



CITY OF MEMPHIS

REQUEST FOR PROPOSAL

#52136

Security Penetration Testing

Date Issued: March 16, 2021

Proposal Submission Deadline: April 21, 2021

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1. OVERVIEW

1.1 GENERAL CONDITIONS

The following data is intended to form the basis for submission of proposals to provide SECURITY PENETRATION TESTING SERVICES. This material contains general conditions for the procurement process, the scope of service requested, contract requirements, instructions for submissions of proposals, and submission forms that must be included in the proposal. The RFP should be read in its entirety before preparing the proposal. All materials submitted pursuant to this RFP shall become the property of the City of Memphis.

To the extent permitted by law, all documents pertaining to this Request for Proposals shall be kept confidential, to the extent necessary for review, until the proposal evaluation is complete. No information about any submission of proposals shall be released until the process is complete, except to the members of the Evaluation Committee established by the City and other appropriate designated City staff. All information provided shall be considered by the Evaluation Committee in making a recommendation to enter into an agreement with the selected consultant.

Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFP shall be made in accordance with the requirements listed in Section 4.5 Initial Questions Submission, Final Questions Submission. The City of Memphis is not responsible for oral interpretations given by any City employee, representative, or others. The issuance of written addenda is the only official method whereby interpretation, clarification, or additional information can be given. Any questions or concerns not submitted by the stated time and date will be deemed waived.

If any addenda are issued to this Request for Proposals, the Purchasing Division will post them to the City's website at <https://www.memphistn.gov/business/rfps-rfgs/>. Submitting organizations are strongly encouraged to view this website often to see if addenda are posted. Failure of any proposer to receive such addendum or interpretation shall not relieve such Proposer from any obligation under his proposal as submitted. All addenda so issued shall become part of the Contract Documents.

The City of Memphis reserves the right to (a) accept or reject any and/or all submissions of proposals; (b) to waive irregularities, informalities, and technicalities; and (c) to accept any alternative submission of proposals presented which, in its opinion, would best serve the interests of the City. The City shall be the sole judge of the proposals, and the resulting negotiated agreement that is in its best interest, and its decision shall be final. The City also reserves the right to make such investigation as it deems necessary to determine the ability of any submitting entity to perform the work or service requested. Information the City deems necessary to make this determination shall be provided by the submitting entity. Such information may include, but is not limited to, current financial statements by an independent CPA, verification of availability of equipment and personnel, and past performance records.

1.2 OBJECTIVE

The City of Memphis is seeking a vendor to assess the current state of The City of Memphis information security posture to ensure that it is configured and is operating the IT infrastructure in a secure manner that meets or exceeds the City of Memphis's compliance obligations, and that the City of Memphis's electronic risks are adequately addressed.

The Information Technology Division (ITD) of the City needs to determine its security weaknesses. Penetration tests can be used to test an organization's security policy compliance, its employees' security awareness and the organization's ability to identify and respond to security incidents.

2. SCOPE OF SERVICES

2.1 SCOPE

The City of Memphis is seeking a vendor to assess the current state of The City of Memphis information security posture to ensure that it is configured and is operating the IT infrastructure in a secure manner that meets or exceeds the City of Memphis's compliance obligations, and that the City of Memphis's electronic risks are adequately addressed. The vendor shall conduct penetration testing activities designed to provide the City of Memphis with insight into external and internal vulnerabilities with agency networks, assets and applications. The scope of the penetration tests shall include the City of Memphis's internet points of presence including the City's external facing website and internally hosted applications.

2.2 SCHEDULING

The contractor shall develop a proposed schedule to include the projected start and end dates of each activity and deliverable. The proposed schedule should include planning for two tests annually, one external penetration test and one internal penetration test. The vendor will further work with the City of Memphis to accommodate the City of Memphis's business hours, scheduling priorities and IT personal availability when scheduling penetration tests. Vendor will notify the City of Memphis Information Technology Division within seven (7) business days of an upcoming penetration test. The final schedule will include changes from accommodations with the City of Memphis that will obtain approval from the Chief Information Officer (CIO) no later than thirty (30) days after contract signature. Vendor shall provide recommended changes and obtain approval of changes from the CIO in writing.

2.3 PLANNING

Prior to conducting a penetration test, the vendor shall develop and submit to the City of Memphis for approval, a penetration test plan. The plan will include a Rules of Engagement (ROE) document and shall define the steps to be taken and tools/equipment to be used to facilitate the testing as well as information to be collected and submitted in the final report. The penetration testing plan should be approved by the CIO before testing begins.

2.4 REQUIREMENTS

The Vendor shall explicitly state whether they can meet the requirements. If the Vendor doesn't meet a requirement, please state either the status of the requirement and/or future developments to meet the requirement. All tests shall be non-destructive in nature, where all remote system scanning, and attempts to exploit vulnerabilities or escalate privileges are conducted with proper care to avoid any disruption of

service. The vendor will follow procedures set by the National Institute of Standards and Technology (NIST) Special Publication 800-115, *Technical Guide to Information Security and Assessment*.

General Requirements:

- Vendor must be able to provide complimentary post-remediation reviews. (Discussion-Based)
- Vendor shall provide a methodology of how the Vendor will assess the City of Memphis's Network and assets.
- Vendor must complete all clean up processes before finishing the penetration test, including but not limited to:
 - Removal of accounts created as part of the assessment
 - Removal of tools installed by tester on the City of Memphis's systems
- Confidential data about the City of Memphis obtained from the penetration test must be disposed of in an appropriate manner.
- Vendor shall not store any cardholder data, if obtained during a penetration test.
- Vendor shall sign a non-disclosure agreement, a copy will be retained by the City of Memphis
- Vendor shall provide a description of the Vendor's work with other clients and provide the City of Memphis with contact information and/or testimonials if available.
- Vendor shall specify the ability to perform and complete External, Internal, Web Application, Physical Security and Social Engineering tests within Ten (10) continuous business days.
- Vendor shall supply a list of potential employees that will be performing the penetration testing exercise on the City of Memphis network in terms of:
 - Relevant working experience (employees must have at minimum 3+ years of experience) in the cyber security field.
 - Relevant Industry Cyber Security Certifications. Eg, :
 - GIAC Certified Penetration Tester (GPEN)
 - GIAC Web Application Penetration Tester (GWAPT)
 - GIAC Exploit Researcher and Advanced Penetration Tester (GXPN)
 - EC-Council Certified Ethical Hacker (CEH)
 - EC-Council Licensed Penetration Tester — Master (LPT)
 - Certified Penetration Tester (CPT)
 - CompTIA PenTest+
 - Offensive Security Certified Professional (OSCP)
 - eCPPTv2 eLearnSecurity Certified Professional Penetration Tester
 - eCPTX eLearnSecurity Certified Penetration Tester eXtreme
- Results of Vendor's employees background check(s) (each employee shall have a clean background record).
- Vendor should explain how the Vendor's employees are trained regularly outside of the workplace.
- The vendor shall provide a summary of any key differentiators that make Vendor uniquely positioned to provide penetration testing services to the City of Memphis

City of Memphis Information Technology Security Assessment will be conducted in four independent phases (or City of Memphis can pick which phase is required) derived from known threats to City of Memphis. The information technology security assessment will take place in five phases:

- External network penetration testing
- Web application penetration testing
- Network Security Assessment (onsite or via VPN depending of circumstances at time of execution)
- Physical Security assessment
- Social Engineering

Each phase of this assessment should be considered and itemized as independent modules of the overall assessment.

2.4.1 EXTERNAL NETWORK PENETRATION TEST

An external penetration test will be performed on externally available hosts accessible from the internet. Testing during this phase should represent an uninformed anonymous threat targeting the City of Memphis external infrastructure. The in-scope infrastructure for City of Memphis's external penetration testing phase will include not more than 100 public facing IPv4 addresses. City of Memphis assumes the following:

- Identified vulnerabilities will be exploited to demonstrate impact to the organization with the exception of denial of service (DoS) attacks (except explicitly authorized), buffer overflows that may cause disruption to critical services. Exploitation will include a social engineering exercise (target emails to be verified by client).
- Heavy load brute force or automated attacks will not be performed unless approved by City of Memphis.
- Vendor agrees to notify City of Memphis of any portion of the assessment resulting in a disruption of service.
- Both parties will sign a mutual non-disclosure agreement to ensure the confidentiality of information exposed and proprietary tools and techniques used during these assessments.
- Vendor will immediately notify City of Memphis of any security vulnerability threatening critical business processes or IT services.

2.4.2 WEB APPLICATION PENETRATION TEST

A web application penetration test provides an independent verification of the security status of an organization's web application(s). This test determines whether web-based applications (customer, patient, taxpayer, other) present an exploitable risk to the organization. City of Memphis requires the following:

- The Vendor will determine if vulnerabilities exist in an application by testing each interface to the application including server operating system, application platform, and database.

- Denial of service (DoS) attacks will not be performed unless explicitly approved by City of Memphis.
- The vendor will adopt a three-phased structure methodology for application penetration testing that includes Enumeration, Vulnerability Assessment, and Exploitation.
- The vendor will attempt to exploit any identified vulnerability and misconfiguration
- Identification of prioritized remediation needs, requirements, and associated risk.

2.4.3 NETWORK SECURITY ASSESSMENT (ONSITE OR REMOTELY DEPENDING ON CIRCUMSTANCES AT THE TIME OF EXECUTION)

An onsite network security assessment will be performed in two phases. The initial assessment will be performed to simulate an attack by an un-trusted outsider, unauthenticated user, with no working knowledge of City of Memphis's network. The second phase of the assessment will be performed with low-level credentials, an authenticated user. This penetration style test should assess the security of all networked assets including servers, desktops, firewall, network devices, wireless infrastructure, and network monitoring & management. Testing during the internal network vulnerability assessment will be performed at City of Memphis's IT office or remotely depending on the circumstances at the time of execution.

