



City of Memphis

**REQUEST FOR QUALIFICATIONS
FOR GRASS MITIGATION SERVICES**

Request for Qualifications # 148752

**Prepared By: Public Works
RFQ Due Date: 21 June 2023**

**The City of Memphis
Division of Public Works
Request for Qualifications
For Grass Mitigation Services**

IN ACCORDANCE WITH ORDINANCE #5366 COMMONLY REFERRED TO AS THE SMALL BUSINESS ENTERPRISE PROGRAM (SBE) DESIGNED TO PROMOTE THE ECONOMIC WELFARE OF THE SMALL BUSINESSES LOCATED WITHIN THE CITY OF MEMPHIS THIS SOLICITATION HAS BEEN DESIGNATED AS A SHELTERED MARKET PROCUREMENT OPPORTUNITY, WHICH WILL ONLY BE OPEN FOR COMPETITION BY AND BETWEEN SBE COMPANIES. ONLY VENDORS CERTIFIED BY THE UNIFORM CERTIFICATION AGENCY AND APPROVED BY THE CITY OF MEMPHIS AS A SMALL BUSINESS ENTERPRISE MAY BID ON THIS PROJECT. COPIES OF THE ORDINANCE ARE POSTED ON THE CITY OF MEMPHIS WEBSITE (WWW.MEMPHISTN.GOV).

Summary of Request

The City of Memphis, through the Division of Public Works, is seeking qualified grass mitigation contractors to mow privately owned lots and certain specified right of ways as needed by the City, including emergency grass cutting where necessary. At the present time, the City of Memphis desires to solicit certified licensed grass contractors. The City intends to select an unspecified number of contractors and enter into one year contractual agreements with the selected contractors who will provide grass mitigation services for the City of Memphis. The City of Memphis may extend the contract for additional years based upon performance, need and/or funding availability.

The City will set the compensation rate for the grass mitigation based upon a predetermined amount and the selected contractors will be paid according to the rate set. The rates will be paid hourly based upon the type of lot expected to be mitigated. Each selected contractor will be used to mow the grass based upon a rotational system as established and implemented by the City. The City will determine which group of Selected Contractors will be best suited for the different grass mitigation demands. The City will not guarantee a minimum number of lots to mitigate during the term of the contract and at its discretion will pull from the pool of contractors as the need arises. The City expects to cover thousands of lots during the term of the contract.

Mandatory Pre-Qualification Conference

The mandatory pre-qualification conference for this RFQ will be held on Monday, June 12, 2023, at the McFarland Community Center, 4955 Cottonwood Rd, Memphis, TN 38118 from **9:00 am – 10:30 am**.

**Contract Terms and Conditions
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REQUEST FOR QUALIFICATIONS TERMS

The City of Memphis is seeking an unspecified number of qualified grass mitigation contractors who have the expertise to provide Grass Mitigation Services for privately owned lots and specified right of ways in accordance with this solicitation document.

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. 5389 which establishes a local preference for local businesses located within the City of Memphis. A copy of your Memphis and Shelby County Tennessee Business Tax Receipt must accompany the bid for consideration of this ordinance.

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

Only responses submitted on the form(s) provided, with no changes, additions or deletions to the terms and conditions will be considered. Bids 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 responses. 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 as outlined in this solicitation. Any interpretation in response to the written request will be made only by addendum duly issued by the City. The City of Memphis will not be responsible for any other explanation or interpretation of the proposed documents.

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

Any contract resulting from the responses 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
Kristie Hardy, City Purchasing Agent

Published in the Daily News:

INSTRUCTIONS TO RESPONDENTS

Respondents shall submit their responses in a sealed envelope INDICATING ON THE OUTSIDE: THE COMPANY NAME and THE REQUEST FOR QUALIFICATION NUMBER. Responses submitted and accepted by the City will become the property of the City of Memphis and will not be returned. **The City has the right to reject any or all responses.**

Respondents 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 entering into a contract with the vendor, the successful vendor, 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.

The City of Memphis reserves the right to cancel this solicitation or to reject, in whole or in part, any and all responses.

RESPONSE SUBMISSION

Submission of Qualification Statements

Request for Qualification responses must be received by the City **no later than 12:00 noon CT on 21 June 2023**. To be responsive, Qualification Statements must provide all requested information, and must be in strict conformance with the instructions set forth herein. Qualification Statements must be signed and acknowledged by the Respondent.

Number of copies

Respondents must submit one (1) signed original (clearly marked as such) and three (3) copies of their proposal of which must be unbound (for photocopying purposes), delivered according to the below delivery options. Proposals forwarded by facsimile or e-mail will not be accepted.

USPS (or other common carrier)

**City of Memphis
Purchasing Department, Room 368
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.
RFQ Title, RFQ #.**

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 RFQ WILL BE DISQUALIFIED FROM PARTICIPATION IN THIS RFQ 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 RFQ will become the property of the city and may be returned only at the City’s option.

