

City of Memphis, Tennessee



Request for Proposal

Project Management Services

RFP No. 27171

Proposal Submission Deadline: Friday, February 20, 2015

Time: 2:00 p.m., Central Time

Purchasing Department

City of Memphis, Tennessee

125 North Main Street, Room 354

Memphis, TN 38103

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1 Overview

1.1 PURPOSE OF THIS RFP

City is issuing this RFP for Project Management Services, fully described in this document (the "Services"). The City of Memphis ("City") seeks comprehensive proposals from the recipient of this RFP ("Vendor") believed to have the capability and capacity to satisfy City's complex requirements and a serious interest in providing the Services. This RFP provides information on the requirements necessary for a Vendor submitting a proposal for the project management services solution/implementation (the "Proposal").

1.2 OVERVIEW OF CITY'S CURRENT PROJECT MANAGEMENT SOLUTION

The City of Memphis has an outsourced project management solution, with Zycron, which provides the requested Information Services project management services.

1.3 STRUCTURE OF RFP

The RFP is structured as follows:

Section 1: City of Memphis Project Management overview.

Section 2: City of Memphis Project Management scope.

Section 3: City of Memphis Project Management response requirements.

Section 4: City of Memphis Project Management agreement instructions.

Section 5: City of Memphis Project Management evaluation criteria and scoring model.

2 City of Memphis Project Management Requirements (SCOPE)

This Section contains the functional requirements for the City of Memphis Project Management RFP. The information in this section is intended to aid the Vendor in evaluating the requirements, and in preparing its Proposal in response to this RFP accordingly.

2.1 FUNCTIONAL REQUIREMENTS

Vendor shall perform the following functions:

- (a) Assist City in identifying City business requirements for projects;

- (b) Define, and develop for City's review and approval, City-required specifications for projects;
- (c) Develop for City's review and approval, project proposals and provide the City's Prime Outsourcing Vendor with Specifications/Scope of Work to prepare for proposals.
- (d) Perform cost-benefit analyses of projects, and perform analyses of City's budget and expenses related to such projects;
- (e) Review current applicable legislation to determine potential effects upon projects;
- (f) Oversight of project implementation; and
- (g) Coordinate and interface with third party suppliers involved in projects

General. Vendor shall be responsible for designing, developing, managing and implementing existing ongoing and newly-initiated Projects as requested and approved by City and subject to the priorities established by City. The estimated number of projects is seven (7) to ten (10) projects each year. Vendor will also be responsible for completing at least three (3) feasibility studies. Vendor shall take steps as necessary to complete such Projects in a timely and efficient manner consistent with City's business requirements as made known to Vendor.

Vendor shall provide a disciplined project methodology for use on the Projects and shall adhere to such methodology during the performance of the Projects. Vendor shall revise this methodology as required to meet City's needs. Vendor shall provide City with a comprehensive description of the methodology, the formal training available, the tools used with the methodology, the project management tools to be used with the methodology, and the plan for implementing the methodology with the City environment.

The efficiency and productivity of the Vendor personnel assigned to perform the projects shall be the responsibility of the Vendor. Vendor shall implement a detailed labor tracking system to track resource availability and usage. The Vendor will present monthly resource utilization and effort reports to the City on the 10th of each month and if the 10th falls on a weekend or holiday, the next business day. Vendor shall work to increase the productivity of such personnel through the use of tools, disciplines, processes and other appropriate development productivity methods, including industry accepted "best practice" methods.

Vendor shall provide the City what tools are used for Project Management methodology and an example of the reporting resulting from that tool. Vendor shall implement (at Vendor's expense) tools to measure, on a commercially reasonable basis, development productivity, and shall report to City each month on productivity efforts and improvements.

- (a) Project Initiation. Upon receipt of a Project Request (which shall include a reasonably detailed description of the business requirements underlying such request), Vendor shall prepare a feasibility study which will include:

- (i) Definition of the scope of work to be performed;
- (ii) Recommendation of an appropriate Project organization team;
- (iii) Defined quality standards; and
- (iv) Assessment of the resource requirements, time requirements, impact on other Projects and the Services, and other information as required so that City may make a reasonable business decision on whether to continue or, whether to initiate a new Project.

In addition, such feasibility study shall include an evaluation of the use of third party package software vs. in-house built applications in meeting the business requirements identified for the Project, if applicable. Vendor shall complete such feasibility study within a timeframe defined by City in light of City's specified priority for the potential Project.