Internal network will include but is not limited to the following:

- Not more than 5000 IPV4 address
- Internally hosted applications
- Domain Controllers
- Internal Web Servers
- DMZ Network

Additional onsite requirements can include Social engineering/USB key drop.

2.4.4 PHYSICAL SECURITY ASSESSMENT

A physical security assessment will be performed to identify strengths and weaknesses in City of Memphis's physical security controls. This assessment should incorporate social engineering techniques to attempt unauthorized access to restricted areas as well as gain physical access to network jacks in City of Memphis's divisional offices.

2.4.5 SOCIAL ENGINEERING

Social engineering tests done internally may include, but are not limited to the following methods:

- Phishing
- Vishing
- Spear Phishing
- Business Email Compromise (BEC)
- Whaling
- PreTexting

2.5 REPORTING

1. Vendor should provide quick notification during penetration testing if critical vulnerabilities or cardholder data was discovered during penetration test.
2. Vendor will promptly notify the City of Memphis Information Technology Division about successful breach into the City of Memphis network during either the internal or external penetration test and obtain approval from the Information Security Manager before continuing test.
3. The vendor will provide a detailed Security Assessment Report, approved by the City of Memphis, within ten (10) business days from completion of pen test that should include, but not limited to the following:
 - a. All vulnerabilities found from penetration test.
 - b. All steps and vectors leading to a vulnerability should be documented along with screenshots and logs (including date and time).
 - c. Summary of tests performed, and assessment methods employed.
 - d. Vulnerabilities identified categorized by severity.
 - e. Cost-efficient specific mitigations and workarounds for vulnerabilities identified.
 - f. Listing of items that need remediation and retesting.
 - g. Suggest best practices for device(s) and/or service configurations.
 - h. Provide a summary of testing performed to validate segmentation controls.
 - i. Provide details to the testing methodology and how testing progressed.
 - j. In the case of where an exploitation didn't occur, any findings that may potentially impact the security posture of the City of Memphis should be documented.
 - k. Document if the City of Memphis security system detected malicious activity from the Vendor's pen test and blocked the Vendor's access to the City of Memphis servers, specifically what action the Vendor's company was attempting at the time.
 - l. Provide a final summary of the overall risk to the City of Memphis operating environment.
 - m. Provide secure delivery of the Security Assessment Report.

Any desired changes to the reporting requirements, whether by vendor or the City of Memphis, shall be documented in the penetration test plan and approved by the City of Memphis. In the event the actual completion date is later than the scheduled completion date, upon approval from the City of Memphis,

the Security Assessment Report shall be submitted within ten (10) days of the actual completion date. The Security Assessment Report shall be developed in accordance with the requirements of the approved penetration test plan.

2.6 TECHNICAL POINT OF CONTACT

To be determined at time of award.

2.7 DELIVERABLES

Upon the conclusion of all aforementioned information technology security assessment, Insert Location Here will be provided the following report sections:

- Executive Summary Report: An overview of all testing results, including a summary of the scope and approach, findings, and recommendations directed at senior management.
- Technical Report: A deep dive into the testing methodology, strengths and weaknesses observed, detailed findings matrix, associated risk ratings of each finding, technical recommendations, and appendices providing supporting documentation of each vulnerability identified.

Findings Presentation: Upon the completion of the project, results will be shared via a conference call presentation to Insert Location Here management. This presentation should provide an overview of strengths, weaknesses, and vulnerabilities identified throughout the assessment.

2.8 CONTRACTOR FURNISHED INFORMATION AND MATERIALS

The contractor shall perform external penetration testing activities from locations external to the City of Memphis facilities, without access or knowledge about the City of Memphis network. The contractor shall provide all tools, test equipment and materials necessary to perform both internal and external penetration tests.

2.9 PERIOD OF PERFORMANCE

Vendor shall perform all requirements stated in section 2.4 each contracted year (subject to change depending on threats identified). The vendor and the City of Memphis shall identify in writing the allowable date(s) and time(s) for the penetration test to take place, within thirty (30) days of contract signature. The period of performance for this contract will begin on the date listed in the resulting contract and run for one year, with three (3) one-year options. The City of Memphis will have the

option each year to extend based upon mutual consent of the parties and contingent upon the availability of funding and successful contract performance of the vendor.

2.10 INSURANCE

Insurance requirements are found at the end of the attached sample contract.

3. PROPOSAL RESPONSE

This Section describes the contents of Proposer's Proposal and provides an outline of how the Proposer should organize it. Proposer's Proposal will not be considered responsive unless it fully complies with the requirements in this Section, as well as the additional instructions provided in Section 4.6 regarding the required Proposal formats and submission process.

Specifically, Proposer's Proposal shall include each of the sections referenced in the table below. The preferred method of submittal is in a three-ring binder with tabbed sections. The requirements for each of these Proposal sections are described in more detail in this Section.

PROPOSER'S PROPOSAL WILL BE DISQUALIFIED FROM THIS RFP PROCESS IF THE PROPOSER FAILS TO CONFORM TO THE PROPOSAL INSTRUCTIONS IN THIS SECTION.

| Sections and Topics |
|--|
| Section 1 – Cover Letter |
| Section 2 – Non-Collusion Affidavit |
| Section 3 – Methodology / Response to Requirements |
| Section 4 – Pricing |
| Section 5 – Relevant Experience and References |
| Section 6 – Relevant Industry Certifications |

3.1 COVER LETTER

Proposer's Proposal shall contain a cover letter acknowledging Proposer's understanding of the RFP process and requirements set forth in this RFP, including its commitment to its Proposal. The cover letter shall be signed by an authorized representative of Proposer's company.

Provide agency's name, address, web address, telephone and fax numbers. Please include name, title and e-mail address of the individual who will serve as agency's primary contact. Describe your agency's ownership.

3.2 NON-COLLUSION AFFIDAVIT

Please use the form provided in Exhibit 3.

3.3 METHODOLOGY / RESPONSE TO REQUIREMENTS

Proposal should include the methodologies to be used to specifically address the requirements specified in section 2.

3.4 PRICING

Proposer shall attach pricing as Exhibit 2.

3.5 RELEVANT EXPERIENCE AND REFERENCES

Briefly describe agency's relevant experience as it relates to this project.

3.6 RELEVANT INDUSTRY CERTIFICATIONS

Proposer shall attach any relevant industry certifications of staff.

4. INSTRUCTIONS ON RFP PROCESS

4.1 USE OF INFORMATION

All correspondence about this RFP and the Initiative should be limited to the Principal Contact listed in Section 4.2 or other designated City personnel or agents.

4.2 PRINCIPAL CONTACT AND INFORMATION REQUESTS

Tim Boyles is the single point of contact (the “Principal Contact”) for all matters relating to this RFP. Proposer should direct all inquiries to the Principal Contact at:

tim.boyles@memphistn.gov

Proposer should not, under any circumstances, contact any City personnel (including senior City management or City employees with whom Proposer has an existing business or personal relationship) to discuss this RFP without the Principal Contact’s prior written consent. Utmost discretion is expected of Proposer and all other RFP recipients. Any recipient attempting to circumvent this process will risk elimination from further participation in the bidding process.

4.3 SCHEDULE OF ACTIVITIES

- In order to accelerate the business transformation, service improvements and cost savings the City anticipates, the City has developed an estimated timeline for this Initiative. The City will move as quickly and efficiently as possible to determine the feasibility of each Proposer’s Proposal and to move forward with term sheet discussions and ultimately conclude an agreement accordingly.
- As a result, the City requests that Proposer make a dedicated team available to participate in the proposal development and evaluation processes as necessary to participate in the activities and meet the deadlines provided in the table below.
- It is the City’s option to conduct interviews with finalists. However, in no way is the City obligated to interview finalists.
- The City reserves the right to modify or update this schedule at any point in time.

In no event shall the deadline for submission of the proposal be changed except by written modification by the City of Memphis Purchasing Department.

| Activity | Date |
|---|----------------|
| Publish RFP | March 16, 2021 |
| Proposer Questions Deadline | March 26, 2021 |
| City Response to Questions | April 8, 2021 |
| Proposal Submission Deadline | April 21, 2021 |
| Finalist Selections – Optional | TBD |
| Finalist Presentations – Optional (City’s Discretion) | TBD |
| Negotiations | TBD |
| Agreement Finalization | TBD |

Several of the activities identified in the above table are described in more detail in the remainder of this Section 4.

4.4 PRE-SUBMITTAL CONFERENCE

No Pre-Submittal Conference is scheduled for this RFP.

4.5 INITIAL QUESTIONS SUBMISSION, FINAL QUESTIONS SUBMISSION

Proposer may submit an initial set of questions based on its review of this RFP, by adhering to the format template provided in Exhibit 1 and submitted as an attached WORD document or as part of the body of the email (no pdf documents), and sending it via email by 5:00 pm on the date listed in Section 4.3 Schedule of Activities. Questions received after this time and date will not be answered. This email should be sent to the individual(s) listed in Section 4.2 Principal Contacts and Information Requests, with the subject heading: “Your company’s name – RFP #XXXXX - RFP Name – Questions”. The City will post the responses to the questions on the City’s web site on or before the date listed in Section 4.3 Schedule of Activities. To ensure the fair and consistent distribution of information, no individual answers will be

given. The only official answer or position of the City will be the one posted via the City's website. Any questions or concerns not submitted by the stated time and date will be deemed waived.

