



**City Of Memphis**

**THIRD PARTY ADMINISTRATIVE SERVICES**

**REQUEST FOR PROPOSAL #12996**

**Prepared By: Health and Safety Office/OJI  
Closing Date for Proposals: April 5, 2013  
Proposals Accepted at Attn: Purchasing Agent  
RFP #12996 for Third Party Administrative Services  
125 N. Main Street, Suite 354  
Memphis, TN 38103**

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**CITY OF MEMPHIS DEPARTMENT OF HEALTH & SAFETY**

Request for Proposal (RFP)

**THIRD PARTY ADMINISTRATIVE SERVICES**

The purpose of this RFP is for the City of Memphis, hereinafter referred to as the “City” or “Client”, to procure a Company, hereinafter referred to as “Company” or “TPA”, to provide Third-Party Administrative Services in connection with the City of Memphis’ self-insured claims administration of On-the-Job Injuries (OJI). The City of Memphis employs more than 9,000 employees and offers benefits to employees injured within the course and scope of their employment.

The selected Vendor will be contractually responsible for all services denoted in the document. The City will be accountable for the management of this contract.

All questions pertaining to the RFP must be forwarded to the City at the e-mail address listed within the RFP”

Interested parties should carefully review this RFP, including all requirements, terms, conditions, and performance standards to ensure the most responsive proposals.

**CITY OF MEMPHIS  
“REQUEST FOR PROPOSALS FOR”  
THIRD-PARTY ADMINISTRATOR SERVICES**

**ACRONYMS INCLUDED IN RFP**

- |    |             |   |
|----|-------------|---|
| 1. | <b>OJI</b>  | <b>ON-THE-JOB INJURY</b>                            |
| 2. | <b>MO</b>   | <b>MEDICAL ONLY CLAIM</b>                           |
| 3. | <b>LT</b>   | <b>LOST TIME CLAIM</b>                              |
| 4. | <b>OSHA</b> | <b>OCCUPATIONAL SAFETY HEALTH ADMINISTRATION</b>    |
| 5. | <b>PPO</b>  | <b>PREFERRED PROVIDER NETWORK</b>                   |
| 6. | <b>NCM</b>  | <b>NURSE CASE MANAGER</b>                           |
| 7. | <b>HHL</b>  | <b>HEART HYPERTENSION &amp; LUNG</b>                |
| 8. | <b>TPA</b>  | <b>THIRD PARTY ADMINISTRATOR</b>                    |
| 9. | <b>LCHP</b> | <b>LICENSED HEALTHCARE PROFESSIONAL</b>             |
| 10 | <b>ALJ</b>  | <b>ADMINISTRATIVE LAW JUDGE</b>                     |
| 11 | <b>CMS</b>  | <b>CENTERS FOR MEDICARE &amp; MEDICAID SERVICES</b> |
| 12 | <b>RRE</b>  | <b>RESPONSIBLE REPORTING ENTITY</b>                 |

**DEFINITIONS**

1. **Administrator fee:** shall mean the fee assessed by Company for the compensation of Company’s employee(s) designated by Company to manage City’s account on behalf of Company for purposes of this Agreement.
2. **Administrative Law Judge or “ALJ”** shall mean a hearing officer appointed or retained by the City Attorney to oversee an administrative hearing.
3. **Allocated Loss Adjustment Expenses:** shall mean the costs for providing the following:
  - A. Independent Medical Examinations
  - B. Cost for copies of any public records and/or medical records

- C. Managed care, including but not limited to PPO networks, medical bill review, and nurse case management services
  - D. Costs of photographers and photocopy services
  - E. Surveillances
  - F. Check stock
  - G. Attendance at mediations, trials or hearings
  - H. Any other specific services requested by City and not included in the contractual responsibilities.
4. **Case reserves:** shall mean the estimated cost of a claim that should be set aside by City for future payment of a qualified claim under City's OJI Policy.
  5. **Claim and Expense Reports:** shall mean quarterly reports submitted by Company to City's OJI Administration which reflect the total amount of reserves estimated by Company to be paid by City for a particular claim, and the total amount actually paid by Company on behalf of City per claim.
  6. **Choice of Medical Provider Form:** shall mean a form used by the City for injured employees to select a medical provider from the City's Emergency and Minor Emergency OJI panel for initial treatment.
  7. **CMS reporting requirement:** shall mean an additional comprehensive method for obtaining information regarding situations where Medicare is appropriately a secondary payer.
  8. **Compensability:** shall mean the determination of whether an employee is entitled to OJI Benefits in accordance with the City's OJI Policy.
  9. **Disbursement Account:** shall mean the account specifically established by City for the purpose of disbursing authorized claim payments to recipients as determined by Company.
  10. **Employee's Choice of Specialty Physician Form:** shall mean a form completed on behalf of an employee to select a physician from the City's OJI Specialty Panel.
  11. **Fiscal Year:** shall mean the period used for calculating annual financial statements. The City of Memphis fiscal year begins July 1 and ends June 30 of the following year.
  12. **Incident Only:** shall mean a qualified On-the-Job Injury that does not involve medical treatment and expense, lost time and disability.

13. **Injury on Duty Form:** shall mean a medical form that outlines medical treatment and return to work status for completion by the treating physician after each employee visit.
14. **Loss Analysis Reports:** shall mean quarterly reports submitted to the City's OJI Administration which reflect the various types of injuries sustained by City employees and the total amounts tendered by Company on behalf of City for each type of injury.
15. **Lost Time Claim:** shall mean a qualified On-the-Job Injury that involves medical treatment and expenses, lost time from work, disability and/or death.
16. **Lost Time take-over claim:** shall mean the acceptance of a qualified OJI claim processed by the City's former Claims Administrator that involved medical treatment and expenses, lost time from work, disability and/or death
17. **Medical only take-over claim:** shall mean the acceptance of a qualified OJI claim processed by the City's former Claims Administrator that involved medical treatment and expenses without lost time and disability.
18. **Notification of Emergency Treatment Form:** shall mean a form used by the City for injured employees to select a medical provider from the City's Emergency OJI panel for initial treatment.
19. **On-the-Job Injury Policy and Administrative Procedures:** shall mean the set of guidelines and directives established by the City for the purpose of administering the payment of medical expenses and lost-time compensation for City employees who suffer injury, death, or occupational disease during the performance of their job duties.
20. **Out-of-Network Medical Treatment:** shall mean an employee's receipt of medical treatment from a physician/provider who is not affiliated with the City's approved PPO.
21. **Panel of Physicians:** shall mean a panel of doctors selected by the City to review employee history and render opinions, as well as process and treat qualified On-the-Job Injury claims.
22. **Process:** shall mean the method established by the City's OJI personnel for administering payment of medical expenses and loss time payments for City employees injured during the performance of their job duties. The method of processing a claim includes reviewing and assigning the claim, contacting the employer and employee (if applicable), conducting an investigation, determining compensability, evaluating case reserves, compiling claim notes and reports, administering claim payments, providing notice of declined payments, following and monitoring an employee's claim until the employee returns to work.
23. **Qualified:** shall mean claims stemming from injuries sustained on the job pursuant to the City's On-The-Job-Injury Policy.