ALL RESPONSES MUST BE TYPED AND SEALED - NO HANDWRITTEN RESPONSES WILL BE ACCEPTED.

Principle Contacts and Questions

Kristie **Hardy** is the single point of contact (the “Principal Contact”) for all matters relating to this RFQ. Proposer should direct all inquiries to the Principal Contact at:

Kristie Hardy at Kristie.hardy@memphistn.gov and Frances Brooks at frances.brooks@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 RFQ without the Principal Contact’s prior written consent. Utmost discretion is expected of Proposer and all other RFQ recipients. Any recipient attempting to circumvent this process will risk elimination from further participation in the bidding process.

Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFQ shall be made using the question and answer sheet in Exhibit C.

Proposer may submit an initial set of questions based on its review of this RFQ, by adhering to the format template provided in Exhibit C 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 9 June 2023** no later than 5:00 PM. This email should be sent to the Kristie Hardy at Kristie.hardy@memphistn.gov and Frances Brooks at frances.brooks@memphistn.gov, with the subject heading "Your company’s name – RFQ #XXXXXX - RFQ Name". Questions received after this time and date will not be answered.: “The City will post the responses to the questions on the City’s web site **on or before 14 June 2023**. 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.

GENERAL GUIDELINES FOR RESPONSE PREPARATION

Response Format: The format in which responses are to be submitted is included in this RFQ. Responses that do not conform to this format will be declared non-responsive and will not be considered for an award from the City.

Addendums to RFQ: The City reserves the right to re-issue or change any portion of this RFQ, in its sole discretion. Any revisions to the solicitation will be made only by an addendum issued by the City, which will be posted on the City's website (www.memphistn.gov).

Withdrawing RFQ: The City reserves the right to withdraw this solicitation at any time prior to making an award based on this solicitation.

Preparation and Presentation Costs: The Respondent shall bear the total costs for any and all appearances and the costs associated with preparing the response or responding to the RFQ. **The City shall not, in any event, be liable for any expenses incurred by Respondents in the preparation and/or submission of the responses. Responses shall not include any such expenses as part of the proposed budget.**

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

Failed Competition: The City reserves the right to reject any or all responses which are not responsive to the specifications of this Request for Qualifications (RFQ). Competitive negotiation requires that at least two responsive responses for the same scope of work and service area be received in response to the RFQ. A competition is considered failed if only one responsive response 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 a Response: At any time prior to the scheduled deadline for receipt of responses, the Respondent may withdraw its response by submitting a written request from the authorized representative whose name and signature appears on the response. A written request to withdraw the response must be submitted in writing to: Office of the City of Memphis Purchasing Agent, Room 354, City Hall, 125 North Main, Memphis, TN 38103.

Acceptance/Rejection of Responses: The City reserves the right to accept or reject, in whole or in part, any or all responses submitted. The City shall reject the response of any Respondent that is determined to be non-responsive.

Respondent indebted to the City: No contract will be 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.

Validity of Responses: All responses shall be valid for a period of 120 days from the opening date of the responses.

Compliance with the RFQ: The submission of a response shall be taken as **prima facie** evidence that the Respondent has familiarized itself with the contents of the RFQ and with these terms and conditions, in particular. The failure or omission by the Respondent to receive or examine this RFQ shall in no way relieve the Respondent of any obligation with respect to its submission or of any term or condition of this RFQ and may result in disqualification. In order to be deemed responsive, Respondents must provide responses to address all items in the RFQ.

Lengthy Responses: The City discourages overly lengthy and costly responses; however, in order for the City to evaluate responses fairly and completely, Respondents should follow the format set out herein and provide all information requested. Responses shall be as thorough and detailed as possible, but prepared simply providing a straightforward, concise description of the Offeror's capabilities to provide the services and satisfy the requirements of the RFQ. Emphasis should be placed on completeness and clarity of content.

Local Preference: 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 the Memphis and Shelby County Tennessee Business Tax Receipt shall accompany the bid for consideration of this ordinance.

Contract Award: The City may fund all or any part of a response, and the City will only accept responses for the services requested. The response submitted in response to this solicitation is not a legally binding document; however, the contract, which will be based on information provided in the response, becomes legally binding once all parties have signed it. Any contract resulting from this RFQ shall be subject to the City of Memphis General Terms and Conditions set forth in this solicitation. The successful Contractors shall be required to execute the contracts originated by the City of Memphis and satisfy all contract requirements as specified by the City (See General Conditions of Contract included herein). Any contract awards and amounts pursuant to this solicitation are subject to the availability and appropriation of funds. Unless changed by the City, the anticipated contract will commence upon contract execution and end **July 1, 2024**. The City reserves the option to extend the contract term for 2 additional 12-month periods.

Insurance: Insurance requirements for Grass Mitigation Services are listed as Exhibit B of the attached Sample Contract.

Business License: 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 entering into a contract with the vendor, the successful vendor, 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.