4.6 PROPOSAL SUBMISSIONS

PROPOSAL SUBMISSION AND DUE DATE

Proposer shall submit, in a sealed packet, one (1) original (clearly marked on the outside of the binder as "ORIGINAL"), seven (7) complete printed copies, and two (2) CDs or thumb drives containing softcopies of its entire Proposal (including the signed Cover Letters) on or before the date specified in Section 4.3 Schedule of Activities, to the addressee provided below:

USPS (or other common carrier)
City of Memphis
Purchasing Department, Room 354
125 N. Main Street
Memphis, TN 38103

Hand Delivery
City of Memphis
Main Lobby – Bid Drop Box
125 N. Main Street
Memphis, TN 38103

The label should identify the contents as:

Your company name & address.
RFP Title, RFP #XXXXX.

PROPOSALS SUBMITTED AFTER THE DEADLINE OR WHICH STATE THAT INFORMATION WILL BE PROVIDED 'AT A LATER DATE', OR WHICH ARE OTHERWISE INCOMPLETE OR FAIL TO COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS RFP WILL BE DISQUALIFIED FROM PARTICIPATION IN THIS RFP PROCESS.

Proposals may not be amended after the submission deadline.

Notwithstanding any legends on the proposal or any other statements to the contrary, all materials submitted in connection with proposer's response to this RFP will become the property of the City and may be returned only at the City's option.

PROPOSAL FORMAT

The City expects the Proposal to be a compilation of various documents, in particular because Proposer's Proposal must utilize the RFP response templates, if provided, set forth in the Exhibits in this RFP.

Proposer shall use Microsoft Office file formats in preparing its Proposal to the maximum extent possible. All pages should be formatted to print on 8 ½" x 11" paper, unless another format is provided by the response template. Proposer responses should be specific, factual, brief and to the point.

PROPOSAL EXPIRATION DATE

Proposals in response to this RFP shall remain valid for six (6) months from the Proposal due date. The City may request an extension of time if needed.

PROPOSER DATA

The confidentiality of information and data contained in the firm of contractor's Proposal shall be subject to and governed by the Open Records Act and any other Public Records laws with which the City is legally obligated to comply (including a Freedom of Information Act Request under "FOIA").

Deadline Extension

The City reserves the right to extend the submission deadline, if such action is considered necessary by the City.

Ambiguity, Conflict, or other Errors in the RFP

If a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify, in writing e-mail, the City of such error and request modification or clarification of the document. The Proposer shall include the RFP number, page number and the applicable paragraph title. The City will issue/post any revisions to the RFP on the City's website (www.memphistn.gov). The Proposer is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the proposal or any ambiguity, conflict, discrepancy, etc. shall be waived.

Failed Competition

The City reserves the right to reject any or all proposals which are not responsive to the specifications of this Request for Proposal (RFP). Competitive negotiation requires that at least two responsive proposals for the same scope of work and service area be received in response to the RFP. A competition is considered failed if only one responsive proposal is received. If a competition has been declared failed, the City then has the option to reopen the procurement or enter into a non-competitive procurement.

Withdrawing or Amending a Proposal

At any time prior to the scheduled deadline for receipt of proposals, the Proposer may withdraw or amend its proposal by submitting a written request from the authorized representative whose name and signature appears on the proposal. A written request to withdraw or amend the proposal must be submitted to the individual and address to whom/which the proposal was submitted in accordance with the section above titled "PROPOSAL SUBMISSION AND DUE DATE."

Acceptance/Rejection of Proposals

The City reserves the right to accept or reject, in whole or in part, any or all proposals submitted. The City shall reject the proposal of any Proposer that is determined to be non-responsive.

Informalities/Minor Irregularities

The City reserves the right to waive minor irregularities or informalities in a Proposer's proposal when the City determines that it will be in City's best interest to do so. Any such waiver shall not modify any remaining RFP specifications or excuse the Proposer from full compliance with the RFP specifications and other contract requirements if the Proposer is awarded the contract.

Proposer indebted to the City

No contract will be knowingly awarded to any organization which, in the City's sole discretion, is in arrears to the City of Memphis upon any debt or contract, or which is a defaulter as surety or otherwise under any obligations to the City of Memphis, or which has failed to perform faithfully on any previous contract with the City of Memphis.

Tax Payments

The City of Memphis is exempt from federal excise, state and local taxes on all purchases and will issue tax exemption certificates, upon request.

4.7 FINALIST SELECTIONS (OPTIONAL)

The City may select a number of the RFP respondents who will be asked to give an oral presentation of its proposal to the City. However, the City is not obligated to interview any finalist. If interviews are conducted, these providers will be selected based on an evaluation of their Proposals against the criteria described in Section 5 of this RFP. RFP recipients that are not selected to progress to the oral presentations likely will be excluded from further consideration.

For this reason, Proposer is strongly encouraged to make as complete and compelling a Proposal as possible. The RFP recipient who fails to comply risks being dropped from further consideration without having an opportunity to improve its offer.

4.8 RECIPIENT PRESENTATIONS (OPTIONAL)

Details pertaining to the oral presentation phase of the RFP process will be confirmed after Proposal submission, however the presentations are tentatively scheduled to begin on the date listed in Section 4.3 Schedule of Activities.

If Proposer is one of the RFP recipients asked to give an oral presentation, Proposer should prepare a comprehensive presentation that concentrates on the business and technical aspects of the Proposal, and should not be marketing discussions. **PROPOSER'S PROPOSAL WILL NOT BE ALTERED OR ENHANCED DURING THE ORAL PRESENTATION.**

Appropriate visual and written materials are expected, but the format will be left to the discretion of the Proposer. A soft copy of all presentation materials must be delivered to the Principal Contact at least one business day before the beginning of the presentation. Proposer should also bring a sufficient number of printed copies of the materials for the City attendees at the presentation.

The City may provide a last-minute agenda or other direction for the Proposer's presentation based on the City's initial review of the Proposals.

4.9 CONTRACT AWARD

The award of contract will be made on the basis of the best proposal, as solely determined by the City, which meets the requirements and criteria set forth in the solicitation. The City will only accept proposals for the services requested. The proposal submitted in response to this solicitation is not a legally binding document; however, the contract, which will be based on information provided in the proposal, becomes legally binding once all parties have signed it. Any contract resulting from this RFP shall be subject to the City of Memphis General Terms and Conditions set forth in this solicitation and any additional terms imposed by City. The successful Contractor shall be required to execute the contract originated by the City of Memphis and satisfy all contract requirements as specified by the City. One or more contracts may be awarded under this RFP, and any contract awards and amounts are subject to the availability and appropriation of funds.

4.10 PROTESTS

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the award announcement at the following address, or via email (Tim Boyles – Tim.Boyles@memphistn.gov):

City of Memphis Purchasing Agent:
125 North Main, Room 354, Memphis, Tennessee 38103.

4.11 MODIFICATION OR TERMINATION OF RFP PROCESS

Subject to the rules and regulations of the City's Procurement Office, including with respect to providing notification and, where applicable, providing the opportunity to revise proposals, the City reserves the right to, in its sole discretion, discontinue, amend, supplement, or otherwise change this RFP, the initiative, the process used for evaluation, and the expected timeline at any time and for any reason, and makes no commitments, implied or otherwise, that this process will result in a business transaction with any provider.

4.12 SUPPLEMENTAL INFORMATION

If, subsequent to issuance of this RFP, additional relevant material is produced by or becomes available to the City, such material will (where appropriate) be transmitted to all RFP participants for their consideration. The City will make modifications by issuing a written addendum, which will be posted on the City's website. Any revisions to the solicitation will be made only by an addendum issued by the City. It is the responsibility of the Proposer to check the website for possible addenda and should consider such information in its Proposal. The City will assume that all changes or additional requirements transmitted

have been taken into account in Proposer's Proposal (including with respect to pricing), unless otherwise specified.

4.13 NO REPRESENTATIONS OR WARRANTIES

The City makes no representations or warranties regarding the accuracy or completeness of the information contained in this RFP or otherwise provided by the City through the RFP process. Proposer is responsible for making its own evaluation of information and data contained in this RFP or otherwise provided by the City, and for preparing and submitting responses to the RFP. The City has attempted to validate the information provided in this RFP, but it is possible that Proposer may detect inconsistencies or potential errors. While Proposer should identify these potential issues in its questions or in an appendix to its Proposal, Proposer should use the information provided on an "as-is" basis for its initial Proposal. Information regarding the City and the Initiative may be revised or updated, and republished for inclusion in a final response.

4.14 PROPOSAL PREPARATION COSTS

Proposer will be responsible for all costs it incurs in connection with this RFP process (including but not limited to Proposal preparation, personnel time, travel-related costs, and other expenses) and any subsequent agreement negotiations.

5. EVALUATION MODEL

5.1 QUALIFYING PROPOSALS

City will review each submitted Proposal to determine whether it is a Qualifying Proposal. A Qualifying Proposal is one that meets all of the criteria set forth below. All Proposals that ARE NOT a Qualifying Proposal will be disqualified from this RFP process. A Qualifying Proposal is a Proposal that:

- Was submitted (in the form and format required) by the due date as specified in Section 4.6.
- Conforms to the requirements of the RFP (as outlined in Section 3).

5.2 EVALUATION OF QUALIFYING PROPOSALS

An evaluation team composed of representatives of the City will evaluate proposals on a variety of quantitative and qualitative criteria. Upon receipt of proposals, the City will review to determine whether the proposal is acceptable or non-acceptable based on the criteria outlined below.

The criteria, and their associated weights, upon which the evaluation of the proposals will be based on the following:

| Evaluation Criteria | Description | Weight |
|---|---|--------|
| Company Reviews and References | Customer References or Local Experience. List of verifiable Clients or References that have engaged the vendor in similar exercise | 15% |
| | | |
| Ability to Execute, Assessment Methodology and Workplan | Vendor provides a clear plan of execution and methodology | 30% |
| | | |
| Company's Employee Skills, Experience and Certification | Implementation Services and Workforce Experience. Availability of sufficient high-quality Vendor personnel with the required skills, experience and industry certification for the specific approach proposed | 25% |
| | | |
| Cost/Pricing | Vendor provides a cost-effective and competitive pricing methodology | 30% |

RFP TERMS AND CONDITIONS

The City of Memphis seeks proposals from firms who have the expertise to provide to provide the products and/or services as is in accordance with this RFP document. This is a Request for Proposal that may be modified by the City in the selection process.

THE CITY OF MEMPHIS ENCOURAGES THE PARTICIPATION OF SMALL, MINORITY AND WOMEN-OWNED BUSINESSES IN THE PURCHASING PROCESS.

The City of Memphis is an Equal Opportunity Employer and does not discriminate on the basis of race, color, national origin, sex, religion, age, or handicap status in employment or in the provision of services.

This procurement may be subject to the requirements of Ordinance No. 5114 which establishes a local preference for local businesses located within the City of Memphis. A copy of your current Memphis and Shelby County Tennessee Business Tax Receipt must accompany the proposal for consideration of this ordinance.

Any protest of award must be filed in with the Purchasing Agent pursuant to Section 4.10 Protests. Notice of Intent to Award will be emailed to all vendors that submit a valid proposal. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

Only proposals submitted on the provided form(s) with no changes, additions or deletions to the terms and conditions will be considered. Proposals containing terms and conditions other than those contained herein may be considered nonconforming.

No objections with regard to the application, meaning, or interpretation of the specifications will be considered after the opening of the subject proposals. If there are questions or concerns regarding any part of plans, terms, specifications or other proposed documents, a written request for interpretation thereof may be submitted to the City Purchasing Agent prior to the deadline date, pursuant to Section 4.5 Initial Questions Submission, Final Questions Submission. The organization submitting the request shall be responsible for the prompt delivery of the request. Any interpretation in response to the written request will be made only by addendum duly issued, and a copy of such addendum will be mailed or delivered to each organization receiving a set of such documents and/or posted on the City's website. The City of Memphis will not be responsible for any other explanation or interpretation of the proposed documents. By submission of its proposal, a proposer shall be deemed to have understood fully the contents and meaning of the RFP.

All proposals must be signed by an authorized representative of your organization. Unsigned proposals will be considered nonconforming.

Any contract resulting from the proposals received in response to this solicitation shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee without regard to conflicts of laws principles.

By order of the Mayor of the City of Memphis, Tennessee.

JIM STRICKLAND, MAYOR

Tim Boyles, City Purchasing Agent

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INSTRUCTIONS TO PROPOSERS

Proposers shall submit their signed proposal in a sealed envelope INDICATING ON THE OUTSIDE: THE COMPANY NAME and THE REQUEST FOR PROPOSAL NUMBER.

Proposers must comply with all applicable licensing requirements. Pursuant to the City of Memphis Charter, Article 71, Section 777 et seq., it is unlawful to operate a business within the limits of the city of Memphis without possessing a Memphis and Shelby County business license, excepting non-profit organizations that qualify as tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. Upon award notification and prior to the City issuing a properly executed purchase order or entering into a contract with the proposer, the successful proposer, whose principal business address is located within the limits of the city of Memphis, will be required to submit, along with the required insurance and other required documentation, a copy of (1) the tax-exempt ruling or determination letter from the Internal Revenue Services; or (2) its current Memphis and Shelby County Business Tax Receipt/License.

Issuance of this RFP does not obligate the City to contract, in whole or in part, for services specified herein. The City of Memphis reserves the right to cancel this solicitation, in whole or in part, or to reject, in whole or in part, any and all proposals. Bidders will be notified of any cancellation, and cancellation of this RFP or any subsequent award will be posted on the City's website.

To request additional information concerning this solicitation, please see Section 4.5 Initial Questions Submission, Final Questions Submission.

This solicitation shall be in accordance with the City of Memphis Ordinances and Purchasing Policies and Procedures, which may be amended from time to time.

All materials submitted pursuant to this RFP shall become the property of the City of Memphis.

To the extent permitted by law, all proposals submitted in response to this RFP shall be kept confidential until the proposals have been evaluated and the intent to award is announced. Until the intent to award is announced, no information regarding any proposal will be released to anyone, except members of the Evaluation Committee who are responsible for evaluating the proposals and other appropriate City staff. All information provided by the Proposer in response to this RFP will be considered by the Evaluation Committee in evaluating the proposal and making an award recommendation to the City.

The Mayor of the City of Memphis is the only individual who can legally sign contracts on behalf of the City. Costs chargeable to the proposed contract shall not be incurred before receipt of a fully executed contract.

EXHIBIT 2 – PRICING

EXHIBIT 3 – NON-COLLUSION AFFIDAVIT

The Proposer, by its officers and its agents or representatives present at the time of filing this Proposal, being duly sworn on their oaths say, that neither they nor any of them have in any way, directly or indirectly, entered into any arrangement or agreement with any other Proposer, or with any officer of the Owner or Owner’s representative whereby such affiant or affiants or either of them has paid or is to pay such other Proposer or officer any sum of money, or has given or is to give to such other Proposer or officer anything of value whatever, or such affiant or affiants or either of them has not directly or indirectly, entered into any arrangement or agreement with any other free competition into the letting of the contract sought for by the attached prices that no inducement of any form or character other than that which appears on the face of the Proposal will be suggested, offered, paid or delivered to any person whomsoever to influence the acceptance of the Proposal or awarding of the Contract, nor has this Proposer any agreement or understanding of any kind whatsoever, with any person whomsoever to pay, deliver to, or share with any other person in any way or manner, any of the proceeds of the Contractor sought by this Proposal.

Submitted By:

Firm Name _____

Authorized Signature _____

Date _____

SIGNATURES

If PROPOSER is:

A. An Individual

By _____

(SEAL)

(Individual's Name)

Doing business as

Business Address:

Phone Number: _____

B. A Partnership

By _____

(SEAL)

(Firm Name)

(General Partner)

Business Address:

Phone Number: _____

C. A Corporation

By _____

(SEAL)

(Corporation Name)

(State of Incorporation)

By _____

(Name of Person Authorized to Sign)

Title _____

Attest _____

(Secretary)

Business Address:

Phone Number: _____

D. A Joint Venture

By _____
(Name)

Business Address:

By _____
(Name)

Business Address:

Each joint venture member must sign. The manner of signing for each individual partnership and corporation that is party to joint venture should be in manner indicated above.

CITY OF MEMPHIS STANDARD CONTRACT FOR GOODS AND / OR SERVICES

PARTIES TO THE AGREEMENT. This Agreement is made and entered into this ____ day of _____, 20__, by and between **[@CONTRACTOR NAME@]**, ("Contractor") and the City of Memphis, a municipal corporation of the State of Tennessee, ("City").

WITNESSETH

WHEREAS, the City, by and through its Division of **[@DIVISION NAME@]** has the need for **[@SERVICES / GOODS TO BE PROVIDED@]**; and

WHEREAS, Contractor has the knowledge and expertise to provide such goods/services; and

WHEREAS, the parties desire to enter into an agreement setting forth the terms and conditions under which Contractor shall provide said goods/services;

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties hereby agree as follows:

PAYMENT TERMS AND CONDITIONS

DESCRIPTION OF GOODS / SCOPE OF SERVICES. The goods / services to be provided in connection with this Agreement will include, but not be limited to, those items listed, if applicable, in the Request for Quote (RFQ)/Request for Proposal (RFP) and Contractor's response thereto, which are incorporated herein by reference and, if applicable, Exhibit **[@EXHIBIT IDENTIFICATION@]**, attached hereto and incorporated herein as if stated verbatim. Said goods / services shall be provided in accordance with the applicable terms and conditions set forth, if applicable, in the City solicitation, and it is understood and agreed among the parties that in the event of a variance between the terms and conditions of this Agreement and any amendment hereto and the terms and conditions contained, if applicable either in the solicitation document or the response thereto, the order of precedence shall be as follows: (1) This Agreement; (2) Contractor's response, if applicable; (3) City's solicitation, if applicable.

TERM. This Agreement shall not be binding upon the parties until it has been signed first by Contractor and then by the authorized representatives of the City in accordance with applicable ordinances, laws and regulations.

The Initial Term of this Agreement shall commence beginning **[@CONTRACT BEGIN DATE@]** and shall end on the earlier of **[@CONTRACT END DATE@]** or until all goods/services herein have been provided to the City ("Initial Term"), subject to the availability and appropriation of funds to finance the same and the successful operation of the program.

The City shall have the option to extend the Initial Term for **[@NO. OF OPTION PERIODS@]** additional **[@LENGTH OF OPTION PERIOD@]** period(s) (the "Option Periods"), subject to the appropriation of funds by the Memphis City Council and mutual agreement of the parties, evidenced in writing. The Initial Term and the exercised Option Periods are collectively referred to hereinafter as the "Term."

Eligible costs authorized by the City and incurred after the Initial Term begins, but prior to the execution of this Agreement, shall be paid under this Agreement.