24. **RRE:** shall mean the party required to report under the Centers for Medicare and Medicaid Services (CMS) Section 111.
25. **Transaction Report:** shall mean the reports submitted by Company directly to City's Accounting Department which reflect all payments made by Company on behalf of City regarding each claim such as medical bills, lost time payments, expenses, savings and any other payments made by Company. Such report is submitted for reconciliation purposes and shall be in a form approved by the City.
26. **Utilization/Disability Guidelines:** shall mean the set of guidelines such as, but not limited to, Presley-Reed, to be utilized by Company in evaluating the appropriateness and medical necessity of a physician's recommended treatment.
27. **Licensed Healthcare Professional:** shall mean a person legally permitted to independently perform activities under an approved license.

**OJI CLAIM HISTORY**

The below chart represents an itemized total of Medical Only (MO) and Lost-time (LT) On-the-Job Injury claims handled and payments made during the referenced Fiscal Year(s) (FY).

<b>Fiscal Year</b>	<b>Total #MO</b>	<b>Total #LT</b>	<b>Total #Claims</b>	<b>Grand Total Paid in Med.</b>
2009	1019	346	1365	\$5,148,966.31
2010	922	520	1442	\$4,399,506.00
2011	677	513	1190	\$4,350,120.00
2012	503	595	1098	\$3,722,026.00

Please note that as part of the City's OJI program, the City's lost time benefits include a salary continuation program. For purposes of this RFP, the City will continue to handle all lost time payments through our normal payroll procedures. However, the TPA is required to track ALL lost time payments for OJI claims data reporting purposes.

## **PROFESSIONAL SERVICES REQUIRED**

1. It is the City's goal to procure professional services that are dedicated and committed to rehabilitating employees in the most cost efficient manner and servicing the City's OJI claims requirements.
  - A. The City seeks to engage Company to perform the following services in connection with the processing of City's qualified "notice only," "lost time" and "medical only" claims pursuant to the City's On-The-Job Injury Policy and Administrative Procedures (hereafter "OJI Policy") attached hereto as Exhibit A:

(1) **NOTICE ONLY** claims, Company shall:

- (a) **Claim Review and Assignment.** Designate a supervisor approved by City to review each claim report received from the City. File each claim and assign to an adjuster when the Notice Only claim becomes a "Medical only claim" and/or "Lost Time claim." Each claim must be processed by Company in accordance with City's OJI Policy and Procedures.

(2) **LOST TIME** claims, Company shall:

- (a) **Claim Review and Assignment.** Designate a supervisor approved by the City to review each claim report received from the City. Prepare a file for each claim, and assign each claim to an adjuster within one (1) business day of receipt of each claim or report. Each claim must be processed by Company in accordance with City's OJI Policy and Procedures.
- (b) **Claim Contacts.** Within one (1) business day of assignment of claim to an adjuster, initiate contact with the employer, employee, and medical provider. Claims with serious injuries, fatalities, or catastrophes shall be responded to within 24 hours/365 days per year.
- (c) **Investigation.** Investigate each claim within 24 hours of receipt of claim, and complete all investigations within 1-14 calendar days of claim assignment. Claim investigation includes, but is not limited to, securing recorded statements of the parties involved (i.e. employee, employer, witness, etc.); obtaining scene diagrams, photos, medical records and reports, newspaper clippings, birth certificates, and other such pertinent documents and information. In the event that Company's investigation uncovers prior medical records or possible records of previous occupational/non-

occupational injuries, Company's adjusters shall obtain such records. If applicable, each adjuster shall provide an explanation in each file regarding his/her inability to obtain such records.

- (d) **Determination of Compensability.** Determine the compensability of the claim within 14 calendar days of receipt of file. Company shall determine compensability based on facts gathered during Company's investigation and pursuant to the procedures enumerated in City's OJI Policy. City reserves the right to review any claim prior to approval. Final decisions on all claim denials shall be made by City's OJI administration supported by a full report and recommendation from Company.
- (e) **Evaluation of Case Reserves.** Provide and document the initial estimated claim cost for each claim within 48 hours after assignment. An accurate reserve or claim cost shall be established 30 calendar days after the assignment and pursuant to an evaluation of the investigated file material.
- (f) **Claim Notes and Reports.** Compile note summaries in each file reflecting (1) the facts of the case; (2) the determination of compensability; (3) reserve changes; (4) reasons for denials; (5) payments; and (6) return to work status; and (7) what is being done to bring the file to conclusion. Files with reserves totaling \$25,000 and above must contain a narrative report that is submitted quarterly to City's OJI administration.
- (g) **Claim Review.** Review medical bills and reports to confirm that charges are related to on the job injuries pursuant to City's OJI Policy
- (h) **Claim Payments.** Document lost time payments for claim data reporting purposes and provide full payment to all medical providers and approved vendors within 30 calendar days. Company shall also provide City's Accounting Department with a monthly transaction register report reflecting all payments made by Company on behalf of City. All payments for lost time are processed thru City's normal payroll procedures.
- (i) **Denial of Claims.** Obtain approval from City's OJI administration prior to denying any lost time claim. Denial of any lost time claim will be made pursuant to City's OJI Policy and Procedures. TPA is responsible for notifying the employee, employer and medical provider in writing when an OJI claim is denied.

- (j) **Notice of Approved/Declined Medical Payments.** Provide a written explanation to each employee, medical provider, and City's OJI administration regarding Company's decision to accept or decline payment of employee's medical expenses.

(3) **MEDICAL ONLY** claims, Company shall:

- (a) **Claim Assignment.** Designate a supervisor approved by City to review each claim report received from City. Prepare a file for each claim within one (1) business day of receipt of claim. Each claim must be processed by Company in accordance with City's OJI Policy and Procedure.
- (b) **Claim Contact.** Make contact only with the employee on qualified medical only claims. Company shall initiate contact with employer only when questionable circumstances arise such as the compensability of an injury or the accuracy of medical bills and/or injury reports.
- (c) **Investigation.** On questionable matter, investigate each claim within 24 hours of receipt of claim, and complete all investigations within 1-14 calendar days of claim assignment. Claim investigation includes, but is not limited to, securing recorded statements of the parties involved (i.e. employee, employer, witness, etc.); obtaining scene diagrams, photos, medical records and reports, newspaper clippings, birth certificates, and other such pertinent documents and information. In the event that Company's investigation uncovers prior medical records or possible records of previous occupational/non-occupational injuries, Company's adjusters shall obtain such records. If applicable, each adjuster shall provide an explanation in each file regarding his/her inability to obtain such records.
- (d) **Determination of Compensability.** Determine the compensability of the claim within 14 calendar days of receipt of file. Company shall determine compensability based on facts gathered during Company's investigation and pursuant to the procedures enumerated in City's OJI Policy. City reserves the right to review any claims prior to approval. Final decisions on all claim denials shall be made by City's OJI administration supported by a full report and recommendation from Company.
- (e) **Evaluation of Case Reserves.** Provide and document the initial estimated claim cost for each claim within 48 hours after assignment. An accurate reserve or claim cost shall be established

30 calendar days after the assignment and pursuant to an evaluation of the investigated file material.

- (f) **Claim Notes and Reports.** Compile note summaries in each file reflecting (1) the facts of the case; (2) the determination of compensability; (3) reserve changes; (4) reasons for denials; (5) payments; and (6) return to work status and; (7) what is being done to bring the file to conclusion. Files with reserves totaling \$25,000 and above must contain a narrative report that is submitted quarterly to City's OJI administration.
- (g) **Claim Review.** Review medical bills and reports to confirm that charges are related to on the job injuries pursuant to City's OJI Policy.
- (h) **Claim Payments.** Pay medical bills within 30 calendar days and maintain a current file for future activity. Company shall also provide City's Accounting Department with a monthly transaction register report, reflecting all payments made on behalf of City.
- (i) **Denial of Claims.** Obtain approval from City's OJI administration prior to denying any medical claim. Denial of any medical claim will be made pursuant to City's OJI Policy and Procedures. TPA is responsible for notifying the employee, employer and medical provider in writing when an OJI claim is denied
- (j) **Notice of Approved/Declined Medical Payments.** Provide a written explanation to each employee, medical provider, and City's OJI administration regarding Company's decision to accept and/or decline payment of employee's medical expenses.

**B. Recorded Statements:**

For all Medical Only and Lost Time claims, recorded statements must be undertaken with the employee, employer and witnesses (if applicable) in accordance with the following criteria:

- Repeater
- Monday – Friday department with injury reported on Monday or Friday
- 24/7 department with injury reported immediately before/after holiday
- Injury with no witness
- All slip and falls
- Late reporting

- Injury with delayed treatment
- MVA
- Back Injury (cervical, thoracic and lumbar)
- New Hire
- Existing/Open case
- Injury reported is not consistent with job or occupation
- Stress/Mental
- Initial diagnosis is not consistent with injury
- Hernia
- Carpal Tunnel Syndrome
- HHL
- Questionable cases
- Supervisor/Adjuster discretion

C. Additionally, Company shall:

- (1) **Claims Reporting System.** Accept OJI reports via fax and inter-office mail from the OSHA Coordinator/supervisor of the injured employee on a 24 hour basis, 365 days per year and send copies of all OJI reports to City monthly.
- (2) **Staffing.** Arrange for the staffing of qualified investigators, adjusters or other experts approved by the City to the extent deemed necessary by Company and City to perform the services required by City as set forth herein.
- (3) **Claim Management.** Engage dedicated adjusters approved by the City who shall maintain average case loads ranging between 80 to 100 open “lost time” claims. Company shall also engage claims specialists that shall maintain average case loads ranging between 200 to 300 “medical only” claims. Any Claims Supervisor designated by Company, and approved by City, to supervise claims processed by Company on behalf of City must devote his/her full time and interest to exclusively servicing the claims of City. Company shall allow City to verify the case loads of each adjuster and specialist through use of Company’s Internet data management system and monthly reporting.
- (4) **Utilization/Disability Guidelines.** Utilize disability guidelines approved by City such as, but not limited to, Presley-Reed to ensure that all claims processed by Company on behalf of City meet guidelines regarding appropriateness of treatment and medical necessity for purposes of continuity of care and quality of service.

- (5) **Subrogation.** Within 48 hours of receipt of claims, identify cases involving third party negligence and provide written notice to City's OJI administration and the Subrogation Unit of City's Law Division. Company shall forward any and all supporting documentation of potential subrogation claims to City's Subrogation Unit within 24 hours of completing investigation of such claims. Company shall maintain a narrative report in each file which outlines (1) the subrogation issues involved; (2) potential recovery; and (3) the estimated amount to be recovered.
- (6) **Death Benefits.** Within fifteen (15) business days of an employee's death, Company shall provide the following documentation to enable City to determine the status of a death claim:
  - (a) Certified copy of the employee's death certificate
  - (b) Copy of the accident report
  - (c) Names of all surviving beneficiaries
  - (d) Medical reports
  - (e) Full report on investigation of OJI death claim supported with a recommendation to approve or deny the death claim per the OJI guidelines
- (7) **Notice of Pending Litigation.** Notify City's OJI administration within 24 hours of receipt of any lawsuit arising out of claims processed by Company on behalf of City. Such litigated matters will be handled by the City Attorney's Office. Additionally, Company shall send a copy of the completed OJI claim to the designated attorney within 48 hours of being notified by the City of a lawsuit stemming from an OJI claim.
- (8) **Internet Access.** Maintain Internet capabilities to allow designated City personnel to access all City OJI files via Company's data management system 24 hours per day, 365 days per year. Company's data management system shall capture all adjuster notes, payments, savings, reserve data, loss cause, loss type, body type, job type, department, location, shift, frequency and the ability to analyze data for loss control purposes. All data stored in Company's system must remain current with injured workers' medical treatment. Company shall take all reasonable and necessary precautionary measures to prevent unauthorized access to City's files maintained by Company at Company's website. All information stored in the electronic file is subject to receipt by designated personnel under the OJI Policy.
- (9) **Reports.** Furnish to City the following loss and information reports, in a form approved by City, on a monthly or quarterly basis, as specified:

(a) **Claim and Expense Reports**

Claim and Expense Reports shall reflect (i) the total amount of reserves estimated by Company to be paid by City for a particular claim, (ii) the total amount actually paid by Company on behalf of City per claim and (iii) the cost of savings with supporting documentation. Company shall submit such reports to City's OJI administration on a monthly basis.

(b) **Transaction Register Reports**

Transaction Register Reports shall reflect all payments (e.g., medical bills, lost time payments, expenses, and any other payments made by Company) made by Company on behalf of City regarding each claim. Such reports shall also reflect all issued checks, corrections, voids and providers. Company shall submit such reports directly to the City's Accounting Department and to the OJI administration on a monthly basis for reconciliation purposes.

(c) **Loss Analysis Reports**

Loss Analysis Reports shall reflect the various types of injuries sustained by City employees compensated under City's OJI program, and the total amounts tendered by Company on behalf of City for each type of injury. Company shall submit such reports to City's OJI administration on a quarterly basis.

(d) **Quarterly New Claims Reports**

The Quarterly New Claims Report shall reflect all new OJI claims filed, including the appropriate payments made during the designated Quarter. The referenced report shall be submitted at the end of the following Quarters, no later than the 3<sup>rd</sup> calendar day of the following month; October 1-December 31, January 1-March 30, April 1 -June 30 and July 1-September 30.