SUBMISSION REQUIREMENTS

Application Format:

All applicants must submit the completed Package, which includes the following:

- 1) Cover Sheet**
- 2) Contractor Qualification Application**
- 3) Licenses and Certifications**
- 4) Conflict of Interest Certification**

All applications must be submitted on the provided forms where applicable and include a completed Contractor's Qualification Form.

Contractor's Qualification Form Requirements:

The Respondent shall, as part of its Qualification Statement, provide the following information:

1) Professional Information

Please provide a brief discussion of your firm's grass mitigation experience in Tennessee. Respondents must have a minimum of two (2) years of experience in providing grass mitigation work or the equivalent. Briefly discuss your firm's capabilities, experience, and qualifications to perform the required services.

2) Staffing

Respondents should identify the staff that will directly work with City staff, and those who will provide relevant backup expertise. The role and qualification for all direct staff should also be provided. Qualification information should include educational background, any licenses or certifications for the State of Tennessee. Levels of experience should be specific for the service requested.

3) Prior experience and references

Please provide at least three client references to include municipalities of comparable size and/or complexity as the City of Memphis.

GRASS MITIGATION SCOPE OF WORK AND REQUIREMENTS

Scope of Work:

See Exhibit A – Scope of Work in the attached Sample Contract.

Time of Completion:

1. Contractors must have the capacity to provide all labor and equipment in order to perform grass mitigation services to all assigned properties within Three (3) to Five (5) calendar days of award of contract.
2. Must be able to mobilize a crew within 24 hours for emergencies and mobilize a crew within 72 for non-emergencies.

Equipment Required:

Contractors are required to have in their possession and to have proof of ownership through title record or other approved forms the following equipment:

- a. Two commercial type lawnmowers.
- b. Manual tools – two blowers, two hand blades, two commercial line trimmers, two chainsaws, trash bags and other equipment that may be needed to perform task.
- c. Walk behind trimmer/brush cutter

Equipment Recommended:

- a. Two tractors with bush hogs – one being a side-mount type.
- b. Excavator, front-end loader, backhoe, or similar heavy equipment.

Compliance with Laws:

All work must be done in strict compliance with the laws of Memphis, Shelby County, Tennessee. The contractors must obtain and retain current SBE certification throughout the life of the contract.

Public Safety:

Contractor must maintain all necessary safety precautions during mitigation including:

1. Contractor must check and confirm that no persons have gained access to the structure and property.
2. Contractor must make every effort to prevent damages to parked or passing vehicles, pedestrians, or adjacent homes and properties due to projectiles from the operation of mowers, bush hogs, etc.
3. This list is not meant to be exhaustive. Any unsafe or potentially unsafe situation must be discussed with the City and addressed immediately.

Required Safety Equipment:

- a. Wear long pants, and sturdy non-slip safety toe boots to protect your legs and feet from objects that are thrown from the mower.
- b. Sandals and tennis shoes are not to be worn while mowing.
- c. Safety glasses must be worn to prevent flying debris from getting in eyes.
- d. Earmuffs or ear plugs must be worn to properly muffle loud noises.
- e. Gloves

Environmental Compliance:

Please be advised that in accordance with City Ordinance 4538, it is unlawful for any person to improperly dispose of, any contaminant into the storm water system. This ordinance prohibits the placing of debris in the street curb, street inlets or open ditches. This includes collected lawn clippings, leaves or branches.

EXHIBIT A – SCOPE OF WORK

Grass Mitigation for properties as designated by the Division of Public Works, Neighborhood Improvement, Grounds Services Department.

**For Privately Owned Lots and
Designated Right of Ways
For the
Division of Public Works
Grounds Services Department**

I. LOCATION

All locations shall be identified and assigned by the City of Memphis Grounds Services Department.

II. SCOPE AND GENERAL CONDITIONS

- A) Provide weed cutting and clean up services for privately owned vacant property, with or without residential or commercial buildings, within the City limits of Memphis, Tennessee.
- B) The Contractor shall provide service for a period from date of contract execution to **July 1, 2024** based upon the need as determined by the Grounds Services Department.
- C) Although there are no set boundaries, work assignments will be made using geographically convenient considerations. Volume may be based on production, quality of services and equipment. This contract does not grant an exclusive right to the contractor. The City reserves the right to supplement weed cutting as necessary. The approximate hours in the Bid Section are a probability rather than a guarantee of work volume. Service charges are not to be greater than \$15.00 each.