In the event City elects to initiate a new Project, Vendor shall prepare a Project Plan and Work Schedule (as described further below) and an estimate of labor for the design, development, implementation and training required for each project. In addition, Vendor shall develop, and thereafter maintain, a knowledge base of documentation gathered throughout the project's life and allow for re-use of such documentation for future projects.

- (b) Project Plans and Work Schedule. For each Project the Vendor shall develop a complete detailed project plan ("Project Plan and Work Schedule") as approved by the City. Each Project Plan and Work Schedule shall, at a minimum:
 - (i) Include detailed schedules that specify a detailed level of activity, including the planned start dates, completion dates, hours and other required resources for activities to be performed by Vendor (and City where applicable) pursuant to the Project for which such Project Plan and Work Schedule was developed;
 - (ii) Identify any pre-existing hardware, software, components and/or tools to be used;
 - (iii) Include a detailed list of the deliverables and milestones (with planned delivery/completion dates) and the project management reports that will be provided;
 - (iv) Describe any assumptions made in compiling the plan;
 - (v) Define roles and responsibilities of Vendor and applicable City personnel;
 - (vi) Provide a risk assessment and cost/benefit analysis for the Project; (vii) assess the extent to which resources are available and required to perform each Project. Following approval by City, Vendor shall perform such work in accordance with the applicable Infrastructure Project Plan and Work Schedule.

- (c) Business Requirements Analysis. Vendor shall be responsible for managing the process of analyzing and developing technology-related business requirements (including information integration requirements) with the City business and technology staff. In addition, Vendor shall assist in developing and refining detailed user requirements, at a level sufficient to formulate acceptance criteria. Based on such business and user requirements, Vendor shall develop functional and technical specifications for the Project which shall be subject to City approval. City's internal audit department may, at City's

election, be involved in the requirements development and design phases to confirm that the design satisfies the control requirements of critical systems. The business requirements analysis will be considered complete when substantially all of the business and user requirements have been identified.

The business requirements analysis will also facilitate City's ability to establish post-implementation performance factors that measure the positive impact of the Project on the operation of City's business ("Post-Implementation Performance Factors").

- (d) Testing. Vendor shall develop and carryout unit testing, string testing, regression testing, functional testing, integration testing. Vendor shall assist the City's Prime Outsourcing Vendor in performing acceptance testing and other end user related testing as requested.

- (e) Acceptance. Vendor shall prepare, with input from City and subject to City's review and approval, a comprehensive acceptance testing plan which includes, at a minimum, acceptance testing criteria and procedures. Each Project shall be subject to a formal acceptance process that uses objective and thorough acceptance test criteria established by City, and that will allow City to verify that the Project meets the specified functional and technical requirements.

The acceptance process shall be developed as soon as possible after establishing the business and user requirements. The acceptance process will include an audit trail capability for tracking and correcting problems. Acceptance will be considered to have occurred when the deliverables associated with the Project successfully meet the acceptance test criteria.

- (f) Implementation and Testing. Vendor shall be responsible for the production implementation and roll-out (if any) of the Project deliverables. Vendor shall comply with City-required implementation procedures. Implementation includes Software installation to the End User Desktop Equipment or local file Server, identification of interfaces and any required conversions, installation and testing of any required middleware products, installation of Software, and any required testing to achieve the proper roll-out of Software. This may also include LAN testing, Network laboratory testing, migration procedures, and the use of any pre-production or pseudo-production environment prior to production migration.

Vendor shall be responsible for any on-site End User support with respect to such Project required during the initial weeks of a production implementation as determined by the affected City divisions and shall maintain the capability to provide enhanced levels of support thereafter. Vendor shall submit to City, for City's approval, a written implementation plan describing Vendor's plan to manage each such implementation. Vendor shall develop and carryout testing, subject to City's review and approval. Vendor shall assist City in performing acceptance testing and other End User related testing

- (g) Post-Implementation Review. Vendor shall subject each Project to a post-implementation review process which will include an analysis of how the deliverables resulting from the Project measured up against the Project Post- Implementation Performance Factors established for such Project.

Such process will include the Project participants.

