



CITY OF MEMPHIS

REQUEST FOR PROPOSAL

#39175

City of Memphis Parks and Neighborhoods

Parks and Neighborhoods Master Plan

Date Issued: December 3, 2018

Proposal Submission Deadline: January 9, 2019

CONTENTS

1. OVERVIEW	4
1.1 GENERAL CONDITIONS	4
1.2 OBJECTIVE.....	5
2. SCOPE OF SERVICES	6
2.1 SCOPE OF WORK	6
2.2 DURATION	9
3. PROPOSAL RESPONSE.....	10
3.1 COVER LETTER	10
3.2 EXECUTIVE SUMMARY	11
3.3 PROJECT METHODOLOGY	11
3.4 RELEVANT EXPERIENCE	12
3.5 PRICING	12
3.6 QUALIFICATIONS OF PERSONNEL.....	12
3.7 INVOLVEMENT IN LEGAL ACTIONS.....	13
3.8 NON-COLLUSION AFFIDAVIT	13
3.9 QUALIFICATION STATEMENT	13
3.10 PROPOSAL SUBMITTAL CHECKLIST	13
4. INSTRUCTIONS ON RFP PROCESS	14
4.1 USE OF INFORMATION	14
4.2 PRINCIPAL CONTACT AND INFORMATION REQUESTS	14
4.3 SCHEDULE OF ACTIVITIES	14
4.4 PRE-SUBMITTAL CONFERENCE.....	15
4.5 INITIAL QUESTIONS SUBMISSION, FINAL QUESTIONS SUBMISSION	15
4.6 PROPOSAL SUBMISSIONS.....	15
4.7 FINALIST SELECTIONS (OPTIONAL)	18
4.8 RECIPIENT PRESENTATIONS (OPTIONAL)	18

4.9	CONTRACT AWARD	18
4.10	PROTESTS	19
4.11	MODIFICATION OR TERMINATION OF RFP PROCESS	19
4.12	SUPPLEMENTAL INFORMATION.....	19
4.13	NO REPRESENTATIONS OR WARRANTIES	19
4.14	PROPOSAL PREPARATION COSTS	20
5.	EVALUATION MODEL	21
5.1	QUALIFYING PROPOSALS	21
5.2	EVALUATION OF QUALIFYING PROPOSALS	21
6.	RFP TERMS AND CONDITIONS	22
	EXHIBITS.....	25
	EXHIBIT 1 – PROPOSER QUESTIONS TEMPLATE	25
	EXHIBIT 2 – NON-COLLUSION AFFIDAVIT	27
	EXHIBIT 3 – QUALIFICATIONS FORM	30
	EXHIBIT 4 – PROPOSAL SUBMITTAL CHECKLIST	33
	EXHIBIT 5 – CITY OF MEMPHIS SERVICE AGREEMENT SAMPLE CONTRACT	34

1. OVERVIEW

1.1 GENERAL CONDITIONS

The City of Memphis is seeking proposals from qualified consulting firms to provide professional services to develop a Parks & Recreation System Master Plan (Master Plan) for 2020-2030.

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

Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFP shall be made **in writing and be in the hands of the Purchasing Agent by the close of the business day on December 14, 2018**. Questions must be submitted by email to Eric.Mayse@memphistn.gov. Subject line must read "Questions – Parks Master Plan Proposal." The City of Memphis is not responsible for oral interpretations given by any City employee, representative, or others. The issuance of written addenda is the only official method whereby interpretation, clarification, or additional information can be given. Any questions or concerns not submitted by the stated time and date will be deemed waived.

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

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

1.2 OBJECTIVE

The Master Plan should create a blueprint for providing quality parks and recreation facilities and services throughout the City of Memphis for the next ten years. The City is seeking a comprehensive strategy for evaluating parks, recreation, green spaces, trails, facilities and programs. The goals are to establish benchmarks, goals, procedures, and achievable strategies and implementation approaches over a ten-year term. This should serve as version 1.0 for an ongoing process and facility improvement to continually meet the needs of our citizens and partners.

The City of Memphis Division of Parks & Neighborhoods provides the community with a wide array of activities and events that encourages and promotes positive and healthy lifestyles for all ages and abilities. Recreation services includes aquatics, athletic/fitness, youth, and general recreation programs offered through 24 community centers, 5 senior centers, 1 specialty center, 13 outdoor pools, 4 indoor pools, 8 golf courses, 1 collegiate football stadium, and a system of 162 greenspaces with multiple sports fields. The Division also provides oversight to several city-owned cultural facilities, but those are not included in the scope of this Master Plan.

The last comprehensive Master Plan for the Division of Parks and Neighborhoods was undertaken in 1999. At the time, master plans were not understood to be an iterative process and, although many of the ideas and plans in that document were followed, the goal for the 2019 Parks Master Plan will be to serve as a foundational document to build upon in future versions.

