

**AGREEMENT FOR COMPREHENSIVE PAYROLL BANKING SERVICES BETWEEN
THE CITY OF RAPID CITY AND GREAT WESTERN BANK**

This Agreement is made by and between the City of Rapid City, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, South Dakota 57701 (“City”) and Great Western Bank, a South Dakota corporation, of 14 Saint Joseph Street, Rapid City, South Dakota 57701 (“Bank”).

WHEREAS, the City of Rapid City issued a Request for Proposals (“RFP”) requesting interested parties provide proposals for comprehensive payroll banking services for the City; and

WHEREAS, Bank submitted the successful proposal for such banking services;

WHEREAS, the RFP and proposal, together with the further agreements of the parties shall constitute the contract between them; and

WHEREAS, the parties wish to reduce their agreement to writing.

NOW THEREFORE, the City and Bank agree as follows:

1. Services. Bank shall provide comprehensive payroll banking services as outlined in the RFP and Bank’s proposal, both of which are incorporated herein and made a part hereof as if fully set forth within this Agreement.
2. Savings Accounts. Bank shall provide a savings account along with an ATM card to any City employee who does not qualify for a checking account.
3. Supplies. Bank shall provide banking supplies for the City’s use free of charge. Such supplies shall include deposit slips, endorsement stamps, and bank bags for payroll deposits.
4. Fees. Bank shall provide all services required by the RFP at no cost. City has elected to enroll in ACH Positive Pay and Check Positive Pay services in addition to the free services included in Bank’s proposal. The fee for adding these services to all accounts held by the City shall be a total of \$100 per month. The fee does not include Investment or Wealth Management Services, which shall be separately negotiated if desired by the City.
5. Bank’s Warranties. The Bank warrants that it shall
 - a. Use its best efforts to perform all banking services under this Agreement;
 - b. Maintain its FDIC-insured status for the entire term of the Agreement; and
 - c. Comply with all provisions of federal and state law relating to banking.
6. City’s Warranties. The City warrants that it shall
 - a. Comply with all applicable federal and state laws; and
 - b. Provide to Bank in a timely manner all information necessary to provide the services required under this Agreement.

7. Term. The initial term of this Agreement shall run for three years from the date of approval by the City.

8. Renewal. This Agreement shall automatically renew for an additional one-year term at the end of the initial term unless either party gives thirty (30) days' notice to the other party of termination at the end of the initial term. This Agreement shall automatically renew for two (2) additional one-year terms in a like manner, with the same right of the parties for non-renewal with notice.

9. Early Termination. Either party may terminate this Agreement upon one hundred eighty (180) days written notice. A decision by the City to terminate the Agreement may not be made solely as the result of an offer of a lower price for services or higher interest rates on deposits from another bank.

10. Relationship between the Parties. The relationship of the parties is that of independent contractors. The parties are not, by virtue of this Agreement or otherwise, in an employer-employee, principal-agent, joint venture or partnership relationship with each other, and each party agrees not to represent to any other person, or to assert in any form or forum to the contrary. Neither party is authorized to act as an agent for, or legal representative of, the other party and neither party shall have the authority to assume or create any obligation on behalf of, in the name of, or binding upon the other party.

11. Indemnity. Bank agrees to indemnify, defend and hold the City harmless from and against any and all liability, losses, claims, damages, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of the Bank and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by the Bank or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by the Bank. Bank further agrees to indemnify, defend and hold the City harmless from and against any and all claims, penalties, charges, or other fees which may be made, assessed or levied as a result of Bank's banking practices, including any breaches of applicable federal or state law related to those practices.

12. Notices. All notices and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when either (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid) or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the addresses designated below (or such other address as a party may designate by notice to the other parties):

City Finance Office
Attn: Pauline Sumption
300 Sixth Street
Rapid City, SD 57701

Great Western Bank
Attn: Jennifer Baloun
14 Saint Joseph St.
Rapid City, SD 57701

with a copy to

City Attorney
Attn: Wade Nyberg
300 Sixth Street
Rapid City, SD 57701

with a copy to

13. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

14. Integration. This Agreement and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof.

15. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

16. Third Parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

17. Assignment. This Agreement and the rights, duties, and obligations hereunder may not be transferred or assigned by either of the parties, whether directly or indirectly by merger, consolidation, reorganization, dissolution, operation of law or otherwise, without the prior written consent of the other party. Any attempted transfer or assignment without consent in violation of the foregoing shall be void. Subject to the foregoing, this Agreement and the provisions hereof shall be binding on the parties and their respective permitted successors and assigns.

18. Waivers. No waiver of any term or provision of this Agreement shall be binding unless executed in writing by the party entitled to the benefit thereof.

19. Cumulative Remedies. The rights and remedies under this Agreement are in addition to and not exclusive of any other rights, remedies, powers and privileges, whether at law or in equity, under this Agreement or otherwise, that any party may have against another. No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude the exercise of any other right, power or privilege. No waiver of any breach or default of any covenant or agreement hereunder shall be deemed a waiver of any preceding or subsequent breach or default of the same or any other covenant or agreement.

20. Force Majeure. Neither party shall be liable for any delay or failure in performance due to any reason or unforeseen circumstance beyond the affected party's reasonable control, including shortages or delays in obtaining materials from suppliers that cannot reasonably be cured by obtaining the needed materials from another source, work stoppages not involving employees of either party that cannot reasonably be overcome, fires, riots, rebellions, wars, acts of terrorism, accidents, explosions, floods, storms, acts of God, and similar occurrences. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

21. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

22. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

23. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

24. Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or, as applicable, the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

25. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

26. Jurisdiction and Venue. The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

Dated this ____ day of _____, 2015.

CITY OF RAPID CITY

Mayor

Attest

Finance Officer

(seal)

GREAT WESTERN BANK

By _____
(signature)

(printed name)

Its _____
(title)