- (h) Change Control Procedures. Vendor shall establish procedures by which City may request enhancements, customizations, interfaces, modifications or other changes to the Project by specifying the desired changes to Vendor. Such procedures will include the performance of an analysis by Vendor and require that no change be made until reduced to a written change order describing the change with particularity that has been approved by the City. In addition, such procedures shall enable tracking of ongoing scope changes to the Project, and provide a basis for auditing scope changes to the Project. Project changes (including necessary changes, if any, to resource requirements or schedule for the corresponding Project) shall be documented by Vendor and approved by the City.
- (i) Documentation. Deliverables which are the result of the Project shall be documented in a manner that satisfies the requirements of Vendor's methodology, is appropriate for the deliverables resulting from the Project, and is otherwise reasonably acceptable to the City. Vendor shall make use of on-line documentation (including user guides and technical references), self-documenting systems and on-line help where commercially reasonable. The vendor shall maintain both electronic and printed documentation for each project. At the completion of each project, the Vendor will provide the City with a bound and electronic copy of the project documentation.
- (j) End User Training. Vendor shall be responsible for determining the requirements for, and to the extent requested by the City, participating in the development of or developing, End-User training for the business system(s) resulting from the Project including the roll-out of workshops, self-study guides and computer-based training.
- (k) Cost-Effective Changes and Alternatives. Vendor shall propose modifications or alternatives to the process if such changes or alternatives will be more cost effective to the City, and shall implement such changes or alternatives as requested or approved by City. The methodology shall include a process for managing small Projects using a simplified process and forms.

2.2 EMERGENCY AND URGENT PROJECT REQUESTS

Emergency and Urgent assignments, as defined in this RFP, are situations that require the City to move a Project ahead of schedule requiring resources on an extremely tight timeframe. This requires the vendor to be extremely flexible in providing this type of commitment.

2.3 TIME ALLOWED FOR VENDOR RESPONSE TO INDIVIDUAL PROJECT REQUESTS

Vendor is allowed 10 business days from the time the Project Request is issued to submit a response. This time period is determined in part by the complexity of the job and the skill set requirements. At the discretion of the City, this time period may be lengthened or decreased, the Individual Project Requests will contain response time requirements, and the vendor is required to comply with the stated requirements set forth in each Project Request.

2.4 OTHER REQUIREMENTS

Must maintain active membership with the Project Management Institute (PMI)

Must maintain active membership with local PMI Chapter

Must provide and maintain complete either waterfall or agile Project Life Cycle Methodology

Must be capable of instituting and maintaining a formal Project Management Office (PMO)

Must provide, maintain and pursue PMI Certified Project Management Professionals

Must have five (5) years of experience

3 PROPOSAL RESPONSE

This Section 3 describes the contents of Vendor's Proposal and provides an outline of how Vendor should organize it. Vendor's Proposal will not be considered responsive unless it fully complies with the requirements in this Section, as well as the additional instructions provided at Section 4.5 regarding the required Proposal formats and submission process.

Specifically, Vendor's Proposal shall include each of the sections referenced in the table below. The requirements for each of these Proposal sections are described in more detail in this Section 3. **VENDOR'S PROPOSAL WILL BE DISQUALIFIED FROM THIS RFP PROCESS IF THE VENDOR FAILS TO CONFORM TO THE PROPOSAL INSTRUCTIONS IN THIS SECTION 3.**

Sections and Topics
Cover Letter
Section 1 – Executive Summary
Section 2 – Scope
Section 3 – Solution/implementation Design
Section 4 – Pricing Model
Section 5 – References
Section 6 – Vendor’s Alternative Proposals/Not Applicable to this RFP
Section 7 – Vendor’s Due Diligence Requirements
Section 8 – Insurance and Indemnification

3.1 COVER LETTER

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

3.2 EXECUTIVE SUMMARY

Vendor’s Proposal shall begin with an executive summary providing an overview of Vendor’s solution/implementation, with a focus on any new technologies, innovations, processes, and transformation that Vendor will bring to help the City meet its objectives. The Executive Summary should include a description of the following:

- a. A description of Vendor’s solution/implementation
- b. A description of Vendor’s pricing approach; including any software license costs.
- c. A description of Vendor’s relevant experience to the proposed solution/implementation, including customer’s previous municipal and local government clients with similar population sizes.
- d. A list of all sister companies, joint ventures, 3rd party dependencies, outsourcing or subcontracting that will be involved in creating and delivering your solution including business/financial contacts for each organization.
- e. Provide number of current clients and client retention rate for each of the last five years, 2010 – 2014. Provide specific percentages for each year. A summary of any

key differentiators that make Vendor uniquely positioned to provide Project Management to the City.

3.3 SCOPE

In Section 2 of its Proposal, Vendor shall explicitly confirm its agreement with the full scope of Services described in this section – City of Memphis Project Management Requirements (SCOPE).