III. SPECIFICATIONS:

- 1. Yards shall be cut with commercial lawnmowers, push mowers, brush cutters, tractor with a bush hog and/or whatever equipment necessary to properly cut grass according to the City's standards. Line trimmers and hand blades might be necessary in hard to reach areas such as steep slopes, utility poles, sidewalk areas, and some borders. Chain saws might be necessary to cut and clear fence lines.
- 2. According to each Contractor's profile and ability, the Contractor will be given job orders requiring mitigation services that have been certified by the City. A Contractor's assignment cannot exceed a maximum of 150 job orders at one time. All job orders must be completed within five (5) days of the assignment or may result in nonpayment or reduced payment. Before cutting, the Contractor will assess each property to make certain that the overgrowth is a minimum of 12" high. The Contractor will also be responsible to advise the city of any unusual requirements or work beyond usual mitigation prior to the commencement of the work. An additional cost, if applicable, will be agreed upon between the Contractor and City in accordance with the contract provisions. Contractor must ensure that quality grass mitigation services are performed by the Contractor's crew personnel.
- 3. The City will assign jobs to the Contractor's GIS portal queue. It is the responsibility of the Contractor to monitor jobs assigned to their queue and to service the assigned parcels within five (5) days of receiving the

assignment. The City has the right to reassign jobs that are not in a completed status in GIS within five (5) days. The City also has the right not to assign any additional jobs to Contractors who have not completed seventy-five percent (75%) of the jobs assigned to them.

4. Contractor shall remove litter and debris before cutting and take said debris to curbside (large items or a large amount of trash). Contractor must separate tires from bagged trash and miscellaneous debris. Contractor shall contact Grounds Services after placing it on curbside for location of pickup. Contractor shall take photos of the items needing removal from curbside and upload them into the GIS portal under the correct task number.

5. Contractor shall cut grass (over 12" tall), hedges, clearing of fence lines. Mowing shall be a maximum height of 1" (one inch) for improved property (with vacant structures) and the height of 3" (3 inches) for unimproved property (vacant lots). Sidewalks and driveways shall be cleared of grass and/or shrubbery to permit clear pedestrian and vehicular passage. All clippings shall be blown, swept or raked from streets, curbs, gutters, sidewalks, and adjoining properties.

6. The contractor shall be available to do the work when requested by the Division. Other work done shall not interfere with work agreed to herein. Weather permitting, the contractor shall complete the work scheduled by the Division within five (5) working days, and shall report progress of said work on a daily basis.

7. It shall be the duty of the contractor to adequately communicate with the City personnel. Contractor will occasionally be required to update the vendor information such as crews, number of employees, equipment inventory, or other information as requested.

8. Work assigned by the City shall be completed and moved to a completed status in the GIS portal by the Contractor as soon as possible but no more than 5 days of receiving the jobs. Jobs in a completed status in GIS that have been submitted for payment are subject to verification. Verification shall include matching the job with an existing service request, checking rates assigned, and a visual inspection of work to determine the level of performance. Work determined to be below the standards set by the Division shall be rejected and the job moved back in GIS to the contractors ready for review queue for corrections. Upon notification the contractor has twenty-four (24) hours to correct the problem. All billings are subject to verification and the books of the contractor may be subject to audit insofar as items under this contract are concerned.

9. Contractors may arrive to cut property and find that the property has already been cut. If assigned lots are already cut, Contractor may not recut but may bill at the service charge rate allowed. In such case, Contractors must take a picture for verification in City's records. If the front yard is cut and not the back yard, Contractors are to cut uncut portions of property and take before and after pictures showing the grass mitigation. If the entrance to the backyard is not large enough or something is blocking the entrance, the cutting of backyard will have to be done by hand, such as weed eating.

10. Any abuse of the City's "Insufficient Equipment and/ or Owner Asked Contractor to Leave the Property" designation and any other terms of the grass mitigation contract may lead to sanctions and penalties at the discretion of the City.

11. The City shall pay the contractor only for actual time spent cutting and/or cleaning with the minimum charge being 1 hour. Travel time to and from the job and breakdown time shall not be included. Contractor

is required to get pre-approval for any mitigation time that is two (2) hours or greater. If pre-approval is not granted, your invoice hours are subject to be reduced at the discretion of Management.

Over 2 Hour Approval Process:

- Request should be submitted via email to the Grounds Services Schedule Planner, Operations Supervisor, and Manager for review and approval.
- Request should include the task number, photos, address, parcel ID, and how many hours requested to complete the job.
- Grounds Services staff has the right to conduct a site visit to determine the appropriate number of hours for the job. Staff will consider terrain, parcel size, type and height of overgrowth, debris and refuse, and the need for any special equipment.
- Grounds Services staff will review additional time requests and provide a response in writing via email.

12. Payment shall be made within 30 calendar days of jobs being placed in the completed status in GIS as tasks are received and verified by Grounds Services personnel. Verification shall include matching the jobs with an existing service request, checking proper billing and invoicing rates, and visual inspection of work to determine the level of performance. Work determined to be below the standards set by the Division shall be rejected and the jobs sent back to the contractor's ready for review queue in GIS. Upon notification, the contractor has twenty-four (24) hours to re-cut a parcel or correct identified issues.

13. The City of Memphis shall not be liable for any injuries to persons including contractor's employees, nor damages to private vehicles, nor damages to contractor's machinery and equipment, nor damages to the property cut or adjoining properties, nor damages and injuries to vehicles and their occupants, nor injury to residents or pedestrians, nor be liable for damage to properties the contractor mows, such as ornamental shrubbery, flowers, damaged sidewalk, etc. Damage claims must be efficiently processed and legally satisfied by the contractor.

14. Accident Prevention: Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction published by the Association of General Contractors of America to the extent that such provisions are in contravention of State or local laws and ordinances.

15. Standard Personal Protective Equipment (PPE) Requirements. Division contractors are required to abide by the minimum Division's PPE requirements listed below:

- a) High Visibility Safety Vests or Shirts- Vests/Shirts will be ISEA/ANSI rated and have the contractor's name visible
- b) Eye Protection/Safety glasses- prescription or non- prescription, over-glasses, and goggles will be ANSI 287.1-1989 approved
- c) Gloves

16. City-Issued Equipment (Stakes). Contractors will be issued wooden stakes that will be used to confirm whether a high grass violation exists. Stake(s) must be used in all before pictures of the vacant lot or vacant house (front and back yards).

17. The City reserves the right to audit the records of the contractor. The contractor shall make and keep as the same accrue, full and complete records and books of accounts of revenue and income, and costs and expenses that specifically relate to performance under this contract. Records and books of accounts, together with any or all other memoranda pertaining thereto that may be kept, maintained or possessed by the contractor, shall be open to examination during regular business hours, by the City or its representatives for the purposes of inspection, auditing, verifying, or copying the same, or making extracts there from. The contractor shall make and keep said records and books of accounts in accordance with generally accepted accounting principles.

18. The City will conduct an annual equipment inspection to determine the equipment each Contractor has. The Contractor's will be divided into classes based on the level of equipment they have. All mitigation Contractors are required to have at least Class C equipment.

- **Class A:** Heavy Equipment such as front-end loader, backhoe, and/ or track hoe. Large cutting apparatuses such as bush hogs, tree trimming tools, and standard commercial lawn equipment.
- **Class B:** Large cutting apparatuses such as bush hogs, tree trimming tools, and standard commercial lawn equipment.
- **Class C:** Standard commercial lawn equipment.

If a Contractor obtains additional equipment during the contract period, it is the Contractor's responsibility to notify Grounds Services to schedule an equipment inspection for consideration to be reclassified. The City reserves the right to request quotes from Contractors on certain parcels and jobs. A contractor's classification will be used to determine which Contractors are selected to submit bids on specified jobs.

19. All aspects of the work assignment and review of work performed shall be at the sole discretion of the Grounds Services Department. This process may be modified as necessary by the Grounds Services Department as deemed necessary.

IV. TERM

The initial term of this contract shall include services rendered for a period ending **July 1, 2024**. The term of this agreement shall remain in effect for the entire period unless otherwise abbreviated upon mutual agreement of the parties and following execution of an appropriate documentation evidencing the modification. The City may extend this Agreement for additional two (2) one-year periods, renewable on an annual basis, under the same terms and conditions. The City shall serve notice of the time extensions in writing to the Contractors by regular mail at least thirty (30) calendar days prior to the expiration of the original term of this Agreement, or any renewal term, in order for such extension to be effective.

V. COMPENSATION:

1. CONTRACTOR shall be paid at a rate of Eighty Dollars (\$80.00) per hour for mitigation of grass on private lots. The total amount per lot assigned shall be decided by Grounds Services upon a review and walk through of the area to be cut. The total amount established by the City shall be reflective of any additional work required that is outside the normal process. Contractor agrees to accept such payment as full compensation for services to be performed under this agreement. Service Charge for lots already cut upon visit shall be at a flat rate of \$15.00 per yard. If a vacant structure is already cut, front and backyard pictures are required to receive the service charge. A City Representative may verify that the property had already been mitigated.

2. CONTRACTOR shall submit jobs via the GIS portal for payment by moving jobs to a completed status. The contractor shall ensure all before and after photos are uploaded correctly for each job and billable hours and amounts are accurate. The CITY shall pay the CONTRACTOR within thirty (30) calendar days after submission of an approvable job.

VI. METHOD OF INVOICING AND PAYMENT

1. Jobs with proper documentation of service must be submitted via the GIS portal by Contractor to the City for payment within 5 days of receipt of work, but not later than 3 days after completion of work assignment. The Contractor shall take good before and after pictures displaying on a cardboard (or an equivalent signage) showing the Contractor name, servicing address, parcel number, date, and task number. Before and after pictures are to be taken using a contractor supplied device. The before and after pictures should be taken from the same views. If there is a building or structure on the parcel, the picture should show as much as possible of the building. There should be before and after photos showing the front, back, and sides of the parcel. If the location has no building, choose a landmark to show in the before and after photos. Large tracts of land should several before and after photos from all angles of the parcels.

2. Upon receipt and approval of each job, the City shall pay the amount shown unless there are some discrepancies. If discrepancies occur, the Contractor will be contacted by the City and notified of the problem. Adjustment and/or credit requests by the City are expected to be followed. When jobs are sent back to the contractor's GIS portal ready to review, the Contractor should review the notes input by the City's staff and make the necessary correction and resubmit within twenty-four (24) hours.

3. All jobs completed should be submitted via the GIS portal. All completed jobs for payment are subject to verification and approval by the City. Jobs submitted with no pictures; pictures that are not clear or cannot be identified; and pictures with no date/time indication may result in no payment. After approval, the City shall, within thirty (30) calendar days, submit to the Contractor the amount shown to be due and payable.

4. Upon the close of the contract period, the Contractor shall have thirty (30) days from the end date of this agreement to submit a payment request to the City, any requests received after this period will not be honored.

VII. CONTRACTOR PERFORMANCE REVIEWS AND RATINGS

1. The Manager and/ or Supervisor shall develop a Contractor performance evaluation report. Contractor performance will be rated based on quality and quantity of work, meeting service level agreement in contract, declined jobs, and completed jobs. This report shall be used to periodically review and rate the Contractor's performance under the terms of the contract with performance ratings as follows:

Excellent	Far exceeds requirements
Good	Exceeds requirements
Fair	Meets requirements
Poor	Does not meet all requirements and contractor is subject to penalty provisions under the contract.
Non-compliance	Either continued poor performance after notice or a performance level that does not meet a significant portion of the requirements. This rating makes the Contractor subject to the default or cancellation for cause provisions of the contract

The report shall also list all discrepancies found during the review period. The Contractor shall be provided with a copy of the report, and may respond in writing if he takes exception to the report or wishes to comment on the report. Contractor performance reviews and subsequent reports will be used in determining the suitability of contract extension.

VIII. TECHNICAL SPECIFICATIONS AND REQUIREMENTS

GIS will be used to receive, update, and complete all assigned jobs. GIS can be used on Android and iOS devices. GIS system requirements are below:

Android

- Android 5.0 (Lollipop) or later
- Processor: ARMv7 or later
- OpenGL ES 2.0 support

Apple

- iOS 11 or later
- iPhone, iPad, or iPod touch

Contractor's devices and service provider must meet the minimum download and upload speeds to ensure GIS is able to perform optimally.

GIS Contractor Portal Statuses:

- **Assigned:** status for jobs that has been placed in the Contractor's queue for completion
- **Ready for Review:** status for jobs that have serviced by the Contractor and the final step prior to completion. This status allows the Contractor to verify they have attached all photos and the appropriate billable amount and hours set.
- **Completed:** status finalizes job and sends it to the City for review and payment.

Once jobs are in the completed status, the City will review the job and determine if payment is appropriate or if the jobs will be moved back to the Contractor's GIS Ready for Review queue for corrections. It is the Contractor's job to monitor their GIS Ready for Review queue for any jobs sent back for correction by the City. Corrections should be made within 24 hours and resubmitted to the City for review.

1. All jobs will be assigned by the City to Contractors via the GIS portal. It is the Contractor's responsibility to continually monitor their portal for newly assigned jobs.
2. The City will provide the Contractor a link for the GIS portal, username, and password to receive and complete jobs. Contractors will be able to upload photos, attach any supporting documentation, and adjust billable hours and amounts prior to submitting for payment.
3. Contractors are required to keep their name, billing address, and any other information needed for payment current in their GIS portal.
4. Contractors shall attach all photos required in their GIS portal prior to submitting a job for payment.

GIS Contingency Plan

1. The City and Contractor shall communicate when there are issues with the GIS application. The City will then determine the next course of action to continue working.
2. Contractors should keep an accurate account of all jobs assigned, rejected, and completed and utilize their GIS portal for job tracking.
3. If GIS is down for an extended period, the City has the right to assign jobs via email to the Contractors.
4. Contractors would be required to create invoices for completed jobs and submit them to Grounds Services via email for payment. Groundsservices@memphistn.gov.

EVALUATION

General

The City's objective in soliciting Qualification Statements is to enable it to select Respondents that will provide high quality, effective, and professional services to the citizens of the City of Memphis in a timely manner. The City will consider Qualification Statements only from Respondents that, in the City's sole judgment, have demonstrated the capability and willingness to provide high quality services to the citizens of the City in the manner described in this RFQ.

Evaluation criteria

Qualification statements will be evaluated by the City on the basis of what is most advantageous for the City of Memphis. The evaluation will consider:

- Experience and reputation in the field;
- Experience with projects of similar size/complexity;
- Prior work history
- Availability to accommodate the needs of the City; and

Selection of Qualified Contractors

Each Qualification Statement must satisfy the objectives and requirements detailed in this RFQ. The City will select the most advantageous Qualification Statements based on all of the evaluation factors set forth in this RFQ. The City will make the awards that are in the best interest of the City. Successful Respondents shall be determined by an evaluation of the total content of the Qualification Statement submitted. The City reserves the right to:

1. Not select any of the Qualification Statements.
2. Award a contract for the requested services at any time within the qualification period.
3. Select less than the desired amount of Contractors based on qualifications.

COVER SHEET
Contractor Response Package

Contractor Name

Contractor Address

Contractor's Telephone Number and Email Address

Authorized Representative

**City of Memphis
Division of Public Works
Grounds Services Department**

CONTRACTOR QUALIFICATION APPLICATION

I. COMPANY INFORMATION

NAME: _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP** _____

BUSINESS PHONE: _____ **HOME PHONE:** _____

FAX NO.: _____ **EMAIL ADDRESS:** _____

MONTH & YEAR ESTABLISHED: _____ **TYPE OF BUSINESS:** _____

YEARS OF GRASS MITIGATION EXPERIENCE: _____

Name of Principal Contact Person: _____

Is your company registered and licensed to do business in Memphis? Yes No _____

Is your company a member of the Better Business Bureau? Yes No _____

Is your company a Minority Owned Business? Yes No _____

Is your company a Female Owned Business? Yes No _____

How long has your company been in business? recently established 2017 _____

Can your company meet the insurance requirements specified in the RFQ? Yes No _____

Can your company meet the timing requirements specified in the RFQ? Yes No _____

Can your company meet all of the grass mitigation specifications in the RFQ? Yes No _____

Are you certified as MBE/WBE?

YES NO

Certifying Agency: _____

II. OWNERSHIP OF FIRM:

Type of Ownership **Individual** _____ **Partnership** _____

Experience

Describe your company's length of experience performing grass mitigation?

Describe your company's experience performing grass mitigation on right of ways?

Identify the site supervisor who will be overseeing all grass mitigation services. As part of the qualifications evaluation, the City may conduct an in person interview with him/her.

In the event of the need for an emergency grass mitigation requirement, how quickly could you mobilize a crew?

II. COMPANY PERSONNEL AND RESOURCES

Supervisory Personnel

Name	Years of Experience	Responsibilities
_____	_____	_____
_____	_____	_____
_____	_____	_____

III. PROJECT REFERENCES

NAME/ADDRESS	PHONE/FAX #	AMOUNT
_____	_____	_____
_____	_____	_____
_____	_____	_____

IV. ACTIVE PROJECTS (In Progress)

NAME/ADDRESS	PHONE #	DESCRIPTION	AMOUNT
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

By my signature, I make legal affirmation that all representation included by me in this application form are true and factual to the full extent of my knowledge. I also agree to the release of any business or credit information required by the Division of Public Works for the processing of this application.

DATE SIGNATURE OF PRINCIPAL

CITY OF MEMPHIS

Grounds Services Department

CONFLICT OF INTEREST DISCLOSURE FORM

Conflict of Interest Regulation: No person who exercise or have exercised any functions or responsibilities with respect to activities assisted with CIP Funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from an assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Name: _____	Program Name: _____
Address: _____	Program RFQ #: _____
City, State, Zip: _____	Vendor # (If any): _____

The purpose of this document is to assist in the determination of whether additional restrictions, oversight or other conditions might be advisable prior to execution of any contract, funding or providing assistance. The term 'Conflict of Interest' refers to situations in which financial or other personal considerations may compromise, or have the appearance of compromising professional judgment in the following rules and regulations of the program. Please Mark the appropriate box for each question and complete the attachment if indicated. This form (with Attachments, if required) must be completed and returned to your Program Representative.

1. Family Relationships: Do you have a family member directly or indirectly involved or employed with the City of Memphis that creates a conflict of interest or the appearance of a conflict under the Conflict of Interest Regulation provided above?

YES NO (If YES, please complete Part A of the Attachment)

2. Program Relationships: Are you involved in any other activity directly or indirectly with the City of Memphis that may create a conflict of interest or the appearance of a conflict under the Conflict of Interest Regulation provided above?

YES NO (If YES, please complete Part B of the Attachment)

3. Business Relationships: Are you or a family member (spouse, child, stepchild, parent, sibling, or domestic partner) involved as an investor, owner, employee, consultant, contractor, or board member with an entity that has a contractual relationship with the City of Memphis to provide goods or services, sponsor development activities and/or receive referrals from the City of Memphis?

YES NO (If YES, please complete Part C of the Attachment)

4. Gifts of Personal Use:

To the best of your knowledge, have you or your family members accepted gratuity gifts, or special favors from someone that is doing business with or proposing to do business with the City of Memphis?

YES NO (If YES, please complete Part D on Attachment)

To the best of your knowledge, have you or your family members made any donations or gifts, or provided special favors to the City of Memphis or any employee of the City of Memphis who exercises or may exercise any functions or responsibility with respect to the activities involving your award, contract or program assistance?

YES NO (If YES, please complete Part D on Attachment)

5. Legal Proceedings and Debarment Have you been involved in any fraud, antitrust or criminal proceedings as a defendant (other than a minor traffic offense) or been debarred, suspended or otherwise excluded by a duly authorized regulatory agency or had a transaction with any such agency terminated for any reason?

YES NO (If YES, please complete Part D on Attachment)

I have read and understand the Conflict of Interest Disclosure Form and have disclosed all information required by this disclosure, if any, in an attached statement. I agree to comply with any conditions or restrictions imposed by the agency to reduce or eliminate actual and/or potential conflicts of interest. I will update this disclosure form promptly if relevant circumstances change. I understand that this Disclosure Form is not a confidential document.

Print Name: _____ Date: _____

Signature: _____ Date: _____

CITY OF MEMPHIS
Grounds Services Department
CONFLICT OF INTEREST DISCLOSURE FORM
ATTACHMENT PARTS A - E

Conflict of Interest Regulation: No person who exercise or have exercised any functions or responsibilities with respect to activities assisted with CIP Funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from an assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Name: _____	Program Name: _____
Address: _____	Program Client #: _____
City, State, _____	Contractor Vendor #: _____
Zip: _____	

If you answered YES to any questions on the previous page, please complete the relevant section(s) below. If you answered NO to All questions, you may discard this attachment. Give your complete form to your Program Representative.

PART A: FAMILY RELATIONSHIPS

1. Name of your family member(s) directly or indirectly involved or employed at City of Memphis:

2. Do any of your family members work in the program area?

3. Are any of your family members elected officials or members of any City of Memphis Board of Commissions?

4. Relationship to you: _____ Position: _____

Department: _____ Supervisor: _____

PART B: PROGRAM RELATIONSHIPS

1. Activities: Name and describe the activity and/or program that you are directly or indirectly involved with:

-
-
2. Have you used the name of the City of Memphis, or their resources (facilities, personnel, or equipment), or confidential information in connection with the activity and/or program?

YES NO (If YES, describe the resource used):

PART C: BUSINESS RELATIONSHIPS

Please provide this section for each business relationship, or attach a separate explanation of business and research activities.

1. Name of business: _____

2. Categorize the business' relationship with the City of Memphis:

- Consultant or advisor
- Research activities
- Business or referrals
- Other Contractual or business relationship

Briefly describe the business or licensing activity:

3. Who is involved with the business? Check all that apply:

- Yourself
- Your family member (name and relationship) _____

Describe the position or involvement (check all that apply):

- Owner/Investor
 - Board Member
 - Employee/Manager
 - Other _____
-

4. Are you receiving any type of compensation? NO YES If YES, describe __

5. Who at City of Memphis oversees the relationship with this business?

Name: _____ Title: _____

Department: _____ Phone: _____

PART D: LEGAL PROCEEDINGS AND DEBARMENT

Describe any legal proceedings or debarment situation: _____

Print Name: _____ Date: _____

Signature: _____ Date: _____

EXHIBIT B – INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS FOR GRASS MITIGATION LAWN CARE

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. The Company is required to submit an updated certificate of insurance to Grounds every three months and must be submitted by their insurance agent, during the terms of this contract.

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
Attn: Risk Management
170 N. Main St., 5th Floor
Memphis, TN 38103

City of Memphis
Attn: Purchasing Agent
125 North Main, Room 354
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

NOTE: Herbicide applicators coverage should be endorsed to the policy or separate standalone Herbicide/Pesticide coverage \$1,000,000 occurrence / \$1,000,000 aggregate, if lawn is being treated.

UMBRELLA LIABILITY with Minimum Limits of:

\$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 subcontractors 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

*****NOTE: INLAND MARINE – CONTRACTOR'S EQUIPMENT, All Risk** coverage is suggested to cover the mowers, blowers, etcetera

The Company shall maintain such coverage for at least three (3) years from the termination or expiration of this agreement.

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 subcontractors 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.

SAMPLE CONTRACT

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 (RFQ) 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.**

BOYCOTT OF ISRAEL. In connection with Tennessee Code Annotated Section 12-4-119, Contractor certifies that it is not currently engaged in nor will it engage in a boycott of Israel. For this purpose, a "boycott of Israel" shall mean engaging in refusals to deal, terminating business activities, or other commercial actions that are intended to limit commercial relations with Israel, or companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or persons or entities doing business in Israel, when such actions are taken (i) in compliance with, or adherence to, calls for a boycott of Israel, or (ii) in a manner that discriminates on the basis of nationality, national origin, religion, or other unreasonable basis, and is not based on a valid business reason. This provision is not applicable to contracts with a value less than \$250,000 or to companies with less than 10 employees.

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 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 **[@EXHIBIT IDENTIFICATION FOR INSURANCE@]** 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 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

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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

By: _____

Date: _____

Name: _____

Title: _____

Approved as to Form:

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)