(e) **Quarterly Allocation Reports**

The Quarterly Allocation report shall reflect all payments made (e.g., medical bills, lost time payments, expenses, and any other payments made by Company during the designated Quarter) by Company on behalf of City regarding each claim. The referenced report shall be submitted at the end of the following Quarters no later than the 3<sup>rd</sup> calendar day of the following month: October 1-

December 31, January 1-March 30, April 1 -June 30 and July 1-September 30.

(f) **OSHA Form 300 Log**

The OSHA Form 300 Log is used to classify work-related injuries and illnesses and to note the extent and severity of each case. The OSHA Form 300 Log shall be completed in accordance with Federal OSHA guidelines, on behalf of the City, and submitted to the City's designated personnel monthly.

(g) **OSHA Form 300A**

The OSHA Form 300A shows the totals for the year in each category listed on the OSHA Form 300 Log. The OSHA Form 300A shall be completed in accordance with Federal OSHA guidelines, on behalf of the City, and submitted to the City's designated personnel monthly.

**City reserves the right to request additional reports that may be necessary on an "as needed" basis.**

- (10) **Claim Forms.** Provide claim forms and other forms approved by City as reasonably necessary and appropriate for the efficient operation of City's OJI Program.
- (11) **Litigation Matters.** Assist City's counsel, if requested, in (i) preparing the defense of litigated cases arising out of claims processed by Company on behalf of City, (ii) negotiating settlements arising out of disputed claims processed by Company on behalf of City; and (iii) pursuing settlement or contribution actions.
- (12) **Clerical Services.** Perform reasonable and necessary administrative and clerical work in connection with the processing of "notice only," "medical only" and "lost time" claims including, but not limited to, the preparation of checks bearing the name of City and drawn on the account or accounts established by the City.
- (13) **Files.** Maintain all files (paper and electronic) processed by Company on behalf of City. Prepare requested OJI files for Pension hearings, ALJ Hearings, outside attorneys and any other matters as requested by City designated personnel. Return to City at the end of the term all paper files processed and maintained by Company on behalf of City in addition to the data tape from electronic files.

- (14) **Local Office.** Establish a local corporate office, within the geographical boundaries of the City, to administer the services specifically required by City and provide cubicle space, computer and phone access at Company's office, as may be needed from time to time, for employee(s) of City and City's dedicated Nurse Case Manager.
- (15) **Licensure.** Provide City with documentation, including but not limited to, Company's Certificate of Authority reflecting Company's right to transact business in the State of Tennessee on behalf of City as a third party administrator.
- (16) **Internal Audits.** Conduct quarterly random claim file audits to ensure that each dedicated adjuster and specialist staffed by Company processes all claims in compliance with City's OJI Policy and Procedures, and the terms of the resulting Agreement. Company shall provide City's OJI administration staff with a written report upon completion of each audit regarding each dedicated adjuster and specialist. Reports shall include but is not limited to the number of claims assigned, number of open claims, number of closed claims and detailed information such as claims that involved a second opinion and assignment to the Nurse Case Manager. Company shall audit all staff within ninety (90) days of their employment to ensure compliance with City's OJI Policy and the terms of the resulting Agreement.
- (17) **Managed Care, Company shall:**
  - (a) **Preferred Provider Network (PPO).** Provide a PPO Network approved by City to provide City employees compensated under City's OJI Program with quality health care that is cost-efficient and medically necessary. Company shall provide a PPO Network that will provide City with 40% savings or greater on the cost of medical care. All specialists affiliated with City's approved PPO Network must be board certified. The PPO Network shall be an agreement between TPA and PPO with the City given full rights to all financial documents. The City reserves the absolute right to engage a PPO Network of City's choice in the event City rejects any PPO Network provided by Company.
  - (b) **Evaluation of PPO Providers.** On a quarterly basis, conduct an evaluation of each network physician or provider's performance on a quarterly basis to ensure compliance with City's approved utilization guidelines.
  - (c) **Discount Fee Schedules.** Provide City with any and all discount fee schedules tendered by approved network providers, and

implement a system to ensure that City obtains the discounted savings.

- (d) **Cost/Savings Reports.** Provide City with a monthly report which reflects all cost savings obtained for each file processed by Company on behalf of City. City reserves the right to request additional reports that may be necessary on an “as needed basis.”
  
- (18) **Medical Bill Review.** Review each medical bill, including but not limited to hospital and non-hospital bills relating to all claims processed by Company on behalf of City, to identify billing infractions, and duplicate or excessive costs. Upon identifying any billing issues/discrepancies, Company shall take all reasonable steps to ensure that such bills are corrected within ten (10) business days. City will pay Company an agreed upon amount for savings to City which result from Company’s review of any bill, excluding any statutory discounts due to City. In the event Company fails to realize any savings on behalf of City, excluding any statutory discounts due to City, City shall not be responsible for Company’s bill review service.
  
- (19) **Utilization Review.** Review each medical bill for medical necessity or appropriateness of medical treatment as related to the medical diagnosis.
  
- (20) **Nurse Case Manager, Company shall:**
  - (a). Assign an employee's claim to the City’s designated nurse case manager based upon one or more of the following circumstances:
    - (1). Admission of employee to a hospital for any injury or condition; (employee should have accrued three weeks of lost time)
    - (2). Catastrophic injuries to employee including but not limited to gunshot wounds or multiple trauma;
    - (3). Employee's receipt of out-of-network medical treatment;
    - (4). Employee's noncompliance with recommended treatment plan;
    - (5). Injuries sustained by employee, resulting in initial medical costs in excess of ten thousand dollars (\$10,000); and
    - (6). Any other circumstances with the approval of NCM and City.
  
  - (b) Assign a particular claim to the City’s designated nurse case manager when an employee has applied to City’s Heart, Hypertension, and Lung Program (HHL). Under this circumstance, Company shall obtain the employee's (i) pre-employment

medicals, (ii) health history packet of information, and (iii) medical records for the preceding ten (10) years, including but not limited to, all diagnostic data, medical reports, lab reports and results, and any other pertinent information. Company shall require that the nurse case manager perform the following:

- (1) Schedule the employee an appointment with one of the three panel physicians approved by City for purposes of City's HHL program, and submit the physician's report to City's remaining two physicians for review and determination as set forth in City's OJI Policy.
- (2) Prepare a report reflecting a summary of each physician's review and determination.

Company shall submit final recommendation to City's designee for final approval regarding admittance into City's HHL Program.

(21) **Employee Counseling**, Company shall:

- (a) Provide information to injured employees regarding the benefits available under City's OJI Program.
- (b) Upon City's request, consult with employee groups regarding specific aspects of the OJI Program.

(22) **Program Development**, Company shall:

- (a) Upon City's request, consult with personnel designated by City regarding the establishment and coordination of necessary procedures and practices to meet any applicable governmental requirements and the needs of City.
- (b) Provide information on a quarterly basis regarding changes or proposed changes in legislation, regulations or rules affecting the responsibility of City regarding City's administration of an on the job injuries.

(23) **Disbursements of Payments**, Company shall:

- (a) Disburse payments for processed claims from the disbursement account by drawing checks upon such account. All checks will be signed by Company utilizing a mechanical facsimile signature prepared by City. Company shall sign all checks utilizing the facsimile signature prepared by City and maintain internal controls

necessary to ensure that unused check stock and the facsimile signature are restricted, checks are inventoried for accountability, check numbers are accounted for on a daily basis, and voided checks are defaced to prevent improper use.

- (b) Provide City monthly records of check disbursements (including voided checks) to allow City to reconcile the disbursement account's activity to Company's disbursement records. City reserves the right to inspect all disbursement records in Company's possession as deemed necessary.
- (c) Authorize individual payments up to \$10,000 without City's prior approval. Company must obtain City's approval prior to making any individual payment in excess of \$10,000.
- (d) Not compromise or settle any claim without obtaining prior approval from City.
- (e) Not advance any of its own funds to pay losses or allocated loss expenses for any claim processed on behalf of City.
- (f) Within 3 business days of receipt of request to satisfy an appeal, provide to the City settlement checks on OJI matters.
- (g) Disburse claim payments in accordance with the specifics within the RFP and the City's OJI Policy.

(24) **OJI Prescriptions**, Company shall:

Ensure injured workers' prescriptions for medications & durable medical equipment and supplies are processed through the City's designated prescription vendor. In the event City's designated vendor is unable to fill a prescription, Company shall consult City for direction. Also, Company shall coordinate all payments for medications & durable medical equipment with the City's designated Pharmacy Management Company and ensure that all medications and durable medical equipment processed are related to the approved injury and is prescribed from the recognized OJI physician.

(25) **Panel of Physician**, Company shall:

Receive from employee, employer and medical provider a Notification Emergency Treatment form, Choice of Medical Provider form and Injury on Duty form when an injury has occurred that resulted in treatment with a facility listed on the City's Initial Treatment OJI Panel. Upon

determination of compensability, Company must immediately provide to the employee, employer and medical provider written notice of compensability decision. Upon receipt of treatment needed with a specialty physician (i.e. ortho, neuro, dental, etc.), Company will contact employee and provide a listing of physicians/facilities from the City's Specialty Panel from which the employee can choose. After the employee has selected the specialty facility, Company must send the Employee's Choice of Specialty Physician form to the facility and the employee must complete and sign the form prior to the visit with his/her visit with the specialty physician. Company must ensure that all treatment rendered by a Panel Physician is in accordance with City Policy and Procedures.

(26) Center for Medicaid and Medicare Reporting, Section 111

Company will be designated as City's RRE and will be responsible for fully complying with all reporting requirements as specified in this section.

**SCHEDULE**

The following RFP Schedule of Events represents the City's best estimate of the schedule that shall be followed. Unless otherwise specified, the time of day for the following events shall be between 8:30 a.m. and 5:00 p.m. Central time. The City reserves the right at its sole discretion to adjust this schedule as it deems necessary. Notification of adjustment will be provided to all vendors submitting a proposal by the deadline.

<b>Published RFP Date</b>	<b>2/26/2013</b>
<b>Deadline for Written Questions</b>	<b>3/6/2013 at 4:00 p.m. CST</b>
<b>City Response to Questions Posted</b>	<b>3/8/2013 at 4:00 p.m. CST</b>
<b>Deadline for Submission of Proposal</b>	<b>4/5/2013 at 2:00 p.m. CST</b>
<b>Selection and preparation of shortlist</b>	<b>4/23/2013</b>
<b>Oral Presentation and On-Site Visits</b>	<b>4/30/13 – 5/4/2013</b>
<b>Evaluation of Proposals Completed</b>	<b>5/7/2013</b>
<b>Notice of Intent to Award</b>	<b>6/4/2013</b>

This timetable is for the information of submitting entities. Project restraints may cause these dates to change. **In no event shall the deadline for submission of the proposal be changed except by written modification by the City of Memphis Purchasing Department.**

## **PROPOSAL SUBMISSION**

### **Proposal Submission and Due Date**

Bidder shall submit 8 original copies of its response in presentation format; on or before **April 5, 2013, at 2:00 p.m. CST**, in a sealed envelope, 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:

### **City of Memphis RFP #12996: Third Party Administrative Services**

Bidders shall prepare his/her proposal in compliance with all of the instructions outlined in this RFP, completing the requested information and returning the completed documents to the City by the deadline.

Proposals and related materials submitted by the Bidder pursuant to this RFP shall become the property of the City and may be returned only at the City's option. Late or incomplete submissions will be considered non-conforming and will not be considered in the evaluation process.

## **PROPOSAL COSTS**

Company shall bear all costs for any and all appearances and costs associated with preparing a proposal or responding to this RFP.

## **TERM OF CONTRACT**

The initial term of the agreement shall be for (3) years with the City having the option to renew the agreement for (2) additional years. The City may elect, upon written notice, to terminate the agreement at any time if Company fails to fully comply with services agreed upon by City and Company. The City may terminate the agreement without cause on 60 days written notice.

## **PAYMENT OF SERVICES**

The Company shall be responsible for billing the City for all professional services at a price and terms agreed upon by both City and Company.

**INSURANCE REQUIREMENTS:**

The Company shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. The Company shall furnish the Risk Manager a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the state of Tennessee.

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

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

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

“Thirty (30) days prior to cancellation or material change in the policy, notice thereof shall be given to the City of Memphis Risk Manager” by registered mail, return receipt requested to the following address.

City of Memphis  
Attn: Risk Management  
2714 Union Extended, Suite 200  
Memphis, TN 38112

**“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.**

**WORKERS COMPENSATION:**

The Company shall maintain in force Workers’ Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all subcontractors to do likewise with MINIMUM LIMITS:

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

**AUTOMOBILE LIABILITY:**

Covering owned, non-owned and hired vehicles with MINIMUM LIMITS:

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

**COMMERCIAL GENERAL LIABILITY:**

Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor’s Liability, and Broad Form Property Damage Liability coverage with MINIMUM LIMITS:

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

**FIDELITY BOND / EMPLOYEE DISHONESTY:**

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

\$1,000,000 Each Occurrence

**ERRORS AND OMISSIONS COVERAGE:**

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

\$1,000,000 Each Occurrence / \$2,000,000 Aggregate

**PROPERTY INSURANCE:**

The Company shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors to do likewise. The Company shall require all subcontractors to carry insurance as outlined above, in case they are not protected by the policies carried by the Company.

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

### **SELECTION CRITERIA**

1. The following selection criteria will be used in determining the lowest and best bid for the underlying procurement. Each proposal will be reviewed and weighted by the designated Evaluation Committee, based upon Company's responses to the following and as otherwise indicated within the RFP. Determination of the point values by the evaluation committee is final and unappealable.
  - A. Provide information regarding Company's in-house policy and procedures for OJI/Work Comp claim handling and information on Company's past experience and performance in providing OJI/Work Comp TPA services with any organization, preferably with a governmental entity, of similar size and operation of services to those of the City of Memphis. Company must provide appropriate contact information for follow-up purposes. Additionally, Company **MUST** disclose any pertinent information of past work experiences that could impact City's decision.

(10 Points Maximum)
  - B. Provide information regarding Company's automated system for timely and accurate payment of losses, expenses and other fees and assessments associated with the administration of the program and reports necessary to document and support the program. Company's system must be user friendly with the ability to for City Personnel to run individual divisional claim reports, adjuster claim counts and the ability to view daily financial transactions and adjuster claim notes. If selected to proceed in the process, Company must provide a live demonstration of automated system before Evaluation Committee.

(13 Points Maximum)
  - C. Provide an address and information regarding Company's Corporate office structure. Discuss Company's work flow and how the City's required services in processing Notice Only, Medical Only and Lost Time claims will fit in Company's work flow. If Company's corporate office is outside city limits, Company must discuss and provide information on plans for establishing a local corporate office within the City of Memphis with a manager and trained staff able to respond to any and all City claims on a twenty-four (24) hour a day, three hundred and sixty-five (365) days per year basis. Company's local office must be able to handle all business of the City, including check processing and bill review services. No City business shall be sent to another city or state for processing.

(15 Points Maximum)
  - D. Discuss Company's ability to create, maintain, store and transfer all of the City of Memphis files and provide sample claim files per the requirements in RFP.

(5 Points Maximum)

- E. Discuss in detail and provide samples of Company's ability to provide the requested reports including but not limited to the OSHA 300 log, required by the State of Tennessee and the CMS Section 111 Reporting Requirement.  
(5 Points Maximum)
- F. List Company's overall qualifications and experience, and provide resumes of company management, key personnel and staff that will be responsible for handling the City's account. Company's designated manager **MUST** have more than 10 years of Worker's Comp experience and Company's Key personnel and adjusting staff (excluding claims clerks and secretaries) **MUST** have more than 7 years of Worker's Compensation experience. The qualifications of all key personnel must be listed on the resumes with the appropriate contact numbers for follow-up. All personnel assigned to City account must be approved by City Staff prior to effective date of contract. Also, Company must provide documentation to show that Manager and key staff exhibits a good working knowledge of all applicable regulations in servicing the City's account. All key staff must be able to understand the difference between the City's OJI self-insured Program and the Worker's Compensation statutes.  
(20 Points Maximum)
- G. Company **MUST** submit a tentative agreement regarding the proposed PPO Networks that will provide City employees compensated under City's OJI Program with quality health care that is cost-efficient and medically necessary.  
(13 Points Maximum)
- H. Company **MUST** submit a tentative agreement with the proposed Bill Review Company who will review each medical bill including but not limited to, hospital and non-hospital bills relating to all claims processed by TPA on behalf of City, to identify bill infarctions, and duplicate or excessive costs.  
(9 Points Maximum)
- I. Company's responses to questions in RFP. (5 Points Maximum)
- J. Company's Proposal submission as stated per the RFP guidelines.  
(5 Points Maximum)

*Please note that the TPA can elect to have one Company provide bill review services and PPO Networks; however, the specifications within the agreement between TPA and the identified Company must comply with the requirements within the City's RFP for both services. Company's response to PPO selection criteria must include expected savings. Company's response to Bill Review selection criteria must include pricing for bill review services.*

## **ORAL PRESENTATIONS**

After the Evaluation Committee has evaluated the proposals, the City may, in its sole discretion, conduct discussions with those Companies whose proposals seem worthy of consideration; however, the City is not obligated to conduct discussions with any Company. A shortlist of the qualified vendors may be invited to give an oral presentation before the evaluation committee. Each presenter will have up to 2 hrs to speak before the evaluation committee. Each onsite presentation will be scored based on the following Evaluation criteria.

## **EVALUATION/AWARD CRITERIA**

Discussion of Company Response to the Selection Criteria(s) <b>excluding Selection Criteria Items B, G-J.</b>	(25 Points Maximum)
Live demonstration of Company's Automated System per the Selection Criteria Item B.	(20 Points Maximum)
Discussion of Company's Response to Pricing.	(10 Points Maximum)
Discussion of Company's PPO and Bill Review per Selection Criteria Items <b>G &amp; H.</b>	(20 Points Maximum)
Overall Presentation	(25 Points Maximum)

The City may conduct negotiations with Companies for the purpose of obtaining the best and final offers. In no event shall negotiations increase the cost or amend the proposal such that the apparent successful Proposer no longer offers the best proposal.

## **CONFLICT OF INTEREST**

The Company covenants that it has no public or private interest, and will not acquire directly or indirectly any interest, which would conflict in any manner with the performance of its services. The Company warrants 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 contractor to the Company in connection with any work contemplated or performed relative to this agreement.

## **QUESTIONS REGARDING THIRD PARTY ADMINISTRATION**

In its proposal, Company shall thoroughly respond to each of the following questions:

### 1. **Claims Adjustment**

- A. Please describe the procedure your organization currently uses to establish initial contact with the claimant, treating physician and employer. Include timelines within which contact is established with each of these entities. Would this procedure be used with the City? If not, please describe the procedure to be used with the City.
- B. Describe your standards and protocols for obtaining prior medical records and/or records of previous occupational injuries. Are these records obtained in every case, or only in some cases? Describe how this decision is made.
- C. Describe your protocols for notifying the employer and/or payroll units that the employee is able to return to work, modified or otherwise. Include timelines and a description of the method of notification.
- D. Describe your protocols and procedures for verifying employment and wages and for communicating with payroll units. Include whether such communication by electronic or other means.
- E. Please describe in detail your organization's current procedure for determining which claims should be aggressively investigated. Include timelines, staff involved, in-house resources available, and any other relevant information.
- F. Please describe how the City will be able to verify caseloads. Enclose samples of caseload reports your organization will provide to City.
- G. Please provide a sample claims file and describe your procedures and protocols for claims file organization.
- H. How many claims do you handle annually? (a) Nationwide? (b) In Tennessee?
- I. Where is the location of the claim office you propose to use for the services requested in this RFP?
- J. Describe briefly your internal claim quality assurance control procedures?
- K. How long do you maintain original claim documents?
- L. How long do you retain claims information in your system?

2. **Subrogation**

- B. Do you routinely provide subrogation services?
- C. How do you identify claims for purposes of subrogation?
- C. What is your overall accuracy rate on claims processed?
- D. Describe your practices with respect to establishment of initial case reserves and subsequent adjustments. Is there an established “diary” system for periodic re-evaluation of reserves?
- E. What settlement authority threshold do you recommend?
- F. What is your standard turnaround time on payment of medical bills? On an average, what is your fastest time? Slowest time?

3. **Staffing**

- A. What is your employee turnover ratio or retention rate of account adjusters and Supervisors?
- B. Identify by name and title the person designated as account claim coordinator.
- C. What is the approximate number of employees in your firm? In the servicing office?
- D. What is the organizational structure of the servicing office? (Number of claim managers, supervisors, adjusters, etc.)
- E. What is the approximate number of accounts handled by the servicing office?
- F. What is your adjuster’s current average case load?
- G. What is the average level of claims experience (years) for each of the following: adjusters, supervisors and managers.
- H. Is there a formal training program for your employees or do you rely solely upon on-the-job training?
- I. How many cases do your supervisors adjust personally?
- J. How many cases do they supervise through their adjusters?

4. **Services**

- A. Describe briefly your contingency plan for dealing with a catastrophe.
- B. Describe the services your firm will provide: Investigation/adjustment; Surveillance; RMIS; Case Management; Legal Services; E-mail; Loss
- C. If any services are sub-contracted, indicate which services and the vendors likely to be involved.
- D. Do you have computer edit checks to detect duplicate billings?
- E. Will the firm permit claim file audits by the client and/or its consultant? Will you accommodate quarterly claim conferences between senior management, the client and/or its consultant?

5. **Automation**

- A. Please explain your claims automation program. How often will data downloads be available and in what format?
- B. The Automation system must, at a minimum, provide the following. In its proposal, Company shall explain the automation system's capabilities regarding:
  - 1. Detailed and Updated Claim Information
  - 2. Full Payment History
  - 3. Unlimited File Note capacity
  - 4. Calendar/Diary System
  - 5. Reserve Analysis Worksheet
  - 6. E-mail
  - 7. Check-writing
  - 8. Reporting Capability
  - 9. Ability to Analyze Data for Loss Control Purposes.
- C. Describe your Company's ability to provide electronic access to claim information.
- D. How current are detailed payments, reserve changes and adjuster's notes that are accessed electronically?
- E. Can your automated system be tailored to meet the needs of the City? If not, please explain?
- F. Can City representatives run reports without the need for extensive training?

6. **Contract Administration**

- A. Will you require the establishment of an escrow account to facilitate your issuance of loss payment? Describe account maintenance requirements?
- B. Describe the obligations of both parties precedent to and following the termination of the resulting service contract.
- C. Describe your approach to providing an orderly transfer of pending files to a new administrator.
- E. Are you willing to be bound by special account servicing instructions developed by the client?

7. **Start Up Requirements:**

- A. Estimate your minimum start-up time from the date of contract award to the date your network would be available to The City of Memphis members.
- B. What specific requirements do you have to initiate set-up?
- C. Please explain any additional cost involved.

## **PROPOSAL FORMAT**

1. All proposals must be prepared in the standard format described in order to facilitate comparison and evaluation. Failure to follow the format or to address an area adequately may cause the proposal to be disqualified. Company shall confirm agreement with each required service, and any proposed deviations from the requested scope of services must be noted and fully explained. Incomplete proposals will not be considered for award. Additionally, Company shall submit **10 original copies** of its response to the City's RFP in a sealed envelope by the proposal submission deadline to City of Memphis Purchasing Agent; 125 North Main Room 354, Memphis, TN 38103.

### **LATE PROPOSALS WILL BE CONSIDERED NON-CONFORMING AND WILL NOT BE CONSIDERED IN THE EVALUATION PROCESS.**

#### **A. Cover Letter**

Prepare and submit a cover letter. The cover letter shall include the name, address, telephone and fax number of the primary company representative(s) to be contacted regarding your proposal. The cover letter shall be signed by an officer of the Company who can bind the Company in contract and who states in the letter as follows "I certify and guarantee that the information in this bid is true and accurate and that to the best of my knowledge all answers have been explained so as to prevent misleading or incomplete answers." Unsigned proposals will be considered non-conforming and will not be considered in the evaluation process.

#### **B. Short Introduction and Summary**

This section should contain an overview of the proposal and point out features the Company deems outstanding. This section should also describe the organization of the company and how its resources will be utilized to service the City's account in addition to information pertaining to past or present clients that Company is providing similar services to, as requested by the City of Memphis. This section shall include any references and the pertinent contact information

#### **C. Specification followed by Responses with requested documents**

Provide detailed responses to the information required in the RFP, including all information required in sections of the RFP titled "Selection Criteria" and "Questions Regarding Third Party Administration."

#### **D Response to Pricing**

- Specify charge per indemnity claim.
- Specify charge per medical only claim.
- Specify charge per incident report.
- Specify charge for takeover of existing files.
- Specify what services are included in the per-claim charges.
- What services are NOT included in the proposed fee?
- How is the account billed for these services?
- Will you offer a fixed (flat fee) annual contract proposal? If so, specify charge. Describe its terms and any limitations. Does it include take-over claims? Does it include pricing for CMS reporting? If not, please outline pricing for CMS reporting?
- Are any services provided on a “time and expense” basis? Please describe.
- Outline the basis for pricing the handling of run-off (tail) claims at the conclusion of your assignment.

### **CONTRACT AWARD**

1. The City reserves the right to incorporate the successful bidder’s proposal into a contract. Failure of a bidder to accept this obligation may result in the cancellation of any award.
2. The selected Company will be required to assume responsibility for all services offered in the proposal. The City will consider the Company official who signs the cover letter on the bid to be the sole point of contact with regard to contractual matters, including payment of any or all charges.

The intent to award notification will be posted on the City's website ([www.memphistn.gov](http://www.memphistn.gov)) and outside Council Chambers, located on the lobby floor of City Hall. Any protest of award must be filed with the City 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.

## REFERENCES

Company should provide a listing of at least (3) past or present clients for whom Company provides TPA services (governmental clients preferred), including name of company, length of client relationship, size of account, address, e-mail, phone number and name of contact person responsible for monitoring company.

## CONTACTS

### **Principal Contact and Information Requests**

- a. All inquiries regarding this RFP shall be forwarded to:  
[markell.newson@memphistn.gov](mailto:markell.newson@memphistn.gov)
- b. Bidders should not, under any circumstances, contact any City personnel (including senior City management or City employees with whom the Bidder has an existing business or personal relationship) to discuss this RFP without the Principal Contact's prior written consent. Any bidder attempting to circumvent this process will risk elimination from further participation in the bidding process.
- c. City will require bidders to adhere to applicable procurement State laws, local ordinances, codes and Purchasing Policies. All questions concerning this Request for Proposal should be forwarded in writing **via email only** on or before March 6, 2013 at 4:00 p.m. to the following email address:  
[markell.newson@memphistn.gov](mailto:markell.newson@memphistn.gov)

Any questions submitted after the referenced time and date will not be accepted. All questions should refer to a page number, section and subsection of the RFP. No oral requests will be accepted and no oral answers/responses will be given. To ensure the fair and consistent distribution of information, all questions will be answered by a Question-and-Answer (Q&A) document, which will be posted on the City's website ([www.memphistn.gov](http://www.memphistn.gov)). The only official answer or response of the City will be the one posted on the City's website.

The City reserves the right to modify or cancel this solicitation at any time prior to making an award based on this solicitation. Any revisions to the solicitation will be made only by an addendum issued by the City, which will be posted on the City's website.

This procurement may be subject to the requirements of Ordinance No. 5185, commonly referred to as the Living Wage ordinance, as amended by Ordinance Number 5257 and 5293, which establishes a minimum wage for employees or a vendor receiving a service-related contract from the City of Memphis.

This procurement may be subject to the requirements of Ordinance No. 5114, commonly referred to as the Local Preference ordinance, which establishes a local preference for local business located within the City of Memphis. A copy of your Memphis and Shelby County Business Tax Receipt must accompany the bid for consideration of this ordinance.

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

### **RIGHT OF REJECTION**

The City of Memphis reserves the right to waive any informality in any proposal, to reject any or all proposals in whole or in part, with or without cause, and/or to accept the proposal that, in the City's sole judgment, will be in the best interest of the City of Memphis and its citizens. Furthermore, the City reserves the right to request clarification on information submitted from one or more applicants.

### **PERFORMANCE GUARANTEE**

The City may conduct random audits of any file, and if the agreed upon "standards of performance" are not met, then the City shall retain the right to reduce or not pay the service fee for the incorrectly handled claim.

## **REQUEST FOR PROPOSAL TERMS**

The City of Memphis seeks responses from qualified firms who have the expertise to provide NURSE CASE MANAGEMENT SERVICES in accordance with this RFP document. This is a Request for Proposals that may be modified by the City during the selection process.

THE CITY OF MEMPHIS ENCOURAGES THE PARTICIPATION OF SMALL AND MINORITY 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 Memphis and Shelby County Tennessee Business Tax Receipt must accompany the bid for consideration of this ordinance.

The contract may be subject to the requirements of Ordinance No. 5185, as amended, which establishes a minimum wage for employees of businesses receiving a service or service-related contract from the City of Memphis.

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. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

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

No objections with regard to the application, meaning, or interpretation of the specifications will be considered after the opening of the subject responses. If there are questions or concerns regarding any part of plans, terms, specifications or other proposed documents, a written request for interpretation thereof may be submitted to the City Purchasing Agent 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 by the City. The City of Memphis will not be responsible for any other explanation or interpretation of the proposed documents. By submission of its proposal, a vendor shall be deemed to have understood fully the contents and meaning of the RFP.

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

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

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

**A C WHARTON, JR., MAYOR**  
Eric S. Mayse, City Purchasing Agent

Published in the Daily News: March 5, 6, 2013

### **INSTRUCTIONS TO PROPOSERS**

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

Responses submitted and accepted by the City become the property of the City of Memphis and will not be returned. **The City has the right to reject any or all responses.**

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

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.memphis.gov](http://www.memphis.gov) under the section titled "Government News".

The City of Memphis reserves the right to cancel this solicitation or to reject, in whole or in part, any and all responses. 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: Markell Newson at [markell.newson@memphistn.gov](mailto:markell.newson@memphistn.gov)

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

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

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

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

## Appendix I: Sample Service Agreement

### STANDARD SERVICE AGREEMENT

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

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

**TERM.** This Agreement shall not be binding upon the parties until it has been signed first by the 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 \_\_\_\_\_ and shall end on the earlier of \_\_\_\_\_ or until all goods/services herein have been provided to the City ("Initial Term"), subject to the availability and appropriation of funds to finance the same and the successful operation of the program. The City shall have the option to extend the Initial Term for \_\_\_\_\_ additional one-year periods (the "Option Periods"), subject to the appropriation of funds by the Memphis City Council and mutual agreement of the parties. The Initial Term and the exercised Option periods are collectively referred to hereinafter as the "Term."

**PAYMENT TERMS AND CONDITIONS INVOICES.** The 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: City of Memphis [DIVISION NAME], [ADDRESS]; Memphis, Tennessee [ZIP CODE ]; Attn: \_\_\_\_\_.

**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 \$\_\_\_\_\_ (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.

**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.

**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 City, 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:
  - a. 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

- b. 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
  - c. 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 \_\_\_\_\_ 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]  
Memphis, TN [ZIP CODE]  
Attn: [CITY CONTACT/REPRESENTATIVE]  
Fax: [FAX NUMBER ]

With copy, if requested, to:  
City Attorney  
125 N. Main, Room 336  
Memphis, TN 38103

To the CONTRACTOR:  
[CONTRACTOR NAME]  
[CONTRACTOR ADDRESS]  
[CITY], [STATE] [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.

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

"Doing Business with the City" link. A link to the Ordinance will be accessible on the top right side under the section "Links." Annual adjustments, if any, to the rates will be posted on the website for the upcoming fiscal year on or around February.

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

## **INSURANCE**

- A. The 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: [CONSULT RISK MANAGEMENT FOR REQUIRED INSURANCE COVERAGE AND AMOUNTS]

1. WORKERS COMPENSATION in accordance with the statutory requirements and limits of the State of Tennessee with minimum limits of

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: \$\_\_\_\_\_ 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: Comprehensive General Liability Insurance, 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, with minimum limits of

General Aggregate	\$_____
Products - Completed Operations	\$_____
Personal & Advertising	\$_____
Each Occurrence	\$_____ (Bodily Injury & Property Damage)
Fire Damage (any one fire)	\$_____

Medical Expense (any one Person)      \$\_\_\_\_\_

5. A Separation of Insured's condition shall be included in all general liability and automobile liability policies required by this Agreement.
- D. Contractor shall provide notice to City within three (3) business days following receipt of any notice of cancellation or material change in Contractor's insurance policy from Contractor's insurer. Such notice shall be provided to City by registered mail, return receipt requested, to the City Risk Management address provided below.
- E. Each certificate or policy shall require and state in writing the following clauses:
1. Thirty (30) days prior to cancellation or material change to the insurance coverage, notice thereof shall be given to the City of Memphis Risk Manager by registered mail, return receipt requested to the following address: City of Memphis; Attn: Risk Management; 2714 Union Avenue Extended, Suite 200; Memphis, TN 38112. Notwithstanding the preprinted cancellation provisions on the Certificate of Insurance, coverages required herein will not be cancelled, reduced in amount, or allowed to lapse until at least thirty (30) days written notice, by certified mail, return receipt requested, has been provided to the City of such alteration or cancellation.
  2. The City of Memphis, its officials, agents, employees and representatives shall be named as Additional Insured on all liability policies." The additional insured endorsements shall be attached to the Certificate of Insurance."