2. SCOPE OF SERVICES

2.1 SCOPE OF WORK

The selected Consultant will provide the following services in fulfilling the needs of Parks and Neighborhoods in the creation of a Master Plan:

2.1.1 INVENTORY & CONDITION REPORT

Update the comprehensive inventory of the City's existing parks and recreation facilities that will include the following:

- Park / Facility classification and purpose
- Location
- Acreage or square footage
- Inventory of facilities and amenities
- General assessment of physical conditions and functionality
- Programming offered at each location
- Utilization of facilities and parks

2.1.2 NEEDS ASSESSMENT

Produce a needs assessment that examines current needs in City-owned parks and recreation facilities and future need for upgrades, changes, and increases or decreases in the system. This should include, but is not limited to, recommendations for system-wide improvements, including acquiring/developing/improving parks sites, eliminating redundancies, adopting new policies, and partnership opportunities to support community needs and interests. The analysis will come primarily from existing data including:

- The inventory and conditions report (see above)
- Projections of population growth, demographic characteristics
- Recreation participation trends
- National level of service (LOS) standards
- Geographic distribution within the City's boundaries
- Identified unmet needs of residents
- Identification of areas of significant recreational opportunities (not existing)

2.1.3 PLANNING CONTEXT

Review and assessment of past and related planning efforts for relevance and alignment (but not limited to):

- Memphis 3.0 Comprehensive Plan

- Midsouth Regional Greenprint (2015)
- Park Services Master Plan (1999)
- Tennessee 2020 (2010)
- Wolf River Greenway Master Plan 2007 (Amended Version)
- Memphis Riverfront Concept (2018)
- Overton Park Conservancy Master Plan (initiated summer 2018)
- Downtown Commission Master Plan (initiated summer 2018)

2.1.4 COMMUNITY ENGAGEMENT

Engage users of community and neighborhood parks, community centers, senior centers, athletic facilities, and pools to determine:

- Existing park and facility usage
- Level of neighborhood engagement and activation of existing and potential park resources
- Desired improvements and expansion of programming, facilities, and amenities
- Undesired changes to facilities, programming, etc.
- Appetite for cost recovery models associated with new and different programming

The Consultant will take the lead on public involvement throughout the planning process. The City requests that one of the public involvement elements is a Parks Master Plan Community Panel whose members represent a diverse range of park interests. Realizing potential Consultants may not be local and travel costs may increase price beyond the allocated budget, the Consultant is not expected to attend all Community Panel meetings but the City will work with the Consultant to have plan elements ready to present at meetings. The Consultant should include in the proposal an outline of their public involvement strategy:

- Describe methods and timeline for engagement to be utilized, including but not limited to digital, in-person, interactive, ideation sessions, etc. Include involvement requested from City of Memphis staff if any.
- Explain how engagement results will be outlined within a user-friendly document.
- Describe your process for evaluating successful engagement, including expected number of impressions/interactions.

2.1.5 REVENUE AND SUSTAINABILITY

Evaluate the revenue generation and expenditure model of Parks & Neighborhoods and compare the City of Memphis model against best practices nationwide.

- Propose strategies for sustainable funding, using socioeconomics and population density as correlators
- Case studies of innovative and sustainable funding models for parks and recreational services and potential applicability to the Memphis market.

2.1.6 ECONOMIC IMPACT

Develop economic impact study, to include:

- Current impact on local economy of park actions and spending
- Comparison of local spending to similar U.S. communities and neighboring municipalities
- Environmental and health impacts of Memphis parks and greenspaces

2.1.7 OPERATIONS

Evaluate operational structure and requirements for the delivery of services, including potential efficiencies and operational improvement priorities for future service delivery.

- Assessment of the Parks & Neighborhoods Division organizational structure, staffing and funding levels in relation to national averages and comparative to peer cities and neighboring municipalities.
- Staffing analysis needed for current level of service, an adequate level of service and a desirable level of service. The analysis will also include funding and staffing requirements for future growth and operation in line with the priority recommendations. The Consultant will also provide suggested funding strategies.
- Peer cities comparison to align Memphis' future structure and models to best practices in cities/park districts. Peer cities should share comparable demographics, population density, per capita income, etc. with Memphis, not just population size.

2.1.8 TEN-YEAR ACTIONABLE MASTER PLAN

The Master Plan must include a clear vision and road map for the parks and recreation future of the City of Memphis, with measurable goals and policy statements.

Based on the research, needs assessment, and community engagement, the Master Plan deliverables shall include an actionable ten-year plan that includes strategies for funding, operations, staffing, maintenance, capital investment, and programming. The actionable plan shall include a timeline of actions, priorities, staffing resources, and an analysis of financial sustainability (budget, funding mechanisms) for various facets of the parks and recreation system.

As a part of implementation, the plan should articulate decision points based off measurable progress within the ten-year period. A successful deliverable would embrace the iterative approach, and recommend different paths forward based on contingencies built into the recommendations. For example, if new funding is a part of a recommendation, but is not in-hand at the proposed point in time, what are other decisions the Division could make to achieve its goals?

The Master Plan should be in a reader-friendly document with an emphasis on maps, charts, photos, graphics and tables to convey information rather than using lengthy text. An Executive

Summary should be provided. It should be formatted in such a way that it is easy to update on a routine basis. Provide a complete color version of the final Master Plan and one hundred and fifty (150) color printed and bound color copies along with 10 (10) flash drives with the final Master Plan and all project files, to include editable GIS files of all maps, shapefiles, and geodatabases compiled for this project.

2.2 DURATION

The length of the engagement is expected to be no more than 12 months, beginning January 1, 2019 and ending either December 31, 2019 or once the Master Plan document has been approved by the City of Memphis.

3. PROPOSAL RESPONSE

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

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

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

Sections and Topics
Section 1 – Cover Letter
Section 2 – Executive Summary
Section 3 – Project Methodology & Proposed Timeline
Section 4 – Relevant Experience
Section 5 – Pricing
Section 6 – Qualifications of Personnel
Section 7 – Involvement in Legal Actions
Section 8 – Non-collusion Affidavit
Section 9 – Qualifications Statement
Section 10 – Proposal Submittal Checklist

3.1 COVER LETTER

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

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

3.2 EXECUTIVE SUMMARY

Section 2 of the Proposal shall include an Executive Summary providing a brief overview of Proposer's products and services as specified in the Scope of Work (Section 2.1). The Executive Summary (limit of 3 pages) should include:

- 3.2.1 Background information about Proposer including its legal name, headquarter address, principal place of business, additional facilities and locations, its legal form (corporation, partnership, etc.), the names of its principals/partners, number of employees (categorized by full-time, part-time, temporary), and the number of years the Proposer has been providing the services specified in this RFP
- 3.2.2 Statements explaining Proposer's understanding of the City's intent and objectives specified in this RFP and Proposer's approach/plan to achieving those objectives
- 3.2.3 A description of Proposer's knowledge and relevant experience in providing similar services to other municipal, local government, and public-sector clients. Please provide specific examples of park and recreation system master planning projects and detail the role that the Proposer held in such examples.
- 3.2.4 A summary of the qualifications, experience, and background of the project team and its committed key personnel, specifically detailing relevant experience in park and recreation systems master planning

3.3 PROJECT METHODOLOGY

In Section 3 of the Proposal, Proposer should provide a detailed description of the services to be provided as set forth in this RFP. The description should include, but not be limited to, the discussion of the following:

- 3.3.1 An introduction with an overview of Proposer's understanding of the scope of work and services to be provided.
- 3.3.2 The proposed services and the methodology / approach that will be used to accomplish the tasks identified in the Scope of Work section. Proposer should discuss their facility analysis methodology and how their team will analyze, develop, validate and score each facility, park, program, etc. Proposer should also include plans for innovative community engagement across race, ethnicity, gender, sexuality, and age as part of 2.1.2 and 2.1.4. The project management plan should include the delineation of roles and responsibilities, a detail of team assignments, and project delivery approach.
- 3.3.3 A statement regarding how the Proposer is prepared to respond promptly to unexpected issues, potential problems, or any changes in the scope of work.
- 3.3.4 Any requirement or need for City-furnished personnel, materials, equipment, or facilities for each proposed evaluation or engagement should be detailed in this section.

3.4 RELEVANT EXPERIENCE

In Section 4 of the Proposal, Proposer should provide a concise description of backgrounds and experience as it relates to the scope of work outlined herein. The description should include, but not be limited to, the following:

- 3.4.1 Experience in the areas of facilities, programming, and performance assessment.
- 3.4.2 Experience record in providing successful comparable services (specifically Parks and Recreations systems) to municipalities, local government, public sector, and other organizations similar in size and demographics to the City of Memphis. Proposer should include the name of organization, type of contract, contract date (year).
- 3.4.3 Provide five (5) references (not including the City of Memphis) of similar master planning projects that Proposer has developed and delivered in the past five years (preferably for Parks and Neighborhoods). For each reference, include name, address, and contact individual at organization/municipality, number of years/contracts the proposer provided the organization, and summary of services provided.

3.5 PRICING

Section 5 of the Proposal shall include Proposer's pricing which will be evaluated separately; therefore, the cost proposal must be submitted sealed and under separate cover.

Proposer's cost proposal must include the overall total project cost. The total cost should include the Proposer's professional fees for each component of the project and the Proposer's estimated related expenses. The detailed pricing should include:

- Itemized costs at each phase of the project (i.e. professional fees and related expenses)
- Miscellaneous project costs (i.e. websites for community engagement, equipment needed for site evaluations, community engagements, etc.)
- Proposers' personnel costs for travel, lodging, food (see City Travel Policy)
- Any additional charges associated with the design, preparation, or publication of the final Master Plan

3.6 QUALIFICATIONS OF PERSONNEL

In Section 6 of the Proposal, Proposer should describe the qualifications and skills of their company/organization to provide the services as set forth in this RFP. The description should include, but not be limited to, the following:

- 3.6.1 Names, qualifications, credentials, and resumes of specific team members who will be committed to the essential work on this project and the delineation of their roles and accountability for the completion of work at each component of this project. The description should also include the team members' direct experience and specific roles on similar projects within the last five years (specifically in park and recreation system master planning).