Section 3 of Vendor's Proposal shall describe Vendor's "Solution/implementation Design". More specifically, this section of Vendor's Proposal shall include each of the following:

3.3.1 CITY OF MEMPHIS PROJECT MANAGEMENT

3.3.1.1 Describe the Vendor's tools and technology to meet the scope/requirements outlined in Section 2 of this RFP.

TOOLS AND TECHNOLOGY

Identify the tools and technology Vendor proposes to deploy for the City of Memphis project management services, describe how the tools will benefit the City and how such components would be expected to interoperate and integrate with the City's technology environment.

Identify any license fees, implementation fees, or other charges Vendor would propose to pass-through to the City for tools and technology, or any other fees for which the City might be responsible related to technology.

Include any assumptions Vendor has made about systems and resources available within the City's information technology environment.

3.3.2 SECURITY

Not applicable.

3.4 PRICING MODEL

In Section 4 of Vendor's Proposal, Vendor shall provide a detailed breakdown of costs. For example, what is the cost for project management, research/inquiry, development, training and implementation?

3.5 REFERENCES

In Section 5 of the Vendor's Proposal, Vendor shall provide project descriptions and verifiable references for at least three (3) of Vendor's customers that, to the extent possible, are local (or state) governments, have similar geographic footprints and for which

Vendor has managed within the last twelve (12) months, including contact information for the references.

3.6 VENDOR'S ALTERNATIVE PROPOSALS

Alternative proposals will not be accepted for this RFP.

3.7 INSURANCE AND RISK OF LOSS

Insurance

Please see Exhibit A-2 for Standard Insurance Requirements.

3.8 Equal Business Opportunity (EBO) Program

Equal Business Opportunity Program

This contract will be subject to the requirements of the City of Memphis Ordinance #5384 which establishes the Equal Business Opportunity ("EBO") Program. It is up to the Respondent to ensure that all requirements of this ordinance are met. The Ordinance may be accessed on the City's website at www.memphistn.gov under "Doing Business". The intent of the EBO Program is to increase the participation of locally owned minority and women owned business enterprises ("M/WBE") in the City's purchasing activities. Toward achieving this objective, the M/WBE participation goal for this solicitation is **30%**. The percentage of M/WBE participation is defined as the dollar value of subcontracts awarded to certified minority and/or women business enterprises divided by the total proposed base bid amount.

Participation Plan

The Participation Plan must include: (1) level and dollar amount of participation your firm anticipates to achieve in the performance of contract resulting from this RFP; (2) the type of work to be performed by the M/WBE participation; and (3) the names of the M/WBEs the Respondent plans to utilize in the performance of the contract resulting from this RFP.

Eligible M/WBE Firms

To qualify as an M/WBE firm, per the requirements of City of Memphis Ordinance #5384, a firm must be included on the City's list of certified M/WBE firms. One or a combination of several M/WBEs may be utilized to meet the established goal of **30%**. A list of the City's eligible M/WBE firms is included in the specifications.

Requests for verification must be submitted to the City's Contract Compliance Office listed below:

Mary Bright
City of Memphis
Contract Compliance Office
125 North Main Street, Suite 546
Memphis, TN 38103
Phone: (901) 576-6210
Fax: (901) 576-6560
Email: mary.bright@memphistn.gov

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CITY OF MEMPHIS

EQUAL BUSINESS OPPORTUNITY PROGRAM COMPLIANCE FORM

PROJECT TITLE: PROJECT MANAGEMENT RFP

Project M/WBE GOAL: 30%

The following sections must be completed by bidder. A certified subcontractor or supplier is defined as a firm from the list of certified firms provided with this specification.

Bidder's Name

Section A - If the bidder is a certified firm, so indicate here with a check mark.

_____ MBE _____ WBE

Section B - Identify below those certified firms that will be employed as subcontractors or suppliers on this project. By submitting this bid, the bidder commits to the use of the firms listed below.

\$ = Show the dollar value of the subcontract to be awarded to this firm

% = Show the percentage this subcontract is of your base bid

M/WBE = Show by inserting an M or W whether the subcontractor is an MBE or WBE

<u>\$ / %</u>	<u>M/WBE</u>	<u>SERVICE</u>	<u>CERTIFIED SUBCONTR. NAME, ADDRESS, TEL. #</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\$ %

_____ **Total MBE**

_____ **Total WBE**

**THIS FORM and SUPPORTING DOCUMENTATION MUST BE SUBMITTED WITH THE BID OR THE
BID WILL BE CONSIDERED NON-CONFORMING.**

4 INSTRUCTIONS ON RFP PROCESS

4.1 USE OF INFORMATION

Vendor may not make any public announcement relating to this RFP or otherwise publicize the existence or contents of this RFP. Any Vendor that discusses this RFP or the Initiative with anyone within or outside the City other than the persons and entities permitted pursuant to this RFP will risk elimination from further participation in the bidding process due to breach of confidentiality, in addition to enforcement by the City of any other remedies available to it. **All correspondence about this RFP and the Initiative should be limited to the Principal Contact described in Section 4.2 or other designated City personnel or agents.**

4.2 PRINCIPAL CONTACT AND INFORMATION REQUESTS

Brent Nair is the single point of contact (the “Principal Contact”) for all matters relating to this RFP. Vendor should direct all inquiries to the Principal Contact at cio.requests@memphistn.gov

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

4.3 SCHEDULE OF ACTIVITIES

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

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

Activity	Date
Publish RFP	1/15/2015
Vendor Questions Submission	1/28/2015 5:00 pm CDT
City Response to Questions	2/4/2015 5:00 PM CDT
Proposal Submission Deadline	2/20/2015 2:00 pm CDT
Select three (3) Finalists - Optional	March 2015
Finalists Presentations – Optional (City’s Discretion)	April 2015
Negotiations	May 2015
Award	June 2015

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

4.4 INITIAL QUESTIONS SUBMISSION, FINAL QUESTIONS SUBMISSION

Vendor may submit an initial set of questions based on its review of this RFP, by completing the template provided at Exhibit A-2 (Vendor Questions Template) and sending it via email by **date/time shown in schedule of activities**. Questions received after 5:00 will not be answered. This email should be sent to the individuals described in Section 4.2, with the subject heading: “**[Your company’s name] – Initial City of Memphis PROJECT MANAGEMENT RFP Questions**”. The City will post the responses to the questions on the City’s web site by **date/time shown in schedule of activities**.

4.5 PROPOSAL SUBMISSIONS

4.5.1 PROPOSAL SUBMISSION AND DUE DATE

4.5.1.1 Vendor shall submit (A) 1 original and 7 complete printed copies of its Proposal (including the signed Cover Letters); and (B) 2 CDs or DVDs containing softcopies of its entire Proposal (including PDFs of the Signed Cover Letters) on or before **date/time shown in schedule of activities**, 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 PROJECT MANAGEMENT RFP # 27171

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

4.5.1.3 PROPOSALS MAY NOT BE AMENDED AFTER THE SUBMISSION DEADLINE.

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

4.5.1.5 With respect to the information contained on Vendor’s CDs or DVDs:

4.5.1.5.1 The folders and/or files should be organized in such a way as to preserve the order and labeling of how such information is presented in Vendor’s printed copy of its proposal;

4.5.1.5.2 Each document (and file name) should clearly show the name of Vendor;

4.5.1.5.3 Each file should be pre-formatted by Vendor to facilitate on-line viewing and printing in a form consistent with Vendor’s printed copy of its proposal;

4.5.1.5.4 All documents should be presented in a native Microsoft Office format (e.g., Word, Excel, PowerPoint,) or PDF.

4.5.1.5.5 Documents should not include embedded files.

4.5.2 PROPOSAL FORMAT

The City expects the Proposal to be a compilation of various documents, in particular because Vendor’s Proposal must utilize the RFP response format set forth in this RFP. The Proposal should be structured so that there is a primary, “core” document (organized in accordance with Section 3) that incorporates by reference, as applicable, the other documents.

All pages should be formatted to print on 8 ½ x 11” paper, unless another format is provided by the response template. Vendor responses should be specific, factual, brief and to the point, and should avoid pure sales and marketing content to the extent possible.

4.5.3 PROPOSAL EXPIRATION DATE

Proposals in response to this RFP shall remain valid for nine (9) months from the Proposal due date. The City may request an extension of time if needed.

4.5.4 VENDOR DATA

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

4.5.5 GENERAL

Subject to questions and clarifications raised on specific issues in accordance with Section 4.4, Vendor shall be deemed, by the submission of its Proposal, to have understood fully the meaning of the overall RFP. Any claims of ambiguity after contract award will not be accepted by the City.

4.6 FINALIST SELECTIONS (N → ~3 Vendors)

The City's current intent is to select approximately three (3) of the RFP respondents who will be asked to give an oral presentation of its proