



City of Memphis

Division of Public Services and Neighborhoods Animal Shelter Service Center

REQUEST FOR PROPOSAL Privatization of Animal Shelter

Request for Proposal #12025

Closing Date for Proposals: February 10, 2012

Proposals Accepted at Attn: Purchasing Agent

RFP #12025

125 North Main Street, Room 354, Memphis, TN 38103

E-Mail Inquires: janet.hooks@memphistn.gov

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City of Memphis

**Division of Public Services and Neighborhoods
Memphis Animal Shelter**

Privatization of Animal Shelter

The City of Memphis is seeking a qualified vendor to operate the Memphis Animal Shelter located at 2350 Apppling City Cove, Memphis, Tennessee.

Proposers are specifically directed not to contact any City personnel, other than the Contact Person indicated below, for any purpose related to this RFP. All inquiries concerning this RFP should be directed to the following Contact Person:

Janet Hooks
Director
Public Services and Neighborhoods
email: janet.hooks@memphistn.gov
Fax (901)576-6259

Envelopes containing the Proposals are to be marked:

PROPOSAL: "Privatization of Animal Shelter"

Issuance Date..... December 19, 2011
Mandatory Pre-Proposal Meeting..... January 12, 2012 at 11:00 A.M.
Proposal Due DateFebruary 10, 2012
Proposal Due Time..... Before 2:00 p.m.

Postmark date will not constitute timely delivery. Responses received after the above time **will not** be considered. Proposers are solely responsible for ensuring timely receipt of their Proposals.

RECEIVED BY PROPOSER:

Sign, date and return this cover sheet with your proposal.

By _____
(Signature)

Name and Title

Date _____

I. GENERAL INFORMATION

A. Project Background and Description

The City of Memphis wants to explore all of its options for providing animal control and animal sheltering services that are required by the mandates of the City of Memphis. Memphis Animal Services provides animal care and control for the City of Memphis to include stray animal pick up, housing, adoptions, rabies vaccinations, spay/neutering, and animal cruelty investigations. Memphis Animal Services strives to protect citizens from the dangers and nuisances of uncontrolled animals while keeping animals safe from mistreatment and abuse. Promoting, motivating and enforcing responsible pet ownership is a primary goal.

Memphis Animal Services responds to reported incidents of sick, injured and dead animals and responds to and conducts investigation of animal cruelty and inhumane living conditions. Memphis Animal Services engages in the promotion of responsible pet ownership through education and enforcement of the municipality's laws including but not limited to mandatory spaying and neutering.

The City of Memphis operates one animal shelter for the care of impounded animals. Shelter personnel are responsible for the daily care of hundreds of animals received at the shelter, assist in the promotion of adoptions and redemptions and perform euthanasia. In addition, the city provides contractual animal services (limited to specified services in contract) for the unincorporated municipalities of Shelby County.

This shelter also administers a low cost rabies vaccination clinic, operates a volunteer program and is actively involved in numerous public education programs which promote responsible pet ownership.

The City of Memphis seeks a qualified vendor to assume operation of the Memphis Animal Shelter. The vendor will be responsible for ensuring the complete execution of contract services as detailed further in this RFP. Additionally, privatization should include lease of City facility, lease and/or purchase of City equipment and vehicles and all services to be provided by vendor's private staff. Further the RFP should include a Project Manager who shall be a City employee. Vendor must demonstrate a marketing plan that will increase adoptions and decrease the euthanasia rate. Vendor will give current city employees first right to interview.

Term of Contract

Term of the Agreement will be for a period of three (3) years with two (2) one (1) year options to renew.

B. SCOPE OF WORK

1. PUBLIC HOURS

Memphis Animal Services is currently open to the public and operational a minimum of five (5) days per week.

2. DOG KENNELS

- a. A minimum of 527 separate kennels is maintained.
 - 1. Animals are separated by sex.
 - 2. Adoption kennels are separate from the hold-stray kennels.
 - 3. Quarantine kennels are separate from all other kennels.

3. CAT CAGES

- a. A minimum of 90 separate cat cages are maintained. Cages are separated from the dog kennels.
 - 1. Animals are separated by sex.
 - 2. Adoption cages are separate from the hold-stray cages.
 - 3. Quarantine cages are separate from all other cages.

4. OTHER ANIMALS

- a. The facility has the ability to shelter other animals. Other animals include but are not limited to farm animals.

5. OPERATIONS

Animal Sheltering

- a. All animals are fed, provided fresh water, water bowls cleaned, kennels cleaned and cat litter changed daily. Animal waste is collected and disposed of properly.
- b. All animals have disposition/identification cards attached to the kennels or cages. The cards indicate the breed, color, sex, age, license tag information, date the animal was received and from whom (designated as: Owner, City, other Government agency, member of public,) the animal was received.
- c. Documentation is kept on every animal brought in by an owner, other Government Agency or a member of the public within the Chameleon software system A detailed inventory is maintained indicating the type of animal, breed, sex, license tag number (if available), microchip information (if available), date the animal was received, from whom the animal was received (designated as: Owner, City, other government agency, member of public), owner's name (if available), appropriate notations for any and all violations or the city ordinance, the final disposition of the animal and the date of and reason for disposition.

- d. All dogs and cats are scanned for the presence of a microchip. If there is a registered microchip, Memphis Animal Services initiates the search for the owner through the microchip vendor. Upon intake all dogs and cats are photographed and the images loaded onto Chameleon.
- e. A notification letter is sent to the owner of all licensed/micro chipped or identified animals impounded. The letter is sent via certified mail, return receipt and U.S. mail. Shelter will retain a copy of the letter. Animals are held a minimum of (10) days from the date of posting before disposition.
- f. Memphis Animal Services documents and monitors all animals under quarantine. When necessary, Memphis Animal Services obtains a lab sample of the animal and prepares the necessary paperwork to accompany the sample sent to the Health Department for testing.
- g. Sell dog licenses and processes all redemptions and adoptions of animals.
- h. Collects all redemption, adoption and licensing fees in accordance with the fee ordinance and accounts for all fee collection transactions.
- i. Provides for the euthanasia of domestic animals, if warranted, once the applicable hold period is completed, and having undertaken the duties provided in an agreement and those of an animal shelter. The City acknowledges that once the legal hold period for any domestic animal is over, the disposition of that domestic animal shall be determined at the sole discretion of vendor. Provided, however, the vendor agrees not to provide animals to any entity and/or facility for research purpose.
- j. Euthanizes animals which are irremediably suffering from injury or illness.
- k. In accordance with Public Health regulations, properly stores all animal carcasses until such time the carcasses are removed from the shelter.
- l. Provides humane treatment of all animals while in shelter.
- m. Provides basic first aid services including licensed veterinary care.
- n. Ensures that all veterinarian services are provided by qualified personnel licensed by the State of Tennessee. In accordance with city law, spays/neuters all dogs prior to adoption.
- o. Maintains animal inventory and revenue reports daily accompanied by the total amount of fees collected during the reporting period.
- p. Promotes animal care and control in accordance with the laws of the State of Tennessee and the Ordinances of the City of Memphis. Provides public assistance and referral related to animal control issues.
- q. Maintains adequate staffing levels to ensure all services are provided in an efficient and professional manner.
- r. Purchases and maintains an adequate inventory of all consumable supplies and equipment necessary to conduct shelter operations.
- s. Maintains the shelter in good condition.
- t. Provides all maintenance including preventative maintenance for equipment, facility and property.
- u. Provides for the housing of animals obtained from and involved in law enforcement activities and animal cruelty.

6-1. ANIMAL SERVICES

Memphis Animal Services humanely and efficiently enforces all applicable animal service laws, regulations, ordinances and codes of the State of Tennessee and the City of Memphis. Memphis Animal Services provides response to complaints generated by the public and law enforcement to include:

- a. Investigation and enforcement of animal cruelty laws and activities associated therewith.
- b. Picking up and caring for injured domestic animals.
- c. Addressing dangerous domestic animal situations.
- d. Monitoring dog bites and enforcing quarantine requirements.
- e. Supporting law and code enforcement officers in domestic animal related situations.
- f. Patrolling for and impounding stray dogs.
- g. Enforcing all current (as of the date of an agreement) City of Memphis ordinances related to Animal Service issues not otherwise set forth above.
- h. As necessary, collects, impounds or disposes of wild animals that are within the City in violation of animal control regulations.
- i. Attempts to identify impounded animals and contact registered owners, including scanning for identification chips.
- j. Inspects private animal facilities and kennels as needed.

6-2. ANIMAL SERVICE CRITERIA

Memphis Animal Services respond to calls for services based on three (3) priorities listed below. An after hour duty officer provides emergency responses to Priority One calls upon receipt of such a call from an authorized City official. A voice messaging service for emergency and public inquires after normal operating hours.

(i) *Priority One Calls*: A prompt essential emergency response for the following:

- Any law enforcement agency requesting immediate emergency assistance.
- Animal bite, where the domestic animal continues to pose an immediate threat.
- Any domestic animal either known to be dangerous or vicious by previous determination in administrative hearing or one that is perceived to be a threat or menacing to those individuals reporting the event.
- Any live domestic animal, which is presenting an immediate hazard to humans, such as a live domestic animal in traffic lanes of a major thoroughfare or highway (not including interstate highways) with traffic control assistance.
- Any domestic animal that is sick, injured, or in immediate danger.

- A domestic animal that is at immediate risk due to animal cruelty or neglect.
- The city does not respond to calls involving wildlife as defined by laws of Tennessee and or applicable ordinance.

(ii) *Priority Two Calls:* A prompt response, if not preempted by Priority One calls:

- Any domestic animal bite, where the animal is contained.
- Any dog running at large and a violation is in progress but the *dog* is not posing a threat to itself or the public.
- Any law enforcement agency requesting nonemergency assistance.
- Any domestic animal that is not at immediate danger but requires follow-up regarding neglect or cruelty.
- Pick-up of a confined stray dog.

(iii) *Priority Three Calls:* An Animal Control Officer follows up as soon as reasonably possible. Repeated offenses are served as Priority One calls when staffing allows. Animal Control Officer responses are not available between 5:00 PM and 7:00 AM.

- Dog running at large when the violation is not in progress.
- Education calls.
- Special requests to address a specific area or neighborhood that needs early morning monitoring, provided that the issue falls under an agreement. This will be done on a case-by-case basis.
- Non-emergency calls not defined above.

7. RECORDS AND REPORTS

7.1 Under a privatization agreement, the vendor shall prepare quarterly and annual reports to the City which shall provide the following information: 1) animal shelter operations (as it pertains to an agreement), including the number of stray animals impounded, number of days held at the animal shelter under an agreement and their disposition; 2) all ordinance summonses processed; 3) Animal Service activities, including number and type of incidents or reports investigated; and 4) Facility and equipment maintenance records, 5) all levels of detail contained within the Chameleon Software as referred to in Section 5-Operations, B and D. In the event of a Freedom of Information Act request, a response **must** be submitted to the City's Legal Division within five (5) business days. Should the City be requested to furnish information to any other government agency, vendor agrees to provide timely information that the City may need to meet such request as long as the request is within the scope of an agreement. In addition, if required by the State of Tennessee and the City of

Memphis, vendor shall provide the requisite financial information regarding the fees, service charges and proceeds collected by vendor in connection with licensing, impounds and redemption of domestic animals from the animal shelter.

7.2 The vendor shall also maintain a database or log containing the following information as a minimum, provided that such information is available to vendor and is not subject to confidentiality restrictions, whether written or otherwise: name; address and telephone number of the person registering the complaint; type of complaint; and the action taken by vendor. The quarterly and annual report to the City required by Subsection shall also cover the number of complaints by type (e.g., vicious animals and cruelty), and the number of unresolved complaints.

7.3 The vendor shall keep and maintain accurate and complete financial records of any monies expended in relation to the performance of services pursuant to an agreement with the City in accordance with generally accepted accounting principles ("GAAP") and in a form acceptable to the City as determined at their reasonable discretion. These records will be made available to the City or their auditor on behalf of the City upon request for the purpose of verifying the vendor's compliance with the terms of an agreement. Any such financial records shall be deemed to be public record. Failure to comply with this requirement shall be a material breach and will be subject any agreement with the City to termination by the City.

7.4 All records and information required to be kept by vendor pursuant to an agreement shall be kept for a minimum of at least three (3) years unless otherwise required by law to be kept for a longer period of time.

8. Disaster Relief Services. In the event of a disaster, the vendor may be asked to provide "Essential Support Function/Official Responder" with respect to any animal disaster to which the City is included within the disaster area designated by a governmental agency. vendor may invoice City for any costs or expenses, including staff overtime and equipment purchases and rentals, incurred by vendor, with respect to additional services provided by vendor in connection with any such disaster relief effort and which are eligible for reimbursement pursuant to FEMA Disaster Assistance Policy 9523.19 or any successor disaster assistance policy promulgated by FEMA. The City shall promptly reimburse vendor for said costs and expenses, provided City has received reimbursement from FEMA. Vendor shall provide any available supporting documentation requested by City for any funding or reimbursement request regarding the disaster that is made to any governmental agency. In the event FEMA determines that any such cost or expense is not eligible for reimbursement pursuant to its applicable policy, where applicable, vendor shall reimburse the City for any amounts previously paid to vendor by City as reimbursement for such disallowed costs or expenses.

9. Project Manager. Selected Vendor will be required to maintain a Project Manager, who shall be a City employee and who will serve as the point of contact for the City and for system management implementation.

10. Liability Insurance. Vendor shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

a. Vendor shall maintain the following minimum limits:

General Liability

Combined Single Limit per occurrence	\$1,000,000
General Aggregate	\$2,000,000

Automobile Liability

Combined Single Limit per occurrence	\$2,000,000
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b. The City of Memphis, its officials, agents, employees and representatives shall be named as Additional Insured's on all liability policies." The additional insured endorsement shall be attached to the Certificate of Insurance.

c. All insurance companies affording coverage to the vendor shall be insurance organizations acceptable to the City.

d. Vendor shall provide notice to City within three (3) business days following receipt of any notice of cancellation or material change in vendor's insurance policy. Such notice shall be provided to City by registered mail, return receipt requested, to the following address: City of Memphis; Attn: Risk Management; 2714 Union Avenue Extended, Suite 200; Memphis, TN 38112.

e. Vendor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and applicable endorsements, in a form satisfactory to the City, concurrently with the submittal of an agreement.

f. Maintenance of insurance by the vendor as specified in an agreement shall in no way be interpreted as relieving the vendor of any responsibility whatsoever and the vendor may carry, at its own expense, such additional insurance as it deems necessary.

g. If vendor fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, the City has the right to obtain the insurance. Vendor shall reimburse the City for the premiums paid with interest at the maximum allowable legal rate then in effect in Tennessee. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid; names of the insurer(s); and rate of interest. Said reimbursement and interest shall be paid by vendor on the first (1st) day of the month following the notice of payment by City.

h. Notwithstanding the preceding provisions of this Subsection, any failure or refusal by vendor to take out or maintain insurance as required in an agreement, or failure to provide the proof of insurance, shall be deemed a default under an agreement.

i. Modification. The City, at their discretion, may require the revision of amounts and coverage at any time during the term of an agreement by giving vendor sixty (60) days prior written notice. The City's requirements shall be designed to assure protection from and against the kind and extent of risk existing in connection with the execution of the scope of work covered by an agreement. Vendor also agrees to obtain any additional insurance required by City, in order to meet the requirements of an agreement.

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

Employers Liability	\$100,000	Each Accident
	\$500,000	Disease – Policy Limit
	\$100,000	Disease – Each Employee

II. FACILITY DESCRIPTION AND REQUIREMENTS

The City of Memphis will require use of its facility by the vendor in the provision of services. Use of the City's facility located at 2350 Appling City Cove will be accomplished by lease of the premises by the vendor in an amount to be proposed either in direct payment by vendor to City or in offset amount of costs for services. A copy of the proposed lease is attached hereto as Appendix 2.

The City of Memphis reserves the right to make inspections of the facility to assure compliance with the scope of work outlined above and ensure the animals are cared for in a humane manner.

III. PRE-PROPOSAL MEETING AT FACILITY

A **Mandatory Pre-Proposal Meeting** has been set for January 12, 2012 at 11:00 am to provide Proposers an opportunity to review the Facility, ask questions or obtain clarification. The meeting will be held at the Memphis Animal Shelter, 2350 Appling City Cove. If clarification to the Proposal is needed, an addendum to the RFP will be issued following the pre-proposal meeting. All proposers are required to attend and a copy of the written responses/clarification will be provided to all attending proposers. While some input obtained at the meeting may be incorporated into the RFP via addenda, remarks and explanations made at the meeting may not necessarily change the provisions

of the final RFP. The provisions of the final RFP are binding regardless of remarks or explanations made at the meeting.

IV. PROPOSAL SUBMISSION DIRECTIONS

1. The proposer shall submit six (6) written copies of the Proposal and one (1) CD copy, in Microsoft Word format. Please submit all Proposals to:

**Attention: City Purchasing Agent
City of Memphis
125 North Main Street, Suite 354
Memphis, Tennessee 38103**

2. Proposals may be delivered in person, by courier service or by mail to the address indicated above. **ALL PROPOSALS MUST BE SEALED AND RECEIVED BEFORE 2:00 P.M. on February 10, 2012**, at the above office and address. Proposals submitted after the above deadline will not be accepted. It is strongly suggested that any proposers intending to hand deliver a proposal on the last day for submission arrive at the Purchasing Agent's office at least ten (10) minutes prior to the proposal receipt deadline to be time stamped to validate the official current time. The time stamped will be the official time. Any proposal received at or after 2:00 P.M. will be returned unopened.

3. Only one (1) Proposal may be submitted from each proposer. For purposes of this RFP, a proposer is defined to include a parent corporation of the proposer and any other subsidiary of that parent corporation. If a proposer submits more than one (1) Proposal, all Proposals from that proposer shall be rejected.

4. Notwithstanding the deadline set forth above, the City reserve the right at any time to extend (by written addendum) the time period in which responses to the Request for Proposals need to be submitted.

5. Incomplete proposals and proposals received after the deadline noted above will not be considered.

6. Questions Regarding RFP:

All questions regarding this RFP must be submitted via email and directed to Janet.Hooks@memphistn.gov

7. Time

Time and the time limits stated in this RFP are of the essence of this Request for Proposal.

8. Anticipated Schedule of Events

Solicitation Issued	December 19, 2011
Mandatory Pre-Proposal Meeting	January 12, 2012
Written Questions Due at the City	January 19, 2012
Written Q&A Responses Posted	January 26, 2012
Proposal/Response Due at City	February 10, 2012
Interviews (At City Option)	TBA

9. This timetable is for the information of submitting entities. Project restraints may cause these dates to change.

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

V. SUBMISSION REQUIREMENTS

The proposals in response to the RFP must follow the format outlined below and all requested information must be supplied:

A. Cover Letter

At least a two (2) page letter describing the key qualifications and experience of the entity, individual and/or team, the specific service to be provided, what is needed from the City, if anything, and why the vendor should be chosen to provide the service or services requested.

B. Entity, Individual or Team Philosophy and Operating Plan

A brief description of the entity, individual or team philosophy as it pertains to the animal sheltering and animal control services to be provided.

C. Relevant Experience

A description of relevant experience and providing of similar services to municipalities should be provided. The description should distinguish between the experience of the entities, individuals and/or team, if applicable. A list of similar services provided by the entity, individual and/or team, which clearly demonstrates the requisite expertise should also be included in the proposal.

D. Operating Qualifications

Please include a detailed description of the entity, individual and/or team's profile, including the range of capabilities and services as it relates to the animal sheltering and animal control services to be provided. The profile should include references for similar services and a contact person or persons together with applicable contact information.

E. Financial Qualifications and History

Please include a description of the entity, individual and/or team's financial capabilities to provide the services. Relevant financial qualifications should also include the following information:

- (a) Audited financial statements or similar financial information of the applicable entity and/or team, which reflects a financial capacity to undertake the services to be provided.
- (b) References from financial institutions or other sources of funding together with contact names and relevant information.
- (c) History of past projects and the financing involved.
- (d) If applicable, prior experience or projects involving the financing for public-private partnerships or other similar arrangements.

F. Litigation History

Please include a description of any litigation involving the entity, individual and/or team submitting the proposal, which is in any way associated with the services to be provided. If applicable, please provide any information related to said litigation and the outcome.

G. Financial Assistance or Participation

If any entity, individual and/or team submitting a proposal is desirous or requires some form of financial assistance or participation from the City in any form or manner (other than compensation for services rendered), including but not limited to financing, lease contributions, etc., please provide a detailed description of what type and the amount of financial assistance or participation is requested. The request for financial assistance or participation shall apply to any category of service provider submitting a proposal.

H. Essential Terms and Conditions

Any entity, individual and/or team submitting a proposal will need to set forth the essential terms and conditions of the professional services agreement, lease agreement and/or other applicable legally binding document associated with the services to be provided. Essential terms and conditions shall include, but not be limited to, such items as a detailed scope of services to be provided, compensation; an itemized fixed fee price for the performance of all services; length of the term for which the services are to be provided; the earliest date the services can be provided; any other consideration and/or

improvements, etc., to be provided by the City; and lease terms and conditions, if applicable.

VI. EVALUATION AND SELECTION PROCESS

A. The following criteria will be used by the Evaluation Committee in determining its recommendation:

- 1. Proposer's understanding of the RFP requirements and end result. 20 points
- 2. Proposer's proposed approach to tasks. 20 points
- 3. Proposer's experience in similar projects. 30 points
- 4. Fee. 10 points
- 5. Client references. 10 points
- 6. Qualifications of proposer's staff for the project and staffing numbers. 10 points

B. Selection process:

- 1. *Initial Review.* The City will conduct an initial review of all proposals received. Any incomplete proposal or a proposal that fails to meet the basic criteria for the scope of work described can be eliminated.
- 2. *Evaluation Process.* An evaluation panel composed of representative of the City (and outside consultants, if needed, as determined by the City in its sole and absolute discretion) will review the remaining proposals. The evaluation panel reserves the right to request additional information and may elect to examine and/or visit similar operations and/or facilities that are referenced, including background checks as applicable.
- 3. *Interviews (optional).* The final entity, individual, company and/or team may be interviewed by the evaluation panel at a date and time to be determined. Proposers are advised that the City at its option may award a contract strictly on the basis of the initial proposals.
- 4. *Selection.* Following the interviews (if done), the evaluation panel will make a recommendation to the Purchasing Agent for the selection of the entity, individual and/or team. Once an entity, individual and/or team are selected said party will enter into negotiations for the applicable agreement (e.g., services agreement, etc.).

VII. RESOURCES:

All work by vendor shall be performed in accordance with applicable City, state and federal laws, statutes and regulations. In submitting a proposal in response to the RFP, it is recommended that a number of documents from several sources, such as the applicable City of Memphis' Code of Ordinance, Chapter 8, should be reviewed and analyzed, including, but not limited to:

- A. Applicable animal control and animal sheltering sections of the Code of the Ordinances (which can be viewed on-line at the City of Memphis website - www.cityofmemphis.gov, Chapter 8 of the City of Memphis Municipal Code.
- B. The provision of animal service governed by the State of Tennessee.
- C. Information Provided by City.
 - Appendix 1 Proposed Contract Terms
 - Appendix 2 Proposed Lease terms (to be provided at the mandatory pre-proposal meeting)
 - Appendix 3 Fee structure
 - Appendix 4 Current staffing
 - Appendix 5 Facility stats

VIII. GENERAL INSTRUCTIONS

A. Proposal Instructions

To receive consideration, Proposals shall be made in accordance with the following general instructions:

1. The signature of all persons signing the Proposal shall be in long hand. The completed Proposal shall be without alterations or erasures. Errors may be crossed out and corrections printed in ink or typed adjacent, and must be initialed in ink by the person signing the Proposal.
2. No oral, telephonic, telegraphic, e-mailed or faxed Proposals will be considered.
3. The submission of a Proposal shall be an indication that the proposer has investigated and satisfied him/herself as to the conditions to be encountered, the character, quality and scope of the work to be performed, and the requirements of the City.
4. All Proposals shall remain firm for one hundred and eighty (180) days from the Proposal submission deadline.

B. RFP Rules

Business Address

Proposers shall furnish their business street address. Any communications directed either to the address so given, or to the address listed on the sealed Proposal container, and deposited in the U.S. Postal Service by Certified Mail, shall constitute a legal service thereof upon the proposer.

Best Proposal

The City reserves the right to select the Proposal which in its sole judgment best meets the needs of the City. The lowest proposed cost is *not* the sole criterion for recommending contract award.

Notification

All firms responding to this RFP will be notified of their selection or non-selection in writing after the Evaluation Committee has completed the selection process.

Conflict/City Employees

City employees will not participate in the selection process when those employees have a relationship with a person or business entity submitting a Proposal. Any person or business entity submitting a Proposal who has such a relationship with a City employee who may be involved in the selection process shall advise the City of the name of the City employee in the Proposal.

Unlawful Activity

Any person or business entity which engages in practices which might result in unlawful activity relating to the selection process including, but not limited to, kickbacks or other unlawful consideration paid to City employees, will be disqualified from the selection process.

Award Protest

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the intent to award announcement at the following address: City of Memphis Purchasing Agent; 125 North Main, Room 354; Memphis, Tennessee 38103. Notice will be posted on the City's website and outside Council Chambers, located on the lobby floor of City Hall. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

Solicitation Caveat

The issuance of this solicitation does not constitute an award commitment on the part of the City, and the City shall not pay for costs incurred in the preparation or submission of Proposals. The City reserves the right to reject any or all Proposals or portions thereof if the City determines that it is in the best interest of the City to do so. Failure to furnish all information requested or to follow the format requested herein, or the submission of false information, may disqualify the proposer, in the sole discretion of the City. The City may waive any deviation in a Proposal. The City's waiver of a deviation shall in no way modify the RFP requirements nor excuse the successful proposer from full compliance with any resultant agreement requirements or obligations.

Informalities/Minor Irregularities

The City reserves the right to waive minor irregularities or informalities in a Vendor's proposal when the City determines that it will be in City's best interest to do so. Any such waiver shall not modify any remaining RFP specifications or

excuse the Vendor from full compliance with the RFP specifications and other contract requirements if the Vendor is awarded the contract.

Form of Agreement

No agreement with the City is in effect until a contract has been signed by both parties. Attached to this RFP as Appendix 1 is a sample agreement which is in substantially the form the successful proposer will be expected to sign. The final agreement may include the contents of the RFP, any addenda to this RFP, portions of the successful proposer's Proposal and any other modifications determined by the City to be necessary prior to its execution by the parties. The sample agreement included in this RFP is for informational purposes and should not be returned with a Proposal; however, the Proposal shall include a statement that the proposer has reviewed the sample agreement and either i) will agree to the terms contained therein if selected, or ii) indicate those specific provisions of the sample agreement to which the proposer takes exception and why. Raising of exceptions by vendor following proposal submission may be cause for rejection of the Consultant's proposal.

The selected vendor will be required to execute an agreement with the City for the services requested within 90 days of the award. If agreement on the terms and conditions that are acceptable to the City cannot be achieved within that timeframe, the City reserves the right to continue negotiations or to award the bid to another Consultant and begin negotiations with that Consultant. Consultant must identify and provide contact information in their proposal of the individual within their organization who is authorized to negotiate the terms and conditions of any agreement between Consultant and City.

Contract Award

The City may fund all or any part of a proposal, and the City will only accept proposals for the services requested. The proposal submitted in response to this solicitation is not a legally binding document; however, the contract, which will be based on information provided in the proposal, becomes legally binding once all parties have signed it. Any contract resulting from this RFP shall be subject to the City of Memphis Additional Contract Terms set forth in this solicitation. The successful vendor shall be required to execute the contract originated by the City of Memphis and satisfy all contract requirements as specified by the City. One or more contracts may be awarded under this RFP, and any contract awards and amounts are subject to the availability and appropriation of funds. The City of Memphis will enter into a negotiated contract with the selected vendor(s).

Modifications to Scope of Work

In the event that sufficient funds do not become available to complete all the services identified in this RFP, the scope of services may be amended, as

determined in the sole discretion of the City. The City may also, from time-to-time, request changes in and/or additions to the services to be provided by the successful proposer. Such changes, including any increase or decrease in compensation, which are mutually agreed upon by and between the City and the successful proposer, shall be incorporated into the contract prior to execution of the contract, and by written amendments thereto after execution.

News Releases

News releases pertaining to any award resulting from this RFP may not be made without prior written approval of the City of Memphis.

Payment Schedule

Periodic payments will be made to the vendor upon submission of an invoice, based on a payment schedule to be developed and included in the final agreement for services. Monthly payments will be made in arrears for services provided.

Statutes and Rules

The terms and conditions of this RFP, and the resulting services and activities performed by the successful proposer, shall conform to all applicable statutes, rules and regulations of the federal government, the State of Tennessee and the County of Shelby.

Background Review

The City reserves the right to conduct a background inquiry of each proposer that may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories, reputation in the business community and financial condition. By submitting a Proposal to the City the proposer consents to such an inquiry and agrees to make available to the City such books and records the City deems necessary to conduct the review.

Questions

Vendors shall submit all questions or concerns related to this RFP by e-mail to the address as specified above. No oral requests for clarification or information will be accepted.

The Vendor shall identify all e-mail inquiries in the subject line as "RFP Inquiry" and shall submit questions no later than the deadline stipulated in the Proposal's Schedule of Events. To ensure the fair and consistent distribution of information, all questions will be answered by a Question-and-Answer (Q&A) document, which will be posted on the City's website (www.memphistn.gov). 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 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).

Amendments to RFP

The City reserves the right to re-issue or change any portion of this RFP, in its sole discretion. In the event it is necessary to revise any part of the RFP after the initial issue date, the City will make modifications by issuing a written amendment, which will be posted on the City's website: (www.memphistn.gov).

Withdrawing RFP

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

Proposal Costs

All costs incurred by the vendor in preparing the proposal, or costs incurred in any other manner by the vendor in responding to this proposal will be solely the responsibility of the vendor. All material and documents submitted by the vendors in response to this RFP become the property of the City of Memphis and will not be returned to the vendor. The vendor shall bear the total costs for any and all appearances. The City shall not, in any event, be liable for any expenses incurred by vendors in the preparation and/or submission of the proposals. Proposals shall not include any such expenses as part of the proposed budget.

The City assumes no obligation as a result of the issuance of this RFP, the preparation or submission of a proposal by a Vendor, the evaluation of an accepted proposal, or the selection of finalists. The City is not bound until a written contract for the performance of the work is executed by both parties.

Successful Vendor Responsibility

The successful vendor shall assume responsibility for meeting all requirements agreed to in response to this RFP. Further, the City will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including the performance of services, security of the lot and the payment of any and all charges resulting from contract obligations. Upon contract award, the selected Vendor will be directly responsible for all of its subcontractors, if any.

Ambiguity, Conflict, or other Errors in the RFP

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

to submitting the proposal or any ambiguity, conflict, discrepancy, etc. shall be waived.

If a proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the proposer shall immediately notify the Contact Person of such error in writing and request clarification or modification of the document. Modifications will be made by addenda as indicated below to all parties in receipt of this RFP.

If a proposer fails to notify the Contact Person prior to the date fixed for submission of Proposals of a known error in the RFP, or an error that reasonably should have been known, the proposer shall submit a Proposal at their own risk, and if the proposer is awarded a contract they shall not be entitled to additional compensation or time by reason of the error or its subsequent correction.

Failed Competition

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

Withdrawing or Amending a Proposal

At any time prior to the scheduled deadline for receipt of proposals, the Vendor may withdraw or amend its proposal by submitting a written request from the authorized representative whose name and signature appears on the proposal. A written request to withdraw or amend the proposal must be submitted in writing to:

Jerome Smith, Purchasing Agent

City of Memphis Purchasing Department

125 N. Main Rm. 354

Memphis, TN 38103.

Oral Presentations

Vendors may be required to give an oral presentation of their proposal to City Representatives for the purpose of clarification to assure the City's full understanding of the proposal. Oral presentations are an option of the City, at the

City's sole discretion; however, no proposal may be altered or enhanced during an oral presentation.

Vendor Indebted to the City

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

Compliance with the RFP

The submission of a proposal shall be taken as prima facie evidence that the Vendor has familiarized itself with the contents of the RFP and with these terms and conditions, in particular. The failure or omission by the Vendor to receive or examine this RFP shall in no way relieve the Vendor of any obligation with respect to its submission or of any term or condition of this RFP and may result in disqualification.

Local Preference/Presence

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

Living Wage

This procurement may be subject to Ordinance No. 5185 which establishes a minimum wage for employees of businesses providing services for the City of Memphis. The Living Wage Ordinance and any amendments thereto, can be accessed on the City's website (www.memphistn.gov). Once on the City's homepage, click on the "Business" link, and then click on the "Doing Business with the City" link. A link to the Ordinance will be accessible on the top right side under the section "Links."

Nonresponsive Proposals

All proposals will be reviewed by City of Memphis ("Evaluation Committee") to determine if they contain the minimum essential requirements outlined in the RFP, including instructions governing submission, format and compliance with standard City requirements. Those proposals deemed non-responsive may be disqualified without further evaluation and the Vendor will be notified. The Evaluation Committee will examine each proposal that meets the mandatory requirements and recommend a Vendor to the City. Proposals will be evaluated

on the compliance with City requests. Innovative approaches to increase the efficiency and effectiveness of operations will also receive considerations, as will the credibility of the Vendor's commitment to the success of the contract and to its verifiable record of working harmoniously and cooperatively with its clients.

Nondiscrimination Requirement

By responding to this RFP the applicant represents that it and any person or entity affiliated by it, does not and will not discriminate against any employee or applicant for employment because of race, religion, sex, color national origin, sexual orientation, ancestry, marital status, physical condition, pregnancy or pregnancy-related conditions, political affiliation or opinion, age or medical condition. Any subsequent contracts or agreements shall contain similar language and requirements pursuant to Memphis law.

Indemnification

Vendor shall indemnify, defend, save and hold harmless the CITY and its officers, agents and employees from and against any and all claims, demands, suits, actions, penalties, damages, 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 Vendor, its employees, subcontractors, or agents or the breach of this Agreement by vendor, its employees, subcontractors or agents. This obligation shall survive the expiration or termination of this Agreement. The Vendor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the vendor shall in no way limit the Vendor'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. The Vendor acknowledges that the City has no obligation to provide legal counsel or defense to the Vendor, 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 the Vendor 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 the Vendor or its subcontractors or employees as a result of or relating to the Vendor's obligations hereunder. The Vendor shall immediately notify the City c/o City Attorney; 125 North Main, Suite 336; Memphis, TN 38103, of any claim or suit made or filed against the Vendor or its subcontractors regarding any matter resulting from or relating to the Vendor's

obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

Insurance

If awarded a contract pursuant to this RFP, the vendor will be required to have and maintain the insurance specified in the RFP. The successful vendor will be required to furnish the City, on or before the effective date of the Agreement, a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required is in effect. All insurance companies must be acceptable to the City of Memphis and be licensed in the State of Tennessee.

NOTE: LATE PROPOSALS WILL NOT BE ACCEPTED.

Each proposal shall be submitted in a sealed envelope or package. Vendors shall note "Request for Proposal enclosed" on the outside of the envelope or package. Proposals submitted and accepted by the City become the property of the City of Memphis and will not be returned. In order to be deemed responsive, Vendors must provide responses to address all items in the RFP. Incomplete proposals will not be considered for selection if the omission(s) are determined, in the City's sole discretion, to be significant. The City has the right to reject any or all proposals. The proposal must set forth accurate and complete information as required in this RFP. Unclear, incomplete, and/or inaccurate documentation may not be considered for a contract award. Falsification of any information may result in disqualification.

Terms and Conditions

RFP TERMS

REQUEST FOR PROPOSAL TERMS

The City of Memphis seeks proposals from firms who have the expertise to provide Privatization of the Animal Shelter in accordance with this RFP document. This is a Request for Proposal that may be modified by the City in the selection process.

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

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

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

The contract may be subject to the requirements of Ordinance No. 5185, as amended, which establishes a minimum wage for employees of businesses receiving a service or service-related contract from the City of Memphis. The Living Wage ordinance and any amendments thereto, can be accessed on the City's website (www.memphistn.gov). Once on the City's homepage, click on the "Business" link, and then click on the "Doing Business with the City" link. A link to the ordinance will be accessible on the top right side under the section "Links".

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the intent to award announcement at the following address: City of Memphis Purchasing Agent; 125 North Main, Room 354; Memphis, Tennessee 38103. Notice will be posted on the City's website and outside Council Chambers, located on the lobby floor of City Hall. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

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

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

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

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

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

A C WHARTON, JR., MAYOR

Jerome Smith, City Purchasing Agent

Proprietary and Confidential

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INSTRUCTIONS TO PROPOSERS

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

Proposers must comply with all applicable licensing requirements. Pursuant to the City of Memphis Charter, Article 71, Section 777 et seq., it is unlawful to operate a business within the limits of the city of Memphis without possessing a Memphis and Shelby County business license, excepting non-profit organizations that qualify as tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. Upon award notification and prior to the City issuing a properly executed purchase order or entering into a contract with the 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.

Issuance of this RFP does not obligate the City to contract, in whole or in part, for services specified herein. The City of Memphis reserves the right to cancel this solicitation, in whole or in part, or to reject, in whole or in part, any and all proposals. Cancellation of this RFP or any subsequent award will be posted on the City's website: www.memphistn.gov under the section titled "Government News."

Any firm receiving a mailed solicitation on the above subject and not bidding will be electronically removed from the City's mailing list used for the above-referenced subject after 3 consecutive non-responses or no bids.

For additional information concerning this solicitation, please contact: Janet Hooks at janet.hooks@memphistn.gov or via facsimile at n/a.

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

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

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

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

TERMS AND CONDITIONS OF CONTRACT

This Agreement is made and entered into this [INSERT EFFECTIVE DATE], by and between [INSERT VENDOR'S FULL LEGAL NAME], hereinafter called the "Contractor" and the City of Memphis, a municipal corporation of the State of Tennessee, hereinafter called the "City".

SCOPE OF SERVICES. The Goods/Services to be provided in connection with this Agreement shall include, but not be limited to, those items listed in the Scope of Work, which is attached hereto and incorporated herein as Exhibit A (the "Services").

TERM. This Agreement shall not be binding upon the parties until it has been signed first by the vendor 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 _____ and shall end on the earlier of _____ 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 _____ additional one-year periods (the "Option Periods"), subject to the appropriation of funds by the Memphis City Council and mutual agreement of the parties. The Initial Term and the exercised Option periods are collectively referred to hereinafter as the "Term."

PAYMENT TERMS AND CONDITIONS

INVOICES. The vendor shall submit original invoices, or copies of original invoices certified as such by the vendor, on the vendor's letterhead and in form and substance acceptable by the City and with all necessary supporting documentation, to the City. The invoice shall describe the 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 the vendor. Invoices shall be submitted to: City of Memphis [DIVISION NAME], [ADDRESS]; Memphis, Tennessee [ZIP CODE]; Attn: _____.

COMPENSATION. Unless the City has good faith and reasonable objections to the vendor's invoice(s), the City shall compensate the vendor, based on invoices submitted by the vendor, the sum total not to exceed \$ _____ (USD) (the "Fee") during the term of the Agreement, which shall include all reimbursable expenses. The City shall use its best efforts to remit payment based on the vendor'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 the vendor based on the vendor's non-performance, unsatisfactory performance or negligent performance of any services hereunder.

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 the vendor. Vendor shall be solely responsible and liable for any taxes and business license fees assessed or imposed by any government having jurisdiction over the work and/or goods to be provided herein.

PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK. 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 work nor as final approval of any of the costs invoiced therein, and the City's payment shall not relieve the vendor from its obligation to replace or correct any work that does not conform to this Agreement, even if the unsatisfactory character of such work may have been apparent or detected at the time such payment was made. Work, data or components that do not conform to the requirements of this Agreement shall be rejected by the City and replaced by the vendor, without delay or additional cost to the City. If the vendor receives payment from the City for a service or reimbursement that is later disallowed or rejected by the City or another governmental entity on the basis of audit or monitoring, the vendor 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 the vendor under this Agreement or any other agreement.

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

GENERAL TERMS AND CONDITIONS

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

TITLE & RISK. 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. The vendor/successful bidder shall assume all liability and responsibility for delivery of such goods in good condition to the City.

PATENT INDEMNIFICATION. The vendor 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 is a violation of trade secret disclosure laws, whether by reason of the vendor's purchase or otherwise. This indemnification obligation shall survive the expiration or termination of this Agreement.

TRANSPORTATION CHARGES/F.O.B. DELIVERY. All pricing is F.O.B. destination, in which vendor 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 FOB destination is allowed by the City, The City agrees to reimburse the vendor for transportation costs in the amount specified in the vendor'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.

SHIPMENTS. 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. The vendor shall not ship excess quantities without the City's prior written approval.

REPORTS. Upon request, the vendor 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 the vendor. 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, vendor 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), 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.

ENTIRE AGREEMENT. This Agreement 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.

STANDARD OF PERFORMANCE. All services by the vendor 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, based on the type of services performed hereunder.

HEADINGS. Titles and headings used herein are for the convenience of reference only and shall be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

MODIFICATION AND AMENDMENT. This Agreement shall be amended or modified only by a written document signed by the parties hereto.

CONFIDENTIALITY. While performing work under this Agreement, the vendor may gain access to

proprietary and/or confidential information that, if disclosed to third parties, may be damaging to the City or its officials or employees. Such information shall include 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 the City related to funding and financial and business information; (ii) all information owned, possessed or used by the City, which is communicated to, learned, developed or otherwise acquired by the vendor in the performance of the Services for the City; (iii) the terms, conditions and pricing contained herein; and (iv) any other information that the vendor has been advised by the City is confidential, privileged or proprietary. Confidential information, as used in this Agreement, shall not include (i) information in the vendor's possession prior to disclosure by the City; (ii) information generally available to the public or that becomes available to the public through a source other than the City, or (iii) information that was rightfully obtained by the vendor from a third party who is under no obligation of confidentiality to the City with respect to such information. The vendor agrees that it will accept and hold confidential information obtained from the City in confidence at all times during and after termination of this Agreement. The vendor shall neither use nor disclose such information, except as provided in this Agreement or as

required by law, without the prior written permission of the City. The vendor acknowledges and agrees that a breach of this section by the vendor will cause the City irreparable injury and damage; therefore, the vendor 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. The vendor agrees that it will disclose confidential information only to those employees who have a right 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."

PUBLIC STATEMENTS. The vendor 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. The vendor 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.

RIGHTS IN DATA. The vendor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type produced under this Agreement, whether or not the same is accepted or rejected by the City, shall remain the property of the City and shall not be published by the vendor or any other party without the express prior written consent of the City. In implementing the foregoing, the vendor hereby grants and assigns to the City all rights and claims of whatever nature, whether now or hereafter, arising in and to any and all of such reports, studies, plans, models, drawings, specifications, and other information or data and shall cooperate fully with the City in any steps the City may take to obtain copyrights, trademark or like protections with respect thereto. The signing of this Agreement shall constitute a complete transfer of ownership, intellectual property and copyright of all documents from the vendor to the City upon the vendor's delivery of such documents and/or information to the City or upon completion of the Project, whichever occurs first. The vendor shall not construe such transfer as a grant for usage nor can the vendor revoke it.

EMPLOYMENT OF CITY WORKERS. The vendor shall not engage, on a full, 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 employ of the City.

CONTRACTOR'S PERSONNEL. The vendor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all work performed under this Agreement shall be supervised by the vendor. Vendor will make its personnel aware of and cause them to comply with the City's policies that have been made known to vendor while performing pursuant to this Agreement. The vendor further certifies that all of its employees assigned to perform any work hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of the vendor who, in the opinion of the City, is incompetent, whose conduct becomes detrimental to the work, 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, the vendor shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training. Vendor is responsible for the acts or omissions of its personnel under or relating to this Agreement. The vendor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. 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 the vendor. In addition, the vendor 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 work performed by or on behalf of the vendor pursuant to this Agreement.

INDEPENDENT VENDORS Nothing in this Agreement shall be deemed or construed to represent that the vendor, or any of the vendor's employees or agents, are the agents, representatives, or employees of the City. The vendor acknowledges that it is an independent vendor over the details and means for performing the services hereunder. Anything in this Agreement which may appear to give the City the right to direct the vendor as to the details of the performance of its obligations hereunder or to exercise a measure of control over the vendor is solely for purposes of compliance with local, state and federal regulations and means the vendor 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 the vendor that neither it nor its employees or agents shall hold itself out contrary to the terms of this paragraph, and the City shall not be liable for any representation, act or omission of the vendor contrary to the provisions hereof.

TERMINATION

1. It shall be cause for the immediate termination of this Agreement if, after its execution, the City

determines that either:

a. the vendor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead 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. the vendor 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. the vendor has filed 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 the vendor's assets.

2. The City may cancel/terminate this Agreement, in whole or in part, upon providing written notice to the vendor of the City's intention to terminate the Agreement as a result of vendor's failure to provide the goods and/or services specified under this Agreement or in violation(s) of any of the terms herein, and the vendor has failed to cure such breach within [NUMBER OF DAYS TO CURE BREACH] business 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 vendor at its expense or hold the same for such disposal as vendor 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 the vendor'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. The vendor 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, the vendor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the vendor, and the City

may withhold any payments to the vendor, for the purpose of setoff, until such time as the exact amount of damages due the City from the vendor is determined.

4. The City may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving [NUMBER OF DAYS TO TERMINATE CONTRACT FOR CONVENIENCE] business days prior written notice to the vendor. 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, the vendor 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 the vendor for expenses incurred after the termination date. All goods accepted by City or services completed by the vendor 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 the vendor 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.

5. The vendor shall deliver to the City all hard copy and electronic files maintained on behalf of the City within _____ 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.

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

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 the vendor has failed to pay laborers employed on his 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 labor and materials, the City, acting as the agent of the vendor, may settle and pay for the same and charge the amounts to the vendor and deduct the same from the said balance or balances.

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.

SUBCONTRACTING, ASSIGNMENT or TRANSFER. The vendor 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 the vendor from performance of its duties hereunder; neither shall the City be responsible for the fulfillment of the vendor'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 vendor to replace such subcontractor or perform the services that were being performed by such vendor 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

vendor, in whole or in part, is acquired by another entity during the term of this Agreement. In the event the vendor is allowed to sublet any part of the Agreement, the vendor shall be as fully responsible to the City for the acts and omissions of the subcontractor and of the persons employed or directly or indirectly employed by the subcontractor as he is for the acts and omissions of persons employed by vendor. The vendor shall not subcontract more than [SUBCONTRACTOR PERCENT]% of the work required hereunder. The computation for percentages will be based on monetary values.

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. The vendor 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 the vendor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the vendor or any agent or representative of the vendor, 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. The vendor 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 the vendor in connection with any work 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.

COVENANT AGAINST CONTINGENT FEES. The vendor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the vendor, 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 the vendor 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, the City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

GENERAL COMPLIANCE WITH LAWS. The vendor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall obtain and maintain, 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 shall be made available to the City, upon request. The vendor is assumed to be familiar with and shall comply with all applicable federal, state, and local laws, ordinances, and regulations in performing any of its obligations under this Agreement, including but not limited to the City of Memphis Living Wage Ordinance, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA), and the Americans with Disabilities Act (ADA). The vendor shall promptly notify the City of any conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict.

NON-DISCRIMINATION. The vendor hereby agrees 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 the vendor'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. The vendor 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 the

vendor fails to comply with the City's non-discrimination 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 the vendor and in the event a finding of discrimination is made and upon written notification thereof, the vendor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. The vendor's failure or refusal to do so shall be cause for termination of this Agreement in accordance with the terms of this Agreement.

EMPLOYMENT OF ILLEGAL IMMIGRANTS. The vendor 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. Vendor 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 the vendor 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 the vendor 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.

SEVERABILITY. If any terms or provisions of this Agreement are held to be illegal, invalid or unenforceable as a matter of law, such provision shall be fully severable, and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding and shall not be affected by such provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, the parties may negotiate in good faith to replace such provision with a valid, legal and enforceable provision that most closely approximates the parties' original intent.

NO 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 . No delay or failure of the City to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver or relinquishment of the City's right to subsequently enforce and compel strict compliance with such provision or any other provision herein or in any document related hereto and specifically identified as a waiver of any succeeding breach thereto or of any other provision herein contained.

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 the vendor. In the event of such termination, the vendor 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 the vendor 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.

CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS

ENTERPRISE. The vendor 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.

PUBLIC RECORDS. Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by the vendor, the vendor 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 services performed hereunder may be subject to disclosure as a public record in accordance with the laws of the State of Tennessee.

ORGANIZATION STATUS AND AUTHORITY. The vendor 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 the vendor 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 the vendor, any provision of any indenture, agreement or other instrument to which the vendor is a party, or by which the vendor'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.

WARRANTY. The vendor warrants to the City that all goods/work shall be free from defects in design and faulty or improper workmanship and shall be in strict compliance with the terms of 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.

RECORDS AND AUDITS. The vendor shall make and keep as the same accrue, full and complete books, documents, accounting records and other evidence, that specifically relate to this Agreement, in accordance with generally accepted accounting principles. The vendor 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 three (3) 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 three-year retention period, such records shall be retained until such litigation, claim or audit finding has been resolved. Copies of said records shall be furnished to the City upon request. Upon reasonable notice, the vendor 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 the vendor'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 the vendor. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

DISPUTE RESOLUTION. In the event of any dispute(s), 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 the vendor

and the City shall be referred in successive order for resolution, first to the City Purchasing Agent, second to the City Attorney, and thirdly to the Mayor of the City of Memphis, whose decision regarding same shall be final.

FORCE MAJEURE. The City shall not be deemed in default hereunder, nor shall the City 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.

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

NOTICES. All notices 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 day 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]

Memphis, TN [ZIP CODE]

Attn: [CITY CONTACT/REPRESENTATIVE]

Fax: [FAX NUMBER]

With copy, if requested, to:

City Attorney

125 N. Main, Room 336

Memphis, TN 38103

To the vendor:

[CONTRACTOR NAME]

[CONTRACTOR ADDRESS]

[CITY], [STATE] [ZIP CODE]

Attn: [CONTRACTOR REPRESENTATIVE]

Fax: [FAX NUMBER - vendor REPRESENTATIVE]

NO THIRD PARTY BENEFICIARY: This Agreement is entered into solely between, and may be enforced only by, City and vendor. Unless otherwise specified herein, this Agreement shall not be deemed to create any rights in third parties, including suppliers or customers of either party.

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

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.

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.

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

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. Signed signature pages may be transmitted by facsimile, and any such signature shall have the same legal effect as an original.

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 vendor providing services herein or for injury to any employee, agent or subcontractor of the vendor performing under this Agreement.

INDEMNIFICATION. **vendor** shall indemnify, defend, save and hold harmless the CITY and its officers, agents and employees from and against any and all claims, demands, suits, actions, penalties, damages, 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 vendor, its employees, subcontractors, or agents or the breach of this Agreement by vendor, its employees, subcontractors or agents. This obligation shall survive the expiration or termination of this Agreement. The vendor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the vendor shall in no way limit the vendor'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. The

Contractor acknowledges that the City has no obligation to provide legal counsel or defense to the vendor, 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 the vendor 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 the vendor or its subcontractors or employees as a result of or relating to the vendor's obligations hereunder. The vendor shall immediately notify the City c/o City Attorney; 125 North Main, Suite 336; Memphis, TN 38103, of any

claim or suit made or filed against the vendor or its subcontractors regarding any matter resulting from or relating to the vendor's obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

LIVING WAGE. In accordance with the City of Memphis Ordinance No. 5185, commonly referred to as the Living Wage Ordinance, as amended, certain businesses holding a service or service-related contract with the City of Memphis shall pay its employees performing work on said contract a minimum hourly wage in the amount of \$10.27 per hour with health benefits for employees and their dependents or \$12.32 per hour without health benefits. Unless otherwise exempted, the vendor agrees to follow and comply with the requirements of said ordinance, as amended. The vendor further agrees to provide certified payrolls, or affidavits in accordance with Ordinance No. 5293, associated with this agreement to the City of Memphis c/o Manager, Prevailing Wage Office; 125 N. Main St., Room 1B-18; Memphis, TN 38103. The Living Wage Ordinance, and any amendments thereto, can be accessed on the City's website (www.memphistn.gov). Once on the City's homepage, click on the "Business" link, and then click on the "Doing Business with the City" link. A link to the Ordinance will be accessible on the top right side under the section "Links." Annual adjustments, if any, to the rates will be posted on the website for the upcoming fiscal year on or around February.

GOVERNING LAW, JURISDICTION AND VENUE. 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.

INSURANCE

A. The vendor shall not commence any work under this agreement until it has obtained and caused its subcontractors to procure and keep in force all insurance required hereunder. The vendor shall require all subcontractors to carry insurance as outlined below, in case the subcontractor(s) are not protected by the policies carried by the vendor. Prior to commencing any work under this contract, the vendor shall furnish the City a Certificate of Insurance and/or policies, upon request, executed by an authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. Failure to maintain or renew coverage or to provide evidence of renewal may result in termination of the contract by City. Failure of the City to identify any deficiency in the evidence that is provided shall not be construed as a waiver of the vendor's obligation to maintain such insurance. The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent. Insurance coverage shall be provided by companies rated A:VI or better by Best's Insurance Rating. The City reserves the right to reject any or all insurance carrier(s) with an unacceptable financial rating. All insurance companies must be acceptable to the City of Memphis and licensed in the State of Tennessee.

B. If any of the insurance requirements are non-renewed at the expiration dates of any policy, payment to the vendor 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 vendor. Vendor's insurance shall be primary as respects the City, its officers, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, employees and agents shall be excess of the vendor's insurance and shall not contribute with it.

D. Vendor shall provide notice to City within three (3) business days following receipt of any notice of cancellation or material change in vendor's insurance policy from vendor's insurer. Such notice shall be provided to City by registered mail, return receipt requested, to the City Risk Management address provided below.

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

1. Thirty (30) days prior to cancellation or material change to the insurance coverage, notice thereof shall be given to the City of Memphis Risk Manager by registered mail, return receipt requested to the following address: City of Memphis; Attn: Risk Management; 2714 Union Avenue Extended, Suite 200; Memphis, TN 38112.

Notwithstanding the preprinted cancellation provisions on the Certificate of Insurance, coverages required herein will not be cancelled, reduced in amount, or allowed to lapse until at least thirty (30) days written notice, by certified mail, return receipt requested, has been provided to the City of such alteration or cancellation.

2. "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."

MEMPHIS ANIMAL SERVICES
FEE STRUCTURE

PET ADOPTION FOR GENERAL PUBLIC

PETS	ADOPTION	RABIES SHOT	LICENSE	TOTAL
DOGS & PUPPIES	\$62.00	\$8.00	\$5.00	\$75.00
CATS & KITTENS	\$62.00	\$8.00	\$0.00	\$70.00
MISC. ANIMALS	FEES VARY	N/A	N/A	

Adoption fees include: Sterilization, Microchip identification, 1st set of vaccinations, defleaing and deworming

****PRICE ADJUSTMENTS FOR RESCUR REGULAR ADOPTIONS****

REGULAR CAT AND DOG ADOPTIONS

ADOPT DOG	\$42.00
HOME AGAIN CHIP	\$0.00
RABIES SHOT	\$8.00
RABIES TAG	\$0.00
TOTAL	\$50.00

ADOPT CAT	\$42.00
HOME AGAIN CHIP	\$0.00
RABIES SHOT	\$8.00
TOTAL	\$50.00

****SPECIAL NEEDS ADOPTIONS FOR RESCUE/GENERAL PUBLIC (UPON VETERINARIAN/SUPERVISOR APPROVAL) RABIES SHOT AND MICHROCHIP ARE GIVEN FOR FLAT FEE****

RESCUE GROUPS SPECIAL NEEDS ADOPTION FEE IS \$20.00

GENERAL PUBLIC SPECIAL NEEDS ADOPTION FEE IS \$40.00

****SPECIAL NEEDS ADOPTIONS DO REQUIRE A SPECIAL NEEDS CONTRACT TO BE COMPLETELY FILLED OUT AND PETS ARE RELEASED NON-STERILIZED!****

#OF OFFENCES	SERVICE/HANDLING	BOARD	RABIES SHOT	LICENSE
1ST	\$80.00 (PER ANIMAL)	\$7.00 (PER DAY) PER ANIMAL	\$8.00	\$5.00 (STERILE) \$15.00 (FERTILE)
*2ND	\$150.00 (PER ANIMAL)	\$7.00 (PER DAY) PER ANIMAL	\$8.00	\$5.00 (STERILE) \$15.00 (FERTILE)
*3RD	\$225.00 (PER ANIMAL)	\$7.00 (PER DAY) PER ANIMAL	\$8.00	\$5.00 (STERILE) \$15.00 (FERTILE)

***2ND OFFENSE: WITHIN 2 YEARS OF ANY DOG BELONGING TO THE SAME OWNER**

***3RD OFFENSE: WITHIN 3 YEARS OF ANY DOG BELONGING TO THE SAME OWNER**

FERTILE PERMITS \$200.00

** PETS ARE TO BE MANDATORIALY SPAYED OR NEUTERED WHEN BEING RECLAIMED BY OWNERS ACCORDING TO THE NEW CITY ORDINANCE. IF THE OWNER (BEING A CITY OF MEMPHIS CITIZEN) DECIDES NOT TO LEAVE THEIR PET(S) TO BE ALTERED, IF THEIR PET(S) ARE NOT BEING HELD FOR QUARANTINE OR IF THEIR PET(S) TESTS POSITIVE FOR HEARTWORMS, THEY CAN PURCHASE A FERTILE PERMIT FOR \$200.00 PLUS ALL OTHER FEES LISTED ABOVE AS THEY APPLY. SHELBY COUNTY RESIDENTS RECLAIMING THEIR PETS ARE EXCLUDED FROM THIS OPTION. SHELBY COUNTY RESIDENCE WHOSE PET(S) IS BEING HELD FOR QUARANTINE IS EXCLUDED FROM HAVING TO PURCHASE A PERMIT.

SPAY/NEUTER

Reclaim fees for fertile pets may be reduced substantially by adhering to the following:

- Show proof that your pet you are reclaiming has been sterilized by a licensed veterinarian.
- Have your pet sterilized by Memphis Animal Services before you take him or her home.
- Bring proof of sterilization, by a licensed veterinarian, to Memphis Animal Services within 30 days following reclaim.

IMPOUNDMENT FEES ARE REDUCED BY \$40.00 PER OFFENSE AND RABIES SHOT AND TAGS ARE REDUCED TO \$13.00 NISTEAD OF \$23.00. IF THE OWNER PURCHASES A FERTILE PERMIT FOR THEIR HEARTWORM POSITIVE ANIMAL(S) BUT HAS THEIR PET(S) STERILIZED WITHIN 30 DAYS BY A VET AND BRINGS PROOF, THEY CAN RECEIVE A REFUND FOR THE \$200.00.

PERMANENT IDENTIFICATION FOR YOUR PET

Micro-Chipping \$25.00
With Reclaim \$15.00

Included in Adoption Fee

PUBLIC SERVICES &

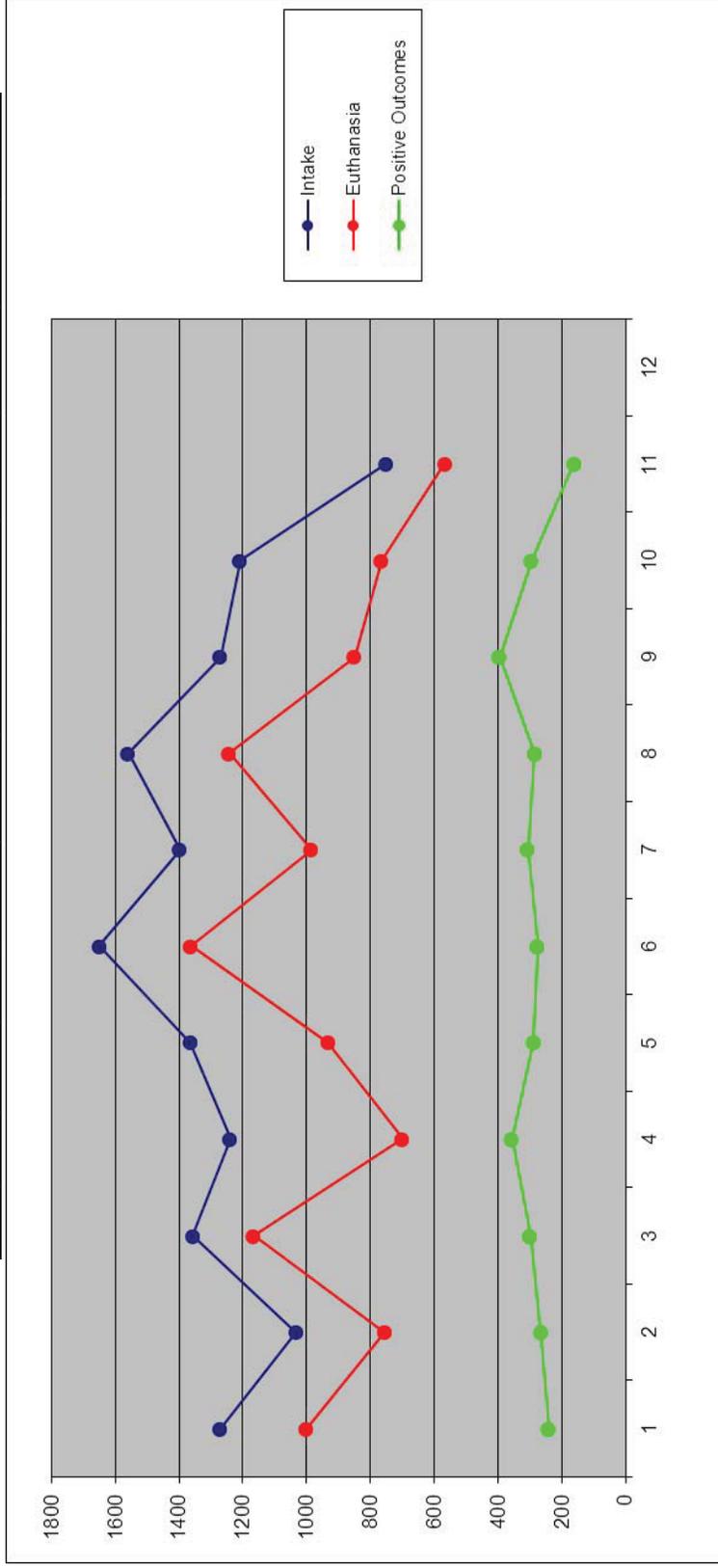
NEIGHBORHOODS

AUTHORIZED COMPLEMENT

Service Center/Position Title	Authorized Positions
<i>Animal Services</i>	
ADMR ANIMAL SHELTER	1
CLERK GENERAL B	5
DIRECTOR VETERINARY MEDICAL	1
MGR OPERATIONS ANIMAL SVCS	1
OFFICER ANIMAL SERVICES	18
OFFICER ANIMAL SERVICES SR	1
SECRETARY B	1
SUPER ADMINISTRATIVE ASST	1
SUPER FIELD ASST	1
SUPER SHELTER	1
TECH ANIMAL CARE	12
TECH ANIMAL CARE SR	1
VETERINARIAN ANIMAL SHELTER	<u>1</u>
Total Animal Shelter	45

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	TOTAL
Intake	1270	1033	1358	1239	1365	1650	1397	1560	1271	1209	749		14101
Euthanasia	1000	756	1167	699	933	1362	985	1244	850	765	567		10328
Positive Outcomes	240	265	298	357	289	276	307	285	394	295	162		3168

Adoption	130	183	169	107	145	149	163	187	247	207	91		1778
RTO	82	57	79	73	51	64	72	77	96	53	34		738
Transfer	28	25	50	177	93	63	72	21	51	35	37		652



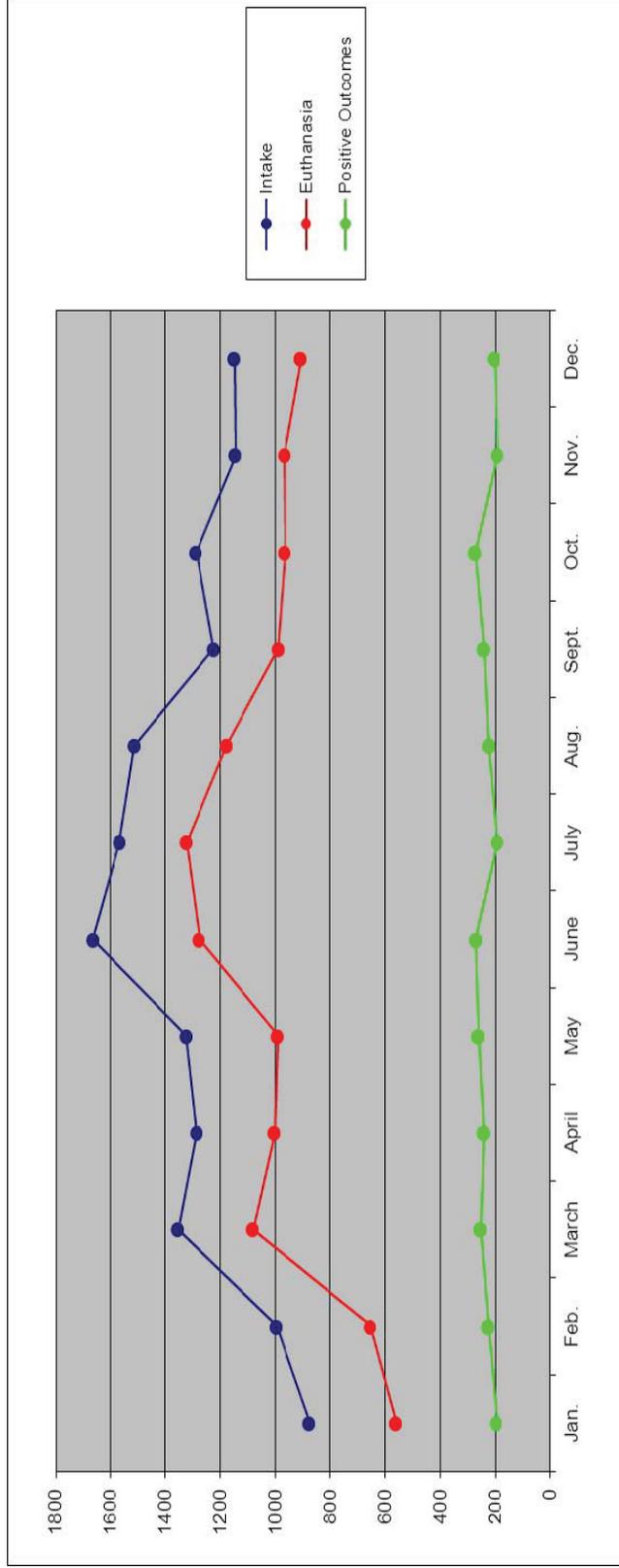
Positive Outcomes: Adoptions, RTO (return to owners) and Transfers

MEMPHIS ANIMAL SERVICES - KENNEL STATISTICS (2010)

2010

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	TOTAL
Intake	877	996	1355	1288	1326	1664	1568	1515	1225	1289	1147	1151	15401
Euthanasia	562	654	1082	1005	992	1277	1323	1180	990	966	968	907	11906
Positive Outcomes	195	226	254	241	262	270	194	224	241	272	193	204	2776

Adoption	133	165	142	109	114	156	121	136	154	156	116	114	1616
RTO	50	55	95	96	92	76	69	80	76	94	70	64	917
Transfer	12	6	17	36	56	38	4	8	11	22	7	26	243



MEMPHIS ANIMAL SERVICES - KENNEL STATISTICS (2009)

2009

	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	TOTAL
Intake	1159	1173	1254	1218	1524	1680	1822	1716	1554	1355	857	944	16256
Euthanasia	1005	874	932	997	1225	1457	1476	1369	1398	1107	646	769	13255
Positive Outcomes	222	279	222	226	215	201	201	212	242	219	164	211	2614

Adoption	135	151	147	129	122	107	129	120	124	131	86	125	1506
RTO	82	127	74	90	86	88	68	87	109	67	56	80	1014
Transfer	5	1	1	7	7	6	4	5	9	21	22	6	94