- 3.6.2 Proposer shall include an organizational chart outlining the reporting structure for the team members specifically assigned to this project. If different principals and pertinent staff will be assigned to different sections of the plan, Proposer should reflect this in separate organizational charts.
- 3.6.3 Name the principals and pertinent staff members who are state licensed as architects or landscape architects or AICP certified planners. Identify the role of the planner(s) and architect(s) and whether he/she will act as the overseer of the project (i.e. give directives, make final decisions, accept responsibility for the project, etc.). State whether the principals and pertinent staff will be directly involved in the actual performance of the contract. Provide information regarding the experience of the lead personnel in park and recreation system master planning.
- 3.6.4 If Proposer intends to subcontract any part of the work under this contract, indicate the services to be subcontracted and the subcontractor (s) to provide the services.

3.7 INVOLVEMENT IN LEGAL ACTIONS

In Section 7 of the Proposal, Proposer shall identify any pending and past litigation, challenges, or legal actions related to consulting services provided by or tests developed by Proposer's company within the past ten (10) years. This includes any litigation against a client based on services provided by Proposer. Proposer shall state the project giving rise to the litigation and explain the issues and outcome.

Proposer shall include a statement of its financial condition demonstrating whether it is fiscally able to provide the services requested in this RFP. Any litigation pertaining to or filing of bankruptcy, reorganization, debarment, and/or insolvency shall be identified and explained in Proposer's proposal.

3.8 NON-COLLUSION AFFIDAVIT

Please use the form in Exhibit 2

3.9 QUALIFICATION STATEMENT

Please use the form in Exhibit 3

3.10 PROPOSAL SUBMITTAL CHECKLIST

Please use the form in Exhibit 4

4. INSTRUCTIONS ON RFP PROCESS

4.1 USE OF INFORMATION

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

4.2 PRINCIPAL CONTACT AND INFORMATION REQUESTS

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

eric.mayse@memphistn.gov

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

4.3 SCHEDULE OF ACTIVITIES

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

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

Activity	Date
Publish RFP	December 3, 2018
Proposer Questions Deadline	December 14, 2018

City Response to Questions	December 21, 2018
Proposal Submission Deadline	January 9, 2019
Finalist Selections – Optional	January 25, 2019
Finalist Presentations – Optional (City’s Discretion)	February 1, 2019
Negotiations	March 1, 2019
Agreement Finalization	March 15, 2019

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

4.4 PRE-SUBMITTAL CONFERENCE

No Pre-Submittal Conference is scheduled for this RFP.

4.5 INITIAL QUESTIONS SUBMISSION, FINAL QUESTIONS SUBMISSION

Proposer may submit an initial set of questions based on its review of this RFP, by completing the template provided at Exhibit 1 (Proposer Questions Template) and sending it via email by December 14, 2018 by 5:00 pm CDT. Questions received after 5:00 will not be answered. This email should be sent to the individual(s) described in Section 4.2, with the subject heading: “[Your company’s name] – Parks Master Plan RFP Questions.” The City will post the responses to the questions on the City’s web site on or before December 21, 2018 by 5:00 pm CDT. To ensure the fair and consistent distribution of information, no individual answers will be given. The only official answer or position of the City will be the one posted via the City’s website. Any questions or concerns not submitted by the stated time and date will be deemed waived.

4.6 PROPOSAL SUBMISSIONS

PROPOSAL SUBMISSION AND DUE DATE

Proposer shall submit, in a sealed packet, one (1) original (clearly marked on the outside of the binder as “ORIGINAL”) and four (4) complete printed copies of its Proposal (including the signed Cover Letters) on or before **January 9, 2019 at 12:00 pm CDT**, to the addressee provided below:

**City of Memphis Purchasing Department
125 N. Main Street, Room 354
Memphis, TN 38103**

The label should identify the contents as:

**Your company name & address.
Parks Master Plan, RFP #39175.**

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

Proposals may not be amended after the submission deadline.

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

PROPOSAL FORMAT

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

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

PROPOSAL EXPIRATION DATE

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

PROPOSER DATA

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

Deadline Extension

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

Ambiguity, Conflict, or other Errors in the RFP

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

Proposer is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the proposal or any ambiguity, conflict, discrepancy, etc. shall be waived.

Failed Competition

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

Withdrawing or Amending a Proposal

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

Acceptance/Rejection of Proposals

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

Informalities/Minor Irregularities

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

Proposer indebted to the City

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

Tax Payments

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

4.7 FINALIST SELECTIONS (OPTIONAL)

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

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

4.8 RECIPIENT PRESENTATIONS (OPTIONAL)

Details pertaining to the oral presentation phase of the RFP process will be confirmed after Proposal submission, however the presentations are tentatively scheduled to begin on February 1, 2019.

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

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

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

4.9 CONTRACT AWARD

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

4.10 PROTESTS

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the award announcement at the following address:

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

4.11 MODIFICATION OR TERMINATION OF RFP PROCESS

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

4.12 SUPPLEMENTAL INFORMATION

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

4.13 NO REPRESENTATIONS OR WARRANTIES

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

4.14 PROPOSAL PREPARATION COSTS

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

5. EVALUATION MODEL

5.1 QUALIFYING PROPOSALS

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

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

5.2 EVALUATION OF QUALIFYING PROPOSALS

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

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

- a. Project approach -- scope, quality and creativity of services proposed (25%)
- b. Proposer Qualifications and Project Personnel Experience (25%)
- c. Parks & Recreation System Master Planning Experience of the Lead Project Personnel (25%)
- d. Plans for participation of minority and women business enterprises (10%)
- e. Project fee structure and cost estimate (15%)

6. RFP TERMS AND CONDITIONS

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

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

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

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

Any protest of award must be filed in 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 proposer shall be deemed to have understood fully the contents and meaning of the RFP.

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

Any contract resulting from the proposals received in response to this solicitation shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement

shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee without regard to conflicts of laws principles.

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

JIM STRICKLAND, MAYOR

Eric Mayse, City Purchasing Agent

Published in The Daily News on December 4 & 5, 2018 2 Copies

INSTRUCTIONS TO PROPOSERS

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

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

Issuance of this RFP does not obligate the City to contract, in whole or in part, for services specified herein. The City of Memphis reserves the right to cancel this solicitation, in whole or in part, or to reject, in whole or in part, any and all proposals. 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: Eric Mayse via e-mail at Eric.Mayse@memphistn.gov. Subject line must read "Questions – Parks Master Plan."

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

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

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

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

EXHIBIT 2 – NON-COLLUSION AFFIDAVIT

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

Submitted By:

Firm Name _____

Authorized Signature _____

Date _____

SIGNATURES

If PROPOSER is:

A. An Individual

By _____

(SEAL)

(Individual's Name)

Doing business as

Business Address:

Phone Number: _____

B. A Partnership

By _____

(SEAL)

(Firm Name)

(General Partner)

Business Address:

Phone Number: _____

C. A Corporation

By _____

(SEAL)

(Corporation Name)

(State of Incorporation)

By _____

(Name of Person Authorized to Sign)

Title _____

Attest _____

(Secretary)

Business Address:

Phone Number: _____

D. A Joint Venture

By _____
(Name)

Business Address:

By _____
(Name)

Business Address:

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

EXHIBIT 3 – QUALIFICATIONS FORM

This statement will provide information which will enable the City to evaluate the qualifications of Proposer and project personnel regarding the requirements of this Request for Proposal.

Complete this form in its entirety and submit it (in the number of copies requested) along with the other required proposal documents. If a request in the Qualification Statement is contained in the proposal, indicate the section in the proposal where that information can be found.

(PRINT)

FIRM NAME: _____

ADDRESS: _____

CITY STATE ZIP: _____

AUTHORIZED REPRESENTATIVE: _____

TITLE: _____

AUTHORIZED SIGNATURE: _____

PHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

1. TYPE OF BUSINESS 2. TYPE OF LICENSE & LOCATION

___ CORPORATION ___ INDIVIDUAL _____

___ PARTNERSHIP ___ JOINT VENTURE _____

OTHER: _____

3. TYPE OF SERVICE TO BE PROVIDED FOR RFP: _____

4. NUMBER OF YEARS IN BUSINESS: _____

5. ON A SEPARATE SHEET PROVIDE A BRIEF HISTORY OF PROPOSER'S COMPANY, STAFF SIZE

AND EXPERIENCE. SUBMIT A RESUME FOR THE PROJECT MANAGER AND EACH

KEY PERSONNEL TO BE ASSIGNED TO THIS PROJECT.

6. WHAT OTHER NAME(S) HAS YOUR COMPANY OPERATED UNDER: _____

QUALIFICATION STATEMENT – PAGE 2

7. HAS PROPOSER OR ITS COMPANY EVER FAILED TO COMPLETE ANY WORK AWARDED TO

IT? _____ YES _____ NO IF "YES", EXPLAIN: _____

8. HAS ANY PRINCIPAL OR PARTNER OF PROPOSER'S COMPANY EVER BEEN A PRINCIPAL

OR PARTNER OF ANOTHER ORGANIZATION THAT FAILED TO COMPLETE A CONTRACT

WITHIN THE LAST TEN (10) YEARS? _____ YES _____ NO

IF "YES", EXPLAIN: _____

9. HAS PROPOSER'S COMPANY OR ANY PARTNERS OR PRINCIPALS EVER BEEN INVOLVED IN

BANKRUPTCY ACTION? _____ YES _____ NO IF "YES", EXPLAIN: _____

10. IS PROPOSER, ITS COMPANY, ANY PARTNERS, OR PRINCIPALS PRESENTLY INVOLVED IN

ANY LITIGATION WITH ANY ORGANIZATION OR GOVERNMENT AGENCY?