INVOICES. Contractor shall submit original invoices, or copies of original invoices certified as such by Contractor, on Contractor's letterhead and in form and substance acceptable by the City and with all necessary supporting documentation, to the City. Contractor shall invoice in duplicate, if requested. The invoice shall describe the goods (the items sold) or services provided, list the price per unit, reflect any applicable terms of payment, and show the contract number to which it relates. Unless the contract number is shown on the invoice, it may be returned to Contractor. Invoices shall be submitted to: **[@DIVISION NAME@]**, **[@INVOICE ADDRESS@]**; Memphis, Tennessee **[@ZIP CODE - INVOICE@]**; Attn: **[@CITY CONTACT/REPRESENTATIVE@]**.

COMPENSATION. Unless City has good faith and reasonable objections to Contractor's invoice(s), the City shall compensate Contractor, based on invoices submitted by Contractor in accordance with the terms of this Agreement, the sum total **[@CHOOSE NOT TO EXCEED OR ESTIMATED TO BE@]** **[\$@CONTRACT AMOUNT@]** (the "Fee") during the Initial Term of the Agreement, which shall include all reimbursable expenses/cost. The City shall use its best efforts to remit payment based on Contractor's invoice within thirty (30) days after receipt of accurate invoice and approval by the City. The City is not obligated to pay, and may withhold from payment, any amounts the City has in dispute with Contractor based on Contractor's non-performance/delivery, unsatisfactory performance/delivery or negligent performance/delivery of any services or goods hereunder.

City reserves the right to review all Charges billed and incurred on a monthly basis.

COMPENSATION FOR CORRECTIONS. No compensation shall be due or payable to Contractor pursuant to this Agreement for any of the goods delivered or services performed by Contractor to correct goods delivered or services performed, when such corrections are required as a direct result of negligence by Contractor to properly fulfill any of its obligations herein.

TRAVEL EXPENSES. Where travel expenses are otherwise allowed and payable herein, such travel expenses shall be in accordance with the City's Travel Policy and Procedures, as may be amended from time to time. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the City.

TAX PAYMENTS. The City of Memphis is exempt from federal excise, state and local taxes on all purchases and upon request will issue tax exemption certificates to Contractor. Contractor shall be solely responsible and liable for any taxes and business license fees assessed or imposed by any government having jurisdiction over the services and/or goods to be provided herein.

PAYMENT DOES NOT IMPLY ACCEPTANCE OF GOOD/SERVICE. The payment of an invoice shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as acceptance of the good/service nor as final approval of any of the costs invoiced therein, and the City's payment shall not relieve Contractor from its obligation to replace or correct any good/service that do not conform to this Agreement, even if the unsatisfactory character of such good/service may have been apparent or detected at the time such payment was made. Good/service, data or components that do not conform to the requirements of this Agreement shall be rejected by the City and replaced by Contractor, without delay or additional cost to the City.

If Contractor receives payment from the City for good/service or reimbursement(s) that is later disallowed or rejected by the City (or another governmental entity on the basis of audit or monitoring), Contractor shall promptly refund the disallowed amount to the City upon the City's request. At its option, the City may offset the amount disallowed from any payment due to Contractor under this Agreement or any other agreement.

FINAL CONTRACT INVOICE. Contractor shall submit to the City a final contract invoice within 45 calendar days from the termination date of the Agreement, for any goods/services provided pursuant to this Agreement. Contractor further acknowledges and agrees the City will not be responsible for any Contractor invoices, pertaining to this Agreement, submitted to the City after the final contract invoice. Contractor shall close out its accounting records at the end of the Agreement period in such a manner that reimbursable expenditures and revenue collections, related to this Agreement, are NOT carried forward.

GENERAL TERMS AND CONDITIONS

AMENDMENT. This Agreement may be modified or amended only by a written amendment executed by all parties hereto and approved by the appropriate City officials in accordance with applicable laws and regulations.

ASSIGNMENT, SUBCONTRACTING, or TRANSFER. Contractor shall not subcontract, assign, delegate or transfer all or part of its rights, responsibilities, or interest under this Agreement without the prior written consent of the City. Any purported assignment, transfer, or delegation in violation of this Section shall be voidable by the City. No subcontracting, assignment, delegation or transfer shall relieve Contractor from performance of its duties hereunder; neither shall the City be responsible for the fulfillment of Contractor's obligations to its transferors or subcontractors. Upon request of the City, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the transfer. At any time, City may, in its sole discretion, revoke its prior approval of a subcontractor and direct Contractor to replace such subcontractor or perform the services that were being performed by such Contractor itself if the City finds in its reasonable judgment that (i) such subcontractor's performance is materially deficient or otherwise unacceptable to City; (ii) good faith doubts exist concerning the subcontractor's ability to render future performance because of changes in the subcontractor's ownership, management, financial condition, or otherwise; or (iii) there have been one (1) or more material misrepresentations by or concerning the subcontractor. The City reserves the right to terminate the Agreement if Contractor, in whole or in part, is acquired by another entity during the term of this Agreement. In the event Contractor is allowed to sublet any part of the Agreement, Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractor and the subcontractor's employees, as Contractor is responsible for the acts and omissions of Contractor's own employees.

ASSIGNS. See **SUCCESSORS.**

AUDITS. See **RECORDS.**

CITY FACILITIES. Except to the extent otherwise approved by the City in its sole discretion, Contractor shall use any and all items provided by the City for the sole and exclusive purpose of providing the services or for delivery of goods described in this Agreement. Use of City facilities by Contractor does not constitute a leasehold interest in favor of Contractor or Contractor's customers.

Contractor shall use any and all items provided by the City in an efficient manner. To the extent that Contractor utilizes such items provided by the City in any manner that unnecessarily increases facility costs or other costs incurred by the City, City reserves the right to set-off the excess costs of such practices. Contractor shall be responsible for any damage to any and all item(s) provided by the City resulting from the abuse, misuse, or neglect of Contractor, its employees and subcontractors or other failure to comply with its obligations respecting such items provided by the City.

Contractor, its employees and agents shall keep any and all items provided by the City in good order, not commit or permit waste or damage to such items, and not use such items for any unlawful purpose. Contractor shall act and comply with City's standard policies and procedures as made available to Contractor regarding access to and use of such City-provided items, including procedures for the physical security of the City facilities.

Contractor shall permit City and its agents and representatives to enter into those portions of the City facilities occupied by Contractor staff at any time to perform facilities-related services.

Contractor shall not make any improvements or changes involving structural, mechanical or electrical alterations to the City facilities without the City's prior written approval. Any improvements to the City facilities will become the property of the City.

When the City facilities are no longer required for performance of the services described in Exhibit “[@EXHIBIT IDENTIFICATION@]”, Contractor shall return such facilities to the City in substantially the same condition as when Contractor began use of such facilities, subject to reasonable wear and tear.

CITY LIABILITY. The City shall have no liability except as specifically provided in this Agreement. The City, by execution of this Agreement, assumes no liability for damages caused to persons or property by reason of Contractor providing goods or services herein or for injury to any employee, agent or subcontractor of the Contractor performing under this Agreement.

CITY'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF. If evidence is produced before the final settlement of all or any balances that Contractor has failed to pay subcontractors, laborers employed on its work, or failed to pay for materials used therein, or if the City has reason to suspect the same, the City may withhold such balances and upon evidence satisfactory to the City as to the amount due for such goods, labor, and materials, the City, acting as the agent of Contractor, may settle and pay for the same and charge the amounts to Contractor and deduct the same from the said balance or balances.

COMPANY'S/CONTRACTOR'S PERSONNEL. (This paragraph/section is applicable only to purchase of services contracts). Contractor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all services performed under this Agreement shall be supervised by Contractor. Contractor will make its personnel aware of and cause them to comply with the City's policies that have been made known to Contractor while performing pursuant to this Agreement. Contractor further certifies that all of its employees assigned to perform any services hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of Contractor who, in the opinion of the City, is incompetent, whose conduct becomes detrimental to the services, or whom the City deems to be unsatisfactory for any reason, shall immediately be removed from association with the services hereunder per the City's request. Upon such request, Contractor shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training. Contractor is responsible for the acts or omissions of its personnel under or relating to this Agreement.

Contractor shall be solely liable and responsible for providing all employee compensation and benefits to, or on behalf of, all persons performing services pursuant to this Agreement. The City shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, health, welfare and disability benefits, federal and local taxes, or other compensation, benefits or taxes for any personnel provided on behalf of Contractor. In addition, Contractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any services performed by or on behalf of Contractor pursuant to this Agreement.

CONFIDENTIALITY. Subject to the open records laws of the State of Tennessee, while performing under this Agreement, the parties may gain access to proprietary and/or confidential information that, if disclosed to third parties, may be damaging to each other. The parties agree not to disclose such information to third parties and shall take all reasonable steps to prevent unauthorized access to any of each other's confidential and proprietary information. Such information shall include, but shall not be limited to, materials considered to be confidential information as a matter of law (*e.g.*, personnel records), and shall also include (i) all materials in any form developed or created by each party related to funding and financial and business information; (ii) all information owned, possessed or used by a party, which is communicated to, learned, developed or otherwise acquired by that party in the performance of this Agreement; (iii) the terms, conditions and pricing contained herein; and (iv) any other information that has been advised by a party is confidential, privileged or proprietary. Confidential information, as used in this Agreement, shall not include (i) information in a party's possession prior to disclosure; (ii) information generally available to the public or that becomes available to the public through a source other than a party under this agreement, or (iii) information that was rightfully obtained by a party from a third party who is under no obligation of confidentiality to either party to this Agreement with respect to such information. Each party agrees that it will accept and hold confidential information obtained from each other in confidence at all times during and after termination of this Agreement. A party shall neither use nor disclose such information, except as provided in this Agreement or as required by law, without the prior written permission of affected

party.

Subject to the open record laws of the State of Tennessee, each party acknowledges and agrees that a breach of this section may cause the affected party irreparable injury and damage; therefore, each party expressly agrees that the affected party shall be entitled to seek injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement. Each party agrees that it will disclose confidential information only to those employees who have a right and need to know, and shall require its employees, agents, and subcontractors to comply with the requirements of this provision and the requirements of the provisions herein titled "Public Statements" and "Rights in Data."

CONFLICT OF INTEREST. Neither party shall engage in any conduct or activity in the performance of this Agreement that constitutes a conflict of interest under applicable federal, state or local laws, rules and regulations. Contractor covenants that it has no public or private interest, and shall not acquire any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor or any agent or representative of Contractor, to any officer, official, agent or employee of the City, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to Contractor in connection with anything contemplated or performed relative to this Agreement. For breach or violation of this provision, the City shall have the right to recover or withhold the full amount of such gratuities.

COUNTERPARTS. This Agreement may be signed in multiple counterparts and/or counterpart signature pages, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument.

COVENANT AGAINST CONTINGENT FEES. Contractor warrants that it has not employed or retained any company or person other than a *bona fide* employee working solely for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a *bona fide* employee working solely for Contractor any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision/warranty, the City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

DEBARRED OR SUSPENDED ENTITIES. By signing this Agreement, Contractor certifies

that it is not presently listed by any federal agency as debarred, suspended, or proposed for debarment from any federal contract activity. If during the term of this Agreement this information changes, Contractor shall notify City without delay. Such notice shall contain all relevant particulars of any debarment, suspension, or proposed debarment.

DESCRIPTION OF GOODS / SCOPE OF SERVICES. See **SCOPE OF SERVICES.**

DISPUTE RESOLUTION. In the event of any dispute, controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations involving themselves or their representatives as they each deem appropriate. Any dispute concerning a question of fact in connection with this Agreement between Contractor and the City shall be referred in successive order for resolution, first to the City's Chief Procurement Officer/Purchasing Agent, second to the City's Chief Legal Officer/City Attorney, and thirdly to the Mayor of the City of Memphis, whose decision regarding the City's position as to the same shall be final.

DRAFTER. This Agreement is the result of arm's-length negotiations between the parties and shall be construed to have been drafted by all parties such that any ambiguities in this Agreement shall not be construed against either party.

DUE DILIGENCE AND NON-RELIANCE. Contractor represents, warrants and covenants that it has had opportunity to conduct, and has conducted, due diligence with respect to this Agreement, and all other items and conditions it deems necessary to conclude this Agreement, and Contractor represents, warrants and covenants that it has not relied upon any written or oral statement of City or its employees, directors, officers, consultants, attorneys or any elected or appointed officials in executing this Agreement.

EMPLOYMENT OF CITY WORKERS. Contractor shall not engage, on a full-time, part-time or any other basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employment of the City.

EMPLOYMENT OF ILLEGAL IMMIGRANTS. Contractor hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. Contractor shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event Contractor fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this Agreement may be canceled, terminated or suspended in whole or in part by the City, and Contractor may be prohibited from contracting to supply goods

and/or services to the City for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with the City.

ENTIRE AGREEMENT. This Agreement, together with all exhibits, attachments, and addendums hereto (if applicable), constitutes the full and final understanding of the parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, express or implied, between the parties with respect to the subject matter of the Agreement.

FORCE MAJEURE. Neither the City nor Contractor shall be deemed in default hereunder, nor shall either be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any *force majeure* event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, acts, governmental authorities or acts of nature or other similar cause beyond its control. Both shall put forward its best efforts to mitigate any delay, interruption, or cessation in the performance of its obligations under this Agreement related to said *force majeure* event.

GENERAL COMPLIANCE WITH LAWS. If required, Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and shall obtain, at its own expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. Such permits and licenses will be made available to City upon request.

Contractor is assumed to be familiar with and agrees that at all times it will observe and comply with all applicable federal, state, and local laws, ordinances, and regulations in any manner affecting this Agreement. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA). Contractor shall promptly notify City of any conflict discovered between the Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict.

GOVERNING LAW. The terms and conditions of this Agreement shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, without regard to conflicts of laws principles. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

HEADINGS. Titles, articles, and/or section headings to the provisions herein are for reference purposes only and will be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

HOLD HARMLESS. See **INDEMNIFICATION.**

INCORPORATION OF “WHEREAS” CLAUSES. The foregoing “WHEREAS” clauses are hereby incorporated into this Agreement and made a part hereof.

INDEMNIFICATION. Contractor shall indemnify, defend, save and hold harmless the City and its officers, agents and employees from and against any and all claims, losses, demands, suits, actions, penalties, damages (consequential or otherwise), settlements, costs, expenses, or other liabilities of any kind and character, including without limitation attorney fees and litigation expenses, arising out of or in connection with the performance of this Agreement by Contractor, its employees, subcontractors, or agents or the breach of this Agreement by Contractor, its employees, subcontractors or agents. This obligation shall survive the expiration or termination of this Agreement. Neither Contractor nor any employees of Contractor shall be liable under this section for damages arising out of injury or damage to persons or property directly caused by the negligence of the City or any of its officers, agents, or employees.

Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit Contractor's responsibility to indemnify, defend, save and hold harmless the City or its elected or appointed officials, officers, employees, agents, assigns, and instrumentalities as herein required.

The City reserves the right to appoint its own counsel regarding any matter defended hereunder. Contractor acknowledges that the City has no obligation to provide legal counsel or defense to Contractor, its employees or subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this Agreement against Contractor as a result of or relating to obligations under this Agreement. The City shall have no obligation for the payment of any judgments or the settlement of any claims asserted against Contractor or its subcontractors or employees as a result of or relating to Contractor's obligations hereunder.

Contractor shall immediately notify the City c/o Chief Legal Officer/City Attorney; 125 North Main Street, Room 336; Memphis, TN 38103, of any claim or suit made or filed against Contractor or its subcontractors regarding any matter resulting from or relating to Contractor's obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

INDEPENDENT CONTRACTORS. Nothing in this Agreement shall be deemed or construed to represent that Contractor, or any of Contractor's employees or agents, are the agents, representatives, or employees of the City. Contractor acknowledges that it is an independent contractor over the details and means for performing this Agreement. Anything in this Agreement which may appear to give the City the right to direct Contractor as to the details of the performance of its obligations hereunder or to exercise a measure of control over Contractor is solely for purposes of compliance with local, state and federal regulations and means Contractor will follow the desires of the City only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by Contractor that neither it nor its employees or agents shall hold themselves out contrary to the terms of this paragraph, and the City shall not be liable for any representation, act or omission of Contractor contrary to the provisions hereof.

INSURANCE. See insurance requirements attached hereto as Exhibit A and incorporated herein as if stated verbatim within the Agreement.

JURISDICTION AND VENUE. See **GOVERNING LAW.**

MINORITY, WOMEN, AND/OR SMALL BUSINESS ENTERPRISE(S) CONTRACTING. Contractor shall take affirmative action to ensure that small, minority-owned and women-owned businesses which have been certified by the City are utilized when possible as sources of supplies, equipment, construction and services.

MODIFICATION. See **AMENDMENT.**

MONITORING RIGHTS. See **RECORDS.**

NONDISCRIMINATION. Contractor hereby agrees to abide by, to take affirmative action to ensure that, and to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination, which provide in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in Contractor's employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, state or statutory law. Contractor shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. In the event Contractor fails to comply

with the City's nondiscrimination policy and any and all other laws prohibiting discrimination, this Agreement may be canceled, terminated or suspended in whole or in part by the City.

The City reserves the right to investigate any claims of illegal discrimination by Contractor and in the event a finding of discrimination is made and upon written notification thereof, Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. Contractor's failure or refusal to do so shall be cause for termination of this Agreement in accordance with the terms of this Agreement.

Any other agreement which relates to this Agreement to which Contractor is a party, including without limitation, Contractor's agreements with its subcontractors, shall specifically contain a provision to this effect.

NOTICES. All notices, approvals, and other communications required or permitted to be given hereunder shall be written and hand-delivered with signed receipt; delivered by facsimile; delivered by a nationally-recognized overnight courier; or mailed *via* certified U.S. mail, postage prepaid and return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand-delivery, on the date of delivery; (ii) if by fax, on the date the fax transmission is received at the receiving location and receipt is telephonically confirmed by the sender; (iii) if by delivery *via* U.S. mail, on the date of receipt appearing on a return receipt card; or (iv) if by overnight courier, on the date receipt is confirmed by such courier service. All notices must be addressed to the respective party at the following addresses or to such other person or address as either party may designate in writing and deliver as provided herein:

To the CITY:

City of Memphis [@DIVISION NAME@]

[@ADDRESS - NOTICES@]

Memphis, TN [@ZIP CODE - NOTICES@]

Attn: [@CITY CONTACT/REPRESENTATIVE@]

Fax: [@FAX NUMBER - CITY CONTACT/REPRESENTATIVE@]

With copy, if requested,

to:

Chief Legal Officer/City Attorney

125 N. Main Street, Room 336
Memphis, TN 38103

To CONTRACTOR:

[@CONTRACTOR NAME@]

[@CONTRACTOR ADDRESS@]

[@CONTRACTOR CITY@], [@CONTRACTOR STATE@] [@CONTRACTOR ZIP
CODE@]

Attn: [@CONTRACTOR REPRESENTATIVE@]

Fax: [@FAX NUMBER - CONTRACTOR REPRESENTATIVE@]

NUMBER AND GENDER. Unless the context requires otherwise, (i) use of a specific gender imports the other gender(s); and (ii) use of the singular imports the plural and *vice versa*.

OBLIGATIONS EXTENDED BEYOND PERIOD OF PERFORMANCE. See **SURVIVAL.**

ORGANIZATION STATUS AND AUTHORITY. Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the State of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

The execution, delivery and performance of this Agreement by Contractor has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of Contractor, any provision of any indenture, agreement or other instrument to which Contractor is a party, or by which Contractor's respective properties or assets are bound, in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

Each person executing this Agreement represents that he/she is lawfully authorized to sign the Agreement on behalf of the party he/she represents and execution of the Agreement was duly and regularly authorized by the party's governing body.

PARTIES IN INTEREST. See **SUCCESSORS.**

PATENT INDEMNIFICATION. Contractor warrants that any goods/services furnished hereunder do not infringe or violate any patent, trademark, copyright, trade secret, or any other proprietary right of any third party; that it shall defend all suits that may arise with respect thereto; and that it shall indemnify, defend, save and hold harmless the City, its officials, employees, agents, successors and assigns, from and against all liabilities, suits, claims, damages, costs or expenses, including without limitation attorney and expert witness fees, for or by reason of any actual or alleged claim the goods/services purchased by City hereunder infringe any patent, copyright, or are a violation of trade secret disclosure laws, whether by reason of Contractor's purchase or otherwise. This indemnification obligation shall survive the expiration or termination of this Agreement.

PENALTIES AND LIQUIDATED DAMAGES. Contractor recognizes that various losses, penalties (including service level penalties), and/or liquidated damages may be assessed against City for certain failures to perform. In any such case where City's failure to perform is due to some negligent act, omission, or failure to perform on Contractor's part, Contractor agrees to pay or reimburse City for such assessments and City may deduct same from any Contractor's invoices as applicable. In any such case where Contractor is assessed penalties, such penalties will not exceed the corresponding amount for which the City is penalized due to Contractor's negligent act, omission, or failure to perform.

PRECEDENCE. In the event of any inconsistency between the terms or provisions expressed in this Agreement, and any term or provision in any of the other contract documents, the order of precedence shall be as follows: (1) this Agreement, including all Exhibits, except that all general terms and conditions contained in the main body of this Agreement shall control over any conflicting general terms and conditions contained in any Exhibit hereto; (2) Contractor's response, if applicable; (3) City's solicitation, if applicable.

PUBLIC RECORDS. Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by Contractor, Contractor understands and acknowledges that the City is a governmental entity subject to the State of Tennessee Public Records Act, and any reports, data or other information supplied to the City regarding goods supplied or services performed hereunder may be subject to disclosure as a public record in accordance with the laws of the State of Tennessee.

PUBLIC STATEMENTS. Contractor shall not make any announcement, release any information, or authorize or participate in any interview concerning this Agreement and the goods and/or services required herein, without obtaining prior written consent from the City. Contractor

shall require its employees, agents, and subcontractors to comply with the requirements of this provision. This provision shall survive the expiration or termination of this Agreement.

RECORDS. Contractor shall make and keep as the same legally enforceable, full and complete books, documents, accounting records and other evidence, that specifically relate to this Agreement, in accordance with generally accepted accounting principles. Contractor shall retain such records, and shall make same available to the City, upon reasonable request, during the term of this Agreement, and for a minimum period of seven (7) full years after completion of the contract obligations or from the date of final payment under this Agreement, whichever is later. In the event any litigation, claim or audit is instituted prior to the expiration of the required five-year retention period, such records shall be retained until such litigation, claim or audit finding has been resolved.

Contractor's activities conducted pursuant to this Agreement shall be subject to monitoring and evaluation by the City, the state, the federal government or their duly appointed agents or employees. Upon reasonable notice, Contractor shall permit the City, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter Contractor's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by Contractor. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

RELATIONSHIP OF PARTIES. This Agreement does not and shall not be construed to create a partnership or joint venture between the parties hereto. Contractor is performing its obligations hereunder as an independent contractor and not as City's agent or employee. Contractor will not hold itself out contrary to the terms of this paragraph and City will not become liable for any representation, act, or omission of Contractor contrary to the provisions hereof.

REMEDIES CUMULATIVE. All remedies available to the City herein are cumulative and shall be in addition to all other rights and remedies provided by law. The termination, expiration, or suspension of this Agreement shall not limit the City from pursuing other remedies available at law or in equity.

REPORTS. Upon request, Contractor shall prepare and submit reports of its activities, funded under this Agreement, to the originating department of the City. The reports shall include an itemization of the use of the City's funds, inclusive of specific services delivered by Contractor. Any such reports provided to the City shall be prepared with the understanding that the City may make such reports available to the public.

In addition, Contractor shall submit and, as necessary, update subcontractor information (including but not limited to payments thereto), for **any and all subcontractors** used on City project(s) via the purchase of goods or services, in the City's compliance tracking software, B2GNow. The City shall have the right to withhold future disbursement of funds under this Agreement and any future agreements until the requirements of this provision have been met.

RIGHTS IN DATA / SOFTWARE. Contractor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type relating to its activities under this Agreement, whether or not the same is accepted or rejected by City, shall remain the property of City and shall not be used or published by Contractor or any other party without the express prior consent of City. Software development, if any, specifically developed as part of this Agreement shall be the intellectual property of City. Contractor recognizes that said data including software development, if any, specifically developed as part of this Agreement shall be the intellectual property of City and is the exclusive property of the City and that the City reserves the right to use, market, license, or sell it to others.

Contractor shall obtain assurances similar to those contained in this subsection from persons, contractors and subcontractors retained by Contractor. Contractor acknowledges and agrees that a breach by Contractor of the provisions of this section will cause the City irreparable injury and damage. Contractor, therefore, expressly agrees that the City shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

SERVICE MARKS. Contractor agrees that it shall not, without City's prior written consent, use the name, service mark or trademarks of the City.

SEVERABILITY. If any terms or provisions of this Agreement are held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added as a part of this Agreement, upon good-faith negotiation by the parties, a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible, and still be legal, valid and enforceable. Parties acknowledge that some Agreement provisions may be inapplicable to the scope of work or goods that are germane to this Agreement. Parties waive no rights or remedies where the provisions are applicable.

SHIPMENTS. (This paragraph/section is applicable only to purchase of goods contracts). Substitutions will not be accepted, unless otherwise specified herein. Partial shipments may be allowed unless otherwise stated in writing by City, however, full shipment of all items ordered hereunder must be completed by the date specified in this Agreement or this Agreement will be

subject to cancellation by the City. Contractor shall not ship excess quantities without the City's prior written approval.

STANDARD OF PERFORMANCE. All services by Contractor shall be performed in compliance with the specified requirements, in a manner satisfactory to the City, and in accordance with the generally-accepted business practices and procedures of the City and pursuant to the governing rules, practices and regulations of the industry for the type of work performed under this Agreement.

SUBCONTRACTING. See **ASSIGNMENT**.

SUBJECT TO FUNDING. This Agreement is subject to availability and annual appropriation of funds by the Memphis City Council. In the event sufficient funds for this Agreement are not available or appropriated by the Memphis City Council for any of its fiscal period during the term hereof, then the City shall immediately terminate this Agreement upon written notice to Contractor. In the event of such termination, Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed up to the termination date. Such termination by the City shall not be deemed a breach of contract by the City, and Contractor shall have no right to any actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount that have not been earned as of the date of termination.

SUCCESSORS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

SURVIVAL. The parties hereto acknowledge that provisions that require or contemplate performance or observance after expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and continue in full force and effect.

TERMINATION: Termination of this Agreement with or without cause.

1. It shall be cause for the immediate termination of this Agreement if, after its execution, the City determines that either:
 - a. Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pleaded *nolo contendere*, or has pleaded or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
 - b. Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without the City's

consent or approval; or

- c. Contractor has filed for bankruptcy, has been adjudicated bankrupt, become insolvent or made an assignment for the benefit of creditors, or a receiver or similar officer is appointed to take charge of all or part of Contractor's assets.
2. The City may cancel/terminate this Agreement, in whole or in part, upon providing written notice to Contractor of the City's intention to terminate the Agreement as a result of Contractor's failure to provide the goods and/or services specified under this Agreement or in violation(s) of any of the terms herein, and Contractor has failed to cure such breach within ten (10) calendar days of such notice. The City may reject the goods and/or services and cancel this Agreement for any goods/services rendered or to be rendered hereunder. At its option, City may return the rejected portion of such goods to Contractor at its expense or hold the same for such disposal as Contractor shall indicate. In the event of any such rejection/termination, the City shall, at the City's option, have the right to obtain like goods and/or services elsewhere or to take over the work and prosecute the same to completion, both at Contractor's expense; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, etc. as may be on the site of the work and necessary therefore. Contractor shall be liable to the City for any loss, damage, or additional cost incurred thereby, including but not limited to any difference between the cost for procuring such like services and the price specified herein, attorneys' fees and court costs.
3. Notwithstanding the foregoing or any section herein to the contrary, Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by Contractor, and the City may withhold any payments to Contractor, for the purpose of setoff, until such time as the exact amount of damages due the City from Contractor is determined.
4. The City may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving thirty (30) calendar days' prior written notice to Contractor. In the event a purported termination for cause by the City is in error, then such termination may, at the City's sole discretion, be deemed to be a termination for convenience under this section. In the event of such termination, Contractor shall be entitled to receive just and equitable compensation, as determined by the City, for any satisfactory authorized work performed in accordance with the Agreement up to the termination date; but in no event shall the City be liable to Contractor for expenses incurred after the termination date.
5. Contractor shall deliver to the City all hard copy and electronic files maintained on behalf of the City within thirty (30) calendar days of termination of this Agreement. Upon reasonable request, the City reserves the right to obtain such information prior to the termination of this Agreement.

6. All goods accepted by City or services completed by Contractor prior to the termination date shall be documented and all tangible work documents shall be transferred to the City prior to payment for services rendered, and shall become the sole property of the City. Such termination by the City shall not be deemed a breach of contract by the City, and Contractor shall not be compensated for any anticipatory profits, or other damages of any description, that have not been earned as of the date of termination.

TERMINATION OF PRIOR AGREEMENTS. See **ENTIRE AGREEMENT.**

THIRD PARTY BENEFICIARY: This Agreement is entered into solely between, and may be enforced only by, City and Contractor. Unless otherwise specified herein, this Agreement shall not be deemed to create any rights in third parties, including suppliers or customers of either party.

TITLE & RISK. (This paragraph/section is applicable only to purchase of goods contracts). The title and risk of loss of any goods hereunder shall not pass to the City until the City actually receives and takes possession of the goods at the point or points of delivery. Contractor shall assume all liability and responsibility for delivery of such goods in good condition to the City.

TRANSFER. See **ASSIGNMENT.**

TRANSPORTATION CHARGES/F.O.B. DELIVERY. (This paragraph/section is applicable only to purchase of goods contracts). All pricing is F.O.B. destination, in which Contractor shall be responsible for freight, transportation costs, and all incidental charges, unless delivery terms are specified otherwise in the bid and agreed to by the City. In the event shipping other than F.O.B destination is allowed by the City, the City agrees to reimburse Contractor for transportation costs in the amount specified in Contractor's bid, or actual costs, whichever is lower, provided the City shall have the right to designate what method of transportation shall be used to ship the goods.

WAIVER OF CONTRACTUAL RIGHT. No term or provision of this Agreement, or of any document executed pursuant hereto, shall be held to be waived, modified or deleted unless in writing and executed by the parties hereto; provided that any such waiver shall not be identified as a waiver of any succeeding breach hereto or of any other provision herein contained. No delay or failure of either to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver, limitation, or relinquishment of that party(s) right to subsequently enforce and compel strict compliance with such provision and/or any other provision herein or in any document related hereto. Parties acknowledge that some Agreement provisions may be inapplicable to the scope of work or goods that are germane to this Agreement. Parties waive no rights or remedies where the provisions are applicable.

No consent or waiver, express or implied, by either party to or of any breach or default by the other in the performance of any of its obligations shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party.

The enforcement by any party of any right or remedy it may have under this Agreement or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

WARRANTY. Contractor warrants to the City that all goods/services shall be free from defects in design and faulty or improper materials and/or workmanship, shall be in strict compliance with the terms of this Agreement and shall be fit and sufficient for the purpose intended or shall have met the particular specification of the solicitation or the accepted Contractor response relating to this Agreement. This warranty shall be effective for a period of not less than one year from the date of acceptance by the City of such goods and/or services as satisfactorily complete, and shall be in addition to all other warranties, express, implied or statutory. The warranty shall survive the termination or expiration of this Agreement.

END OF DOCUMENT - SIGNATURE PAGE NEXT

Remainder of Page Left Intentionally Blank

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement.

CITY OF MEMPHIS

[@CONTRACTOR NAME@]

By: _____

Jim Strickland, Mayor

Date: _____

Approved as to Form:

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Jennifer Sink, Chief Legal Officer/
City Attorney

Attest:

By: _____

Comptroller

ADDENDUM

ADDENDUM. The following Addendum to the Agreement is by and between the City and Contractor. If not otherwise defined herein, defined terms shall have the meaning as set forth in the Agreement, which is specifically referenced and incorporated herein. In the event of any discrepancy between other provisions of the Agreement and this Addendum, the terms of this Addendum shall govern.

The parties agree that the following provisions shall be added to or amend the Agreement as follows:

(IF NO ADDENDUM THIS PAGE SHOULD BE DELETED/REMOVED)

EXHIBIT A

INSURANCE REQUIREMENTS FOR IT – SECURITY PENETRATION TESTING RFP

THE COMPANY SHALL NOT COMMENCE ANY WORK UNDER THIS CONTRACT UNTIL IT HAS OBTAINED AND CAUSED ITS SUBCONTRACTORS TO PROCURE AND KEEP IN FORCE ALL INSURANCE REQUIRED. THE COMPANY SHALL REQUIRE ALL SUBCONTRACTORS TO CARRY INSURANCE AS OUTLINED BELOW, IN CASE THEY ARE NOT PROTECTED BY THE POLICIES CARRIED BY THE COMPANY. THE COMPANY IS REQUIRED TO PROVIDE COPIES OF THE INSURANCE POLICIES UPON REQUEST. THE COMPANY SHALL FURNISH THE RISK MANAGER A CERTIFICATE OF INSURANCE AND/OR POLICIES ATTESTED BY A DULY AUTHORIZED REPRESENTATIVE OF THE INSURANCE CARRIER EVIDENCING THAT THE INSURANCE REQUIRED HEREUNDER IS IN EFFECT. ALL INSURANCE COMPANIES MUST BE ACCEPTABLE TO THE CITY OF MEMPHIS AND LICENSED IN THE STATE OF TENNESSEE WITH A BEST INSURANCE RATING OF A AND CLASS VII OR BETTER AND AUTHORIZED TO DO BUSINESS IN THE STATE WHERE THE WORK IS PERFORMED.

If any of the Insurance Requirements are non-renewed at the expiration dates, payment to the company may be withheld until those requirements have been met, or at the option of the City. The City may pay the renewal premiums and withhold such payments from any monies due the Company.

The Company shall indemnify, defend, save and hold harmless the City, its officers, employees, and agents, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by Company, its employees, subcontractors, or agents, or any negligent act or omission of Company, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, and this indemnification shall survive the expiration or earlier termination of this Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of the City, its officers, employees and agents. Contracts for third party service providers should include indemnity provisions that protect the City from any liability arising out of the Company's loss of City's sensitive information.

Each certificate or policy shall require and state in writing the following clauses:

Company shall provide notice to the City within three (3) business days following receipt of any notice of cancellation or material change in Company's insurance policy from Company's insurer. Such notice shall be provided to City by registered mail, to the following addresses:

City of Memphis

City of Memphis

Attn: Risk Management

Attn: Purchasing Agent

170 N. Main St., 5th Floor

125 North Main, Room 354

Memphis, TN 38103

Memphis, TN 38103

The Certificate of Insurance shall state the following: "The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies." The additional insured endorsements

shall be attached to the Certificate of Insurance and the Certificate of Insurance shall also state: "The additional insured endorsement is attached to the Certificate of Insurance."

WORKERS COMPENSATION:

The Company shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and Minimum Limits of the State of Tennessee and shall require all subcontractors to do likewise.

| | | |
|----------------------|-----------|-----------------------|
| Employer's Liability | \$100,000 | Each Accident |
| | \$500,000 | Disease-Policy Limit |
| | \$100,000 | Disease-Each Employee |

AUTOMOBILE LIABILITY:

Covering owned, non-owned, and hired vehicles with Minimum Limits of:

\$1,000,000 Each Occurrence – Combined Single Limits

COMMERCIAL GENERAL LIABILITY:

Commercial General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability Coverage with Minimum Limits of:

| | |
|-------------|---|
| \$2,000,000 | General Aggregate |
| \$2,000,000 | Products-Completed Operations |
| \$1,000,000 | Personal and Advertising Injury |
| \$1,000,000 | Each Occurrence (Bodily Injury & Property Damage) |
| \$ 50,000 | Fire Damage any One Fire |
| \$ 5,000 | Medical Expense any One Person |

ERRORS AND OMISSIONS / PROFESSIONAL LIABILITY:

THE COMPANY SHALL MAINTAIN SUCH COVERAGE FOR AT LEAST THREE (3) YEARS FROM THE TERMINATION OR EXPIRATION OF THIS AGREEMENT WITH MINIMUM LIMITS OF:

\$5,000,000 EACH CLAIM / \$5,000,000 AGGREGATE

CYBER LIABILITY (“NETWORK SECURITY AND PRIVACY”):

For losses arising out of the following areas:

- Privacy Liability
- Network Security Liability
- Media Liability
- Cyber Extortion
- Privacy Breach Response
 - Customer Notification Expense
 - Credit Monitoring Expense
- Business Interruption
- Regulatory Defense and Penalties including PCI Fines/Penalties if applicable
- Social Engineering

THE COMPANY SHALL MAINTAIN SUCH COVERAGE FOR AT LEAST THREE (3) YEARS FROM THE TERMINATION OR EXPIRATION OF THIS AGREEMENT WITH MINIMUM LIMITS OF:

\$ 10,000,000 EACH CLAIM / \$10,000,000 AGGREGATE

UMBRELLA LIABILITY:

\$2,000,000 EACH OCCURRENCE / \$2,000,000 AGGREGATE

PROPERTY INSURANCE:

THE COMPANY SHALL BE RESPONSIBLE FOR MAINTAINING ANY AND ALL PROPERTY INSURANCE ON THEIR OWN EQUIPMENT AND SHALL REQUIRE ALL SUBCONTRACTORS TO DO LIKEWISE. THE COMPANY SHALL REQUIRE ALL SUB-CONTRACTORS TO CARRY INSURANCE AS OUTLINED ABOVE, IN CASE THEY ARE NOT PROTECTED BY THE POLICIES CARRIED BY THE COMPANY.

The Company is required to provide copies of the insurance policies upon request.

