Scope of Work; and (6) Contractor's Response.

### 3. NOTICES

Any notice under this Agreement shall be in writing and be delivered in person or by public or private mail, or by courier service, or by certified mail with return receipt requested, or by electronic mail. All notices shall be addressed to the City at the following address or other addresses as the parties may from time to time direct in writing. Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day electronic mail delivery is verified.

City of Abilene  
City Manager  
P.O. Box 519  
Abilene, KS 67410

### 4. INVOICES

All invoices must contain the City Contract number or purchase order (PO) number, an itemization of materials and services, and a notation of the correct contract pricing.

- A. Invoices for payment must be submitted by the Contractor to:  
City of Abilene  
Attn: Finance Director  
PO Box 519  
Abilene, KS 67410  
[Email  
leann@abilenecityhall.com](mailto:leann@abilenecityhall.com)

Requests for additional compensation will be rejected by the City unless otherwise provided in this Agreement.

Payments shall be due and payable within (30) days after acceptance of such goods or services or after receipt of properly completed invoice, whichever is later.

Upon request, Contractor must provide a record of all items ordered and/or services rendered under the Agreement and/or a "usage" report of services rendered, items ordered, and quantities.

### 5. TERMINATION

The City may terminate this Agreement, in whole or in part, at any time during an effective term (as provided in the Scope of Work), with or without cause, by written notice to the Contractor. The Contractor shall be paid all amounts due and owing for work performed as of the date of termination. The Contractor shall submit a final claim for payment for actual work performed within ten (10) Business Days of the date of termination. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same and dispose of it in the manner the City directs. In the event termination of this Agreement stems from a breach by Contractor of any of the provisions of this Agreement, the City reserves the right to terminate this Agreement as set forth above.

6. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

- A. Any commitment by the Contractor within the scope of this Agreement shall be binding upon the Contractor. The rights and remedies of the City provided in this provision shall not be exclusive and are in addition to other rights and remedies provided by law or under the terms of this Agreement. For purposes of this Agreement, a commitment by the Contractor includes:
1. Prices and options committed to remain in force over a specified period of time;
  2. Any warranty or representation made by the Contractor in a Response as to performance or any other physical, design, or functional characteristics;
  3. Any warranty or representation made by Contractor concerning the characteristics or items in (2) above, contained in any literature, descriptions, drawings, or specifications accompanying or referred to in a Response;
  4. Any modification of, affirmation, or representation as to the above that is made by Contractor in writing or during the course of negotiation, whether or not incorporated into a formal amendment to the Response, supporting documents or negotiations subsequent thereto as to training to be provided, services to be performed, prices, and options committed to remain in force over a fixed period of time, or any other similar matter, regardless of the fact the duration of such commitment may exceed the duration of this Agreement.
- B. In addition to any other representations and warranties contained herein, Contractor represents and warrants the following:
1. That it is authorized to do business in Kansas, properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and the equipment, goods, and/or services required hereunder, and has or will obtain all licenses and permits required by law prior to the beginning date of the initial term of the Agreement; and
  2. That all documents, agreements and other information provided to the City by Contractor or that Contractor has caused to be provided to the City are true and correct in all respects and do not omit to state any material fact or condition required to be stated, necessary to make the statement or information not misleading, and there are no other agreements or conditions with respect thereto.

7. CONTRACTOR'S INSURANCE; SURETY BONDS.

Contractor will secure, purchase and maintain, at its own expense, the insurance policies, with the minimum insurance coverages noted, to remain in full force and effect during all periods of use or service covered by the Agreement:

- A. **Statutory Workers' Compensation Insurance** in accordance with the laws of the State of Kansas, including Employer's Liability Insurance in the amount of at least one million dollars (\$1,000,000) per accident or disease.
- B. **Commercial General Liability Insurance** in the amount of at least one million dollars (\$1,000,000) each occurrence bodily injury and property damage combined, one million dollars (\$1,000,000) per occurrence personal and advertising liability, two million dollars (\$2,000,000) products/completed operations aggregate, and two million dollars (\$2,000,000) general aggregate. **The Commercial General Liability Insurance policy shall be written on an occurrence basis and shall be endorsed to include "The City of Abilene" as additional insureds.** Further, coverage for these additional insureds shall apply on a primary and non-contributory basis irrespective of any other insurance, collectable or not.
- C. **Comprehensive Automobile Liability Insurance**, including owned, non-owned, and hired vehicles, in the amount of at least one million dollars (\$1,000,000) each occurrence bodily injury and property damage combined.
- D. **Umbrella Liability Insurance** with limits of liability of not less than three million dollars (\$3,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate. **The Umbrella Liability insurance policy shall also list the City as additional insured and shall be maintained throughout the contract.**
- E. **Property Insurance** with limits adequate to replace any equipment located on the premises of the City.
- F. **Professional Liability Insurance** in the amount of \$3,000,000 per occurrence. If Contractor will provide or furnish professional services under this Agreement, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of related services and caused by a negligent error, omission or act for which the insured party is legally

liable. If such professional services are performed by a subcontractor, and not the contractor itself, then the requirements in this paragraph may be satisfied through the purchasing and maintenance of such insurance by such subcontractor.

G. **General Requirements:** All insurance required hereunder shall be maintained in full force and effect in a company or companies reasonably satisfactory to the City and shall be maintained at Contractor's expense. All insurance required hereunder shall contain a clause requiring written notice to the City thirty (30) days in advance of the cancellation, non-renewal, or material modification of said insurance as evidenced by an official email notifying The City. Certificates of insurance shall be supplied contemporaneously with the execution and delivery of a final contract. Said certificates shall evidence compliance with all provisions of this section.

H. **Subcontractor Insurance:** The Contractor will further require any subcontractors or others acting under its direction or control to maintain the same insurance coverage as set forth above and provide certificates of insurance evidencing the required coverage to the Contractor. It will be the Contractor's responsibility to maintain any subcontractor's Certificate of Insurance for the duration of the contract. "The City of Abilene" shall be named as additional insureds on any Commercial General Liability Insurance policy and be evidenced on such certificate.

I. **Bonds:** The Contractor shall furnish a Performance Bond and a Payment Bond meeting all applicable requirements of state law, written by a surety on bond forms satisfactory to the City and complying with the specific requirements of the Award Contract, including the requirements forth below. The Contractor shall deliver the bonds not later than ten (10) days after execution of the Award Contract, or before the work commences, whichever is earlier. Bonds shall guarantee the faithful performance of all the covenants, stipulations, and agreements of the Agreement. Bonds shall be signed by an agent resident in the State of Kansas and date the date of bond shall be the date of execution of the Agreement. Each bond shall be in a penal sum which is not less than the Contract Price.

## 8. INDEMNIFICATION

To the fullest extent permitted by law, Contractor, including its respective officers, directors, partners, employees, insurers, agents, subcontractors, invitees or others acting under its direction or control

(collectively, "Contractor Party"), agrees to defend, indemnify and hold harmless City, City's officers, directors, partners, employees, agents and representatives from and against any and all actual or alleged claims, costs, losses, damages and costs of defense (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all courts or arbitration or other dispute resolution costs) of any nature whatsoever, resulting from, arising out of or in consequence of, any action or cause of action in connection with the execution, performance and furnishing of Contractor Party's commitments, obligations and services under this Agreement including, but not limited to: monies owed by Contractor Party to third parties (including without limitation subcontractors) and/or damage to property or any injuries or death sustained by any person or persons, including any third parties, employees, agents, invitees and the like, caused by the negligent acts or omissions or intentional acts of Contractor Party.

Contractor Party further waives any rights of subrogation against City, City's officers, directors, partners, employees, insurers, agents or representatives.

## 9. TAXES

The City is exempt from the tax levied by the Kansas Retailers' Sales Tax Act and the Compensating Tax Act for the reason that KSA 79-3606(b).

## 10. TERMS FOR THE PURCHASE OF GOODS

A. **THIS ORDER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS AND PROVISIONS STATED HEREIN. ALL ADDITIONAL OR DIFFERENT TERMS PROPOSED BY CONTRACTOR ARE OBJECTED TO AND ARE HEREBY REJECTED, UNLESS OTHERWISE PROVIDED FOR IN WRITING BY THE CITY MANAGER.**

B. **CHANGES:** No alteration in any of the terms, conditions, delivery, price, quality, quantity or specifications of this order will be effective without the written consent of the City Manager. All changes in scope to the Agreement must be in writing and submitted.

C. **DELIVERY:** For any exceptions to the delivery date as specified on the order, Contractor shall give prior notification and obtain approval thereto from the City Manager.

D. **ORDER NUMBERS:** Award Contract numbers or purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

- E. **PACKING:** No charges will be allowed for special handling, packing, wrapping, bags, containers, etc., unless otherwise specified.
- F. **PAYMENT, CASH DISCOUNT:** Invoices will not be processed for payment nor will the period of computation for cash discount commence until receipt of a properly completed invoice or invoiced items are received and accepted, whichever is later. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. Payment shall not be considered late if a check or warrant is available or mailed within the time specified.
- G. **PRICE WARRANTY FOR COMMERCIAL ITEMS:** Contractor warrants that prices charged to the City are based on Contractor's current catalog or market prices of commercial items sold in substantial quantities to the general public and prices charged do not exceed those charged by Contractor to other customers purchasing the same item in like or comparable quantities.
- H. **PRODUCT WARRANTIES:** Contractor warrants that all products delivered under this Agreement shall be new, unless otherwise specified, free from defects in material and workmanship, shall be fit for the intended purpose, and shall not infringe upon the rights of any third party. Contractor further warrants that all products and services shall be delivered and performed in a professional manner in accordance with applicable laws and generally accepted practices and standards of similar professionals in the industry.
- I. **QUALITY STANDARDS:** Brand names, models, and specifications referenced herein are meant to establish a minimum standard of quality, performance, or use required by the City. No substitutions will be permitted without written authorization of the City of Abilene.
- J. **REJECTION:** All goods, materials, or services purchased herein are subject to approval by the City. Any rejection of goods, materials, or services resulting from nonconformity to the terms, conditions or specifications of this Agreement, whether the goods are held by the City or returned, will be at Contractor's risk and expense.
- K. **SHIPPING INSTRUCTIONS:** Unless otherwise instructed, all goods are to be shipped prepaid and allowed, FOB Destination.

## 11. SAFETY AND SECURITY

### A. SUPERVISION

Contractor will ensure that all personnel it provides to the City will be thoroughly instructed by their supervisors as to the required duties and methods of performance. Contractor agrees that its personnel will receive close and continuing first-line supervision, will maintain a courteous and respectful attitude toward City employees and third parties and will not solicit nor request gratuities while on City premises.

### B. BACKGROUND CHECKS

To the extent that Contractor or its personnel provide direct, on-premises services under this Agreement, Contractor shall conduct appropriate reference and federal, state and county of residence criminal background checks in advance on all personnel who are expected to come onto the City premises in connection with this Agreement, including all individuals that Contractor employs, contracts or sub-contracts with to perform services under this Agreement. As a result of Contractor's background and reference checks, Contractor shall exclude from direct, on-premises participation in the performance of services under this Agreement, any personnel convicted of a criminal or civic offense that indicates a lack of business integrity or business honesty that currently, seriously, and directly affects the performance of services under this Agreement or otherwise poses a safety or security risk. This includes, but is not limited to, any personnel convicted (a) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (b) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property; (c) under state or federal antitrust statutes; or (d) of any other offense to be serious and compelling as to affect performance of services under this Agreement.

### C. COMPLIANCE WITH THE LAW

Contractor agrees to abide by all applicable federal or state laws, rules, ordinances and regulations related to performance of services under this Agreement, including, but not limited to, the Fair Credit Reporting Act ("FCRA"), the Fair and Accurate Credit Transaction Act ("FACTA"), the Family Educational Rights and Privacy Act of 1974 ("FERPA"), the EU General Data Protection Regulation ("GDPR"), and any equal opportunity laws rules, ordinances and regulations related to its duties under this paragraph. Failure to comply with this paragraph shall constitute an event of default

under this Agreement, and any resulting fines or damages will be the sole responsibility of Contractor.

#### D. LICENSES AND TRAINING

Contractor will ensure that all personnel who perform services under this Agreement are appropriately licensed or certified and in good-standing, as applicable, and that such personnel are duly qualified to perform the services under this Agreement. As necessary, Contractor must train its personnel to meet all legal and industry requirements, qualifications, and standards.

### 12. MISCELLANEOUS PROVISIONS

#### A. ADDITIONAL ACTS (FURTHER

ASSURANCES). Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties, the parties hereby agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts, deeds and assurances as any party hereto may reasonably require to consummate the transaction contemplated hereunder.

B. ASSIGNMENTS. Neither Agreement or any interest herein shall be transferred by Contractor to any other party without the approval in writing of the City Manager. Transfer of the Agreement or any interest herein without approval may cause termination of the Agreement at the option of the City. Notwithstanding any assignment, Contractor shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants, and provisions of this Agreement.

C. BINDING EFFECT. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

D. CONTINUATION DURING DISPUTES. The Contractor agrees, notwithstanding the existence of any dispute between the parties, insofar as possible under the terms of the Agreement to be entered into, each party will continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by any court.

E. GOVERNING LAW: This Agreement shall be construed in accordance with and governed by the laws of the State of Kansas. Any legal

proceeding related to this Agreement shall be instituted in the courts of the State of Kansas with venue in Dickinson County, and Contractor agrees to submit to the jurisdiction/venue of such court.

#### F. LIENS, CLAIMS AND ENCUMBRANCES.

Contractor warrants and represents that all the goods and materials delivered herein are free and clear of all liens, claims or encumbrances of any kind.

G. LAWS, REGULATIONS AND PERMITS. The Contractor shall give all notices required by law and comply with all applicable federal, state, and local laws, ordinances, rules, and regulations relating to the conduct of the work and as required in the related industry. The Contractor shall be liable for all violations of the law in connection with work furnished by the Contractor, including the Contractor's subcontractors, if any.

H. NO JOINT VENTURE. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment or agency relationship between the parties.

I. NO WAIVER. Failure of the City to insist on the strict performance of the terms and provisions of this Agreement shall not constitute or be construed as a waiver of relinquishment of the City's right thereafter to enforce strict compliance with any such terms or provision, but the same shall continue in full force and effect.

J. NONDISCRIMINATION: Contractor represents and agrees that it will not discriminate in the performance of this Agreement or in any matter directly or indirectly related to this Agreement on the basis of sex, race, color, national origin, disability, age, religion, marital status, veteran's status, sexual orientation, gender identity or genetic information.

To the extent applicable, the contractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

K. **PROOF OF COMPLIANCE:** In order that the City may determine whether the Contractor has complied with the requirements of the Agreement documents, the Contractor shall, at any time when requested by the City, submit to the City properly authenticated documents or other satisfactory proofs as to compliance with such requirements.

L. **RISK OF LOSS.** Until all improvements, equipment, or goods to be provided under this Agreement are installed on property owned or controlled by the City and working properly, or unless the City provides otherwise, the Contractor shall bear all risks of all loss or damage to the improvements, equipment, or goods, excluding loss or damage caused by acts, omissions, or negligence of the City. Once all improvements, equipment, or goods to be provided under this Agreement are installed on property owned or controlled by City and working properly, the risk of all loss or damage shall be borne by City, excluding loss or damage caused by acts, omissions, or negligence of the Contractor.

M. **SEVERABILITY; ENTIRE AGREEMENT.** If any term or provision of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms or provisions that can be given effect without the invalid term or provision; to this end the terms and provisions of this Agreement are declared severable. This Agreement constitutes the entire Agreement between the parties with respect to the matter addressed herein. No change thereto shall be valid unless communicated in writing in the agreed manner and signed by the City and the Contractor.

N. **SURVIVAL OF TERMS.** The terms and provisions hereof, and all documents being executed hereunder, if any, including, without limitation, the representations and warranties, shall survive this Agreement and shall remain in full force and effect thereafter.

O. **NON-APPROPRIATION.** The City is subject to Kansas budget and cash basis laws, and operates on a calendar fiscal year. In the event that this Agreement involves financial obligations spanning multiple fiscal years for the City, it is subject to annual appropriation by the City's governing body for future fiscal years. If the City's governing body does not appropriate the funds necessary to fulfill the City's financial

obligations pursuant to this Agreement, the City shall so notify the other parties to this Agreement and this Agreement shall be null and void for purposes of the fiscal year(s) affected by the decision of the governing body not to appropriate.

### Attachment A

List of Accounts and Addresses to be Analyzed

<b>Account Ending</b>	<b>Addresses</b>
933	2103 S Washington WTRWL, Abilene, KS 67410
381	100 N Elm St, Abilene, KS 67410 (Sr Center)
623	209 NW 4 <sup>th</sup> , Abilene, KS 67410 (Library)