_____ YES _____ NO IF "YES", EXPLAIN THE LITIGATION AND STATE THE

CURRENT STATUS / OUTCOME: _____

11. BANK REFERENCE: _____

ADDRESS: _____

CONTACT NAME: _____ PHONE: _____ 33

QUALIFICATION STATEMENT – PAGE 3

12. LIST THREE (3) SIMILAR PROJECTS FROM LAST FIVE (5) YEARS – INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT), CONTACT NAME, ADDRESS, TELEPHONE NUMBER(S), E-MAIL ADDRESS.

NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.

13. LIST CURRENT SIMILAR PROJECTS UNDER CONTRACT – INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT), CONTACT NAME, ADDRESS, TELEPHONE NUMBER(S), E-MAIL ADDRESS.

NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.

14. LIST ANY SUB-CONTRACTORS TO BE USED FOR THIS PROJECT:

INCLUDE NAME, ADDRESS, TELEPHONE NUMBER, TYPE OF WORK

IF ADDITIONAL INFORMATION IS PROVIDED ON A SEPARATE SHEET FOR ANY OF THE ITEMS, CLEARLY SPECIFY WHERE IT CAN BE LOCATED IN PROPOSER'S PROPOSAL.

EXHIBIT 4 – PROPOSAL SUBMITTAL CHECKLIST

Submittals: The following submittals must be completed and submitted with each proposal.

Item #	Check (√)	Proposal Submittal Checklist
1.		Cover Letter
2.		Executive Summary
3.		Project Methodology
4.		Relevant Experience
5.		Qualifications of Personnel
6.		Project Management Plan / Time Schedule
7.		Involvement in Legal Actions
8.		Pricing/ Cost Proposal (Sealed and under separate cover)
9.		Non-Collusion Affidavit
10.		Qualification Statement

STANDARD SERVICE AGREEMENT

CMEM STANDARD SERVICE AGREEMENT (HEADER)

This Agreement is made and entered into this _____, by and between [@ CONTRACTOR NAME @], hereinafter called the "Contractor" and the City of Memphis, a municipal corporation of the State of Tennessee, hereinafter called the "City":

WITNESSETH

WHEREAS, the City, by and through its [@ DIVISION NAME @], has the need for [@ SERVICES TO BE PROVIDED @]; and **WHEREAS**, the Contractor has the knowledge and expertise to provide such services; and **WHEREAS**, the parties desire to enter into an agreement setting forth the terms and conditions under which the Contractor shall provide said services. **NOW THEREFORE**, for and in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties desire to enter into Agreement and hereby agree as follows:

CMEM STANDARD SERVICE AGREEMENT (SCOPE OF SERVICES)

SCOPE OF SERVICES. The 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 Contractor and then by the authorized representatives of the City in accordance with applicable ordinances, laws and regulations.

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

The City shall have the option to extend the Initial Term for [@ OPTION YEARS @] 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."

CMEM SERVICE AGREEMENT (PAYMENT TERMS AND CONDITIONS)

INVOICES. The Contractor shall submit original invoices, or copies of original invoices certified as such by the Contractor, on the Contractor'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 Contractor. Invoices shall be submitted to: [@ DIVISION NAME @], [@ INVOICE ADDRESS @]; Memphis, Tennessee [@ ZIP CODE - INVOICE @]; Attn: [@ CITY CONTACT/REPRESENTATIVE @]

COMPENSATION. Unless the City has good faith and reasonable objections to the Contractor's invoice(s), the City shall compensate the Contractor, based on invoices submitted by the Contractor, the sum total not to exceed \$[@ CONTRACT AMOUNT @] (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 Contractor's invoice within thirty (30) days after receipt of accurate invoice and approval by the City. The City is not obligated to pay, and may withhold from payment, any amounts the City has in dispute with the Contractor based on the Contractor'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 Contractor. Contractor shall be solely responsible and liable for any taxes and business license fees assessed or imposed by any government having jurisdiction over the 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 Contractor 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 Contractor, without delay or additional cost to the City.

If the Contractor 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 Contractor shall promptly refund the disallowed amount to the City upon the City's request. At its option, the City may offset the amount disallowed from any payment due to the Contractor under this Agreement or any other agreement.

FINAL CONTRACT INVOICE. The Contractor 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 Contractor further acknowledges and agrees the City will not be responsible for any Contractor invoices, pertaining to this Agreement, submitted to the City after the final contract invoice. The Contractor 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.

CMEM SERVICE AGREEMENT (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 Contractor/successful bidder shall assume all liability and responsibility for delivery of such goods in good condition to the City.

PATENT INDEMNIFICATION. The Contractor warrants that any goods/services furnished hereunder do not infringe or violate any patent, trademark, copyright, trade secret, or any other proprietary right of any third party; that it shall defend all suits that may arise with respect thereto; and that it shall indemnify, defend, save and hold harmless the City, its officials, employees, agents, successors and assigns, from and against all liabilities, suits, claims, damages, costs or expenses, including without limitation attorney and expert witness fees, for or by reason of any actual or alleged claim the goods/services purchased by City hereunder infringe any patent, copyright, or is a violation of trade secret disclosure laws, whether by reason of the Contractor'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 Contractor shall be responsible for freight, transportation costs, and all incidental charges, unless delivery terms are specified otherwise in the bid and agreed to by the City. In the event shipping other than FOB destination is allowed by the City, The City agrees to reimburse the Contractor for transportation costs in the amount specified in the Contractor's bid, or actual costs, whichever is lower, provided the City shall have the right to designate what method of transportation shall be used to ship the goods.

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 Contractor shall not ship excess quantities without the City's prior written approval.

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

In addition, Contractor shall submit and, as necessary, update subcontractor information (including but not limited to payments thereto), for **any and all subcontractors** used on City project(s), 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 Contractor shall be performed in compliance with the specified requirements, in a manner satisfactory to the City, and in accordance with the generally accepted business practices and procedures of the City and pursuant to the governing rules, practices and regulations of the industry, 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, in accordance with applicable laws and regulations.

CONFIDENTIALITY. While performing work under this Agreement, the Contractor 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 Contractor, which is communicated to, learned, developed or otherwise acquired by the Contractor in the performance of the Services for the City; (iii) the terms, conditions and pricing contained herein; and (iv) any other information that the Contractor 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 Contractor'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 Contractor from a third party who is under no obligation of confidentiality to the City with respect to such information. The Contractor 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 Contractor 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 Contractor acknowledges and agrees that a breach of this section by the Contractor will cause the City irreparable injury and damage; therefore, the Contractor 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 Contractor 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 Contractor shall not make any announcement, release any information, or

authorize or participate in any interview concerning this Agreement and the goods and/or services required herein, without obtaining prior written consent from the City. The Contractor shall require its employees, agents, and subcontractors to comply with the requirements of this provision. This provision shall survive the expiration or termination of this Agreement.

RIGHTS IN DATA. The Contractor 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 Contractor or any other party without the express prior written consent of the City. In implementing the foregoing, the Contractor 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 Contractor to the City upon the Contractor's delivery of such documents and/or information to the City or upon completion of the Project, whichever occurs first. The Contractor shall not construe such transfer as a grant for usage nor can the Contractor revoke it.

EMPLOYMENT OF CITY WORKERS. The Contractor 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 Contractor 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 Contractor. Contractor will make its personnel aware of and cause them to comply with the City's policies that have been made known to Contractor while performing pursuant to this Agreement. The Contractor 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 Contractor 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 Contractor shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training. Contractor is responsible for the acts or omissions of its personnel under or relating to this Agreement.

The Contractor 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 Contractor. In addition, the Contractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.

INDEPENDENT CONTRACTORS. Nothing in this Agreement shall be deemed or construed to represent that the Contractor, or any of the Contractor's employees or agents, are the agents, representatives, or

employees of the City. The Contractor acknowledges that it is an independent contractor 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 Contractor as to the details of the performance of its obligations hereunder or to exercise a measure of control over the Contractor is solely for purposes of compliance with local, state and federal regulations and means the Contractor will follow the desires of the City only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by the Contractor 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 Contractor 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:

the Contractor 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 the Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without the City's consent or approval; or the Contractor 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 Contractor's assets.

2. The City may cancel/terminate this Agreement, in whole or in part, upon providing written notice to the Contractor of the City's intention to terminate the Agreement as a result of Contractor's failure to provide the goods and/or services specified under this Agreement or in violation(s) of any of the terms herein, and the Contractor 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 Contractor at its expense or hold the same for such disposal as Contractor shall indicate. In the event of any such rejection/termination, the City shall, at the City's option, have the right to obtain like goods and/or services elsewhere or to take over the work and prosecute the same to completion, both at the Contractor's expense; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, etc. as may be on the site of the work and necessary therefore. The Contractor shall be liable to the City for any loss, damage, or additional cost incurred thereby, including but not limited to any difference between the cost for procuring such like services and the price specified herein, attorneys' fees and court costs.

3. Notwithstanding the foregoing or any section herein to the contrary, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor, for the purpose of setoff, until such time as the exact amount of damages due the City from the Contractor 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 Contractor. In the event a purported termination for cause by the City is in error, then such termination may, at the City's sole discretion, be deemed to be a termination for

convenience under this section. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation, as determined by the City, for any satisfactory authorized work performed in accordance with the Agreement up to the termination date; but in no event shall the City be liable to the Contractor for expenses incurred after the termination date. All goods accepted by City or services completed by the Contractor prior to the Termination Date shall be documented and all tangible work documents shall be transferred to the City prior to payment for services rendered, and shall become the sole property of the City. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall not be compensated for any anticipatory profits, or other damages of any description, that have not been earned as of the date of termination.

5. The Contractor shall deliver to the City all hard copy and electronic files maintained on behalf of the City within thirty (30) calendar days of termination of this Agreement. Upon reasonable request, the City reserves the right to obtain such information prior to the termination of this Agreement.

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

In the event the Contractor is allowed to sublet any part of the Agreement, the Contractor 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 Contractor. The Contractor 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 Contractor covenants that it has no public or private interest, and shall not acquire, any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and the Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer, official, agent or employee of the City, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Contractor 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 Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor's employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex,

national origin, or any other classification protected by Federal, State or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. In the event the Contractor 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 Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. The Contractor'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 Contractor hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. Contractor shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event the Contractor fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this agreement may be canceled, terminated or suspended in whole or in part by the City, and the Contractor may be prohibited from contracting to supply goods and/or services to the City for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with the City.

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 Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed up to the termination date. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall have no right to any actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount that

have not been earned as of the date of termination.

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

PUBLIC RECORDS. Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by the Contractor, the Contractor understands and acknowledges that the City is a governmental entity subject to the State of Tennessee Public Records Act, and any reports, data or other information supplied to the City regarding 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 Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

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

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

WARRANTY. The Contractor 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 Contractor 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 Contractor shall retain such records, and shall make same available to the City, upon reasonable request, during the term of this Agreement, and for a minimum period of 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 Contractor shall permit the City, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter the Contractor's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by the Contractor. 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 Contractor 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 - NOTICES @]

Memphis, TN [@ ZIP CODE - NOTICES @]

Attn: [@ CITY CONTACT/REPRESENTATIVE @]

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

With copy, if requested,

to:

City Attorney

125 N. Main, Room 336

Memphis, TN 38103

To the CONTRACTOR:
[@ CONTRACTOR NAME @]
[@ CONTRACTOR ADDRESS @]
[@ CONTRACTOR CITY @], [@ CONTRACTOR STATE @] [@ CONTRACTOR ZIP CODE @]
Attn: [@ CONTRACTOR REPRESENTATIVE @]
Fax: [@ FAX NUMBER - CONTRACTOR REPRESENTATIVE @]

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

SERVICE MARKS. The Contractor 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 Contractor providing services herein or for injury to any employee, agent or subcontractor of the Contractor performing under this Agreement.

INDEMNIFICATION. CONTRACTOR 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 Contractor, its employees, subcontractors, or agents or the breach of this Agreement by Contractor, its employees, subcontractors or agents. This obligation shall survive the expiration or termination of this Agreement.

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

employees, agents, assigns, and instrumentalities as herein required.

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

The Contractor 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 Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

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 Contractor 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 Contractor shall require all subcontractors to carry insurance as outlined below, in case the subcontractor(s) are not protected by the policies carried by the Contractor. Prior to commencing any work under this contract, the Contractor 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 Contractor'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 Contractor 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 Contractor. Contractor'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 Contractor's insurance and shall not contribute with it.

C. The Contractor shall maintain, at its expense, at minimum, the following insurance coverage during the life of the Agreement:

1. WORKERS COMPENSATION in accordance with the statutory requirements and limits of the State of Tennessee Employer's Liability \$100,000 Each Accident \$500,000 Disease - Policy Limit \$100,000 Disease - Each Employee The workers compensation policy shall include a waiver of subrogation in favor of the City, its officials, employees and agents.
2. AUTOMOBILE LIABILITY covering owned, non-owned and hired vehicles with a minimum limit of: \$1,000,000 Each Occurrence - Combined Single Limits. The policy shall include a waiver of subrogation in favor of the City, its officials, employees and agents.
3. The Contractor shall be responsible for maintaining any and all PROPERTY INSURANCE on its own equipment and shall require all subcontractors to do likewise.
4. COMMERCIAL GENERAL LIABILITY covering Bodily Injury and Property Damage on an "occurrence" basis. The policy shall include a waiver of subrogation in favor of the City, its officials, employees and agents. The coverage shall be provided on ISO occurrence Form CG 00 01 07 98 (or substitute form for providing equivalent or greater coverage) and include Premises and Operations, Contractual Liability, Independent Contractor's Liability, Broad Form Property Damage, including Premises/Completed Operations, and Personal Injury liability, with employee and contractual exclusions deleted. General Aggregate \$1,000,000 Products - Completed Operations \$1,000,000 Personal & Advertising \$1,000,000 Each Occurrence \$1,000,000 (Bodily Injury & Property Damage) Fire Damage (any one fire) \$50,000 Medical Expense (any one Person) \$5,000
5. A Separation of Insureds condition shall be included in all general liability and automobile liability policies required by this Agreement.

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

1. The vendor shall provide notice to the City of Memphis within three (3) business days following receipt of any notice of cancellation or material change in the vendor's insurance policy. This notice 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
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."**

CONTRACT EXECUTION

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement, effective as of the day and year first above written.

CITY OF MEMPHIS

By: _____
_ Jim Strickland, Mayor

_____ Approved:

_____ City
Attorney Attest:

Deputy Comptroller

[@ CONTRACTOR NAME @]

By: _____ Name: _____
_____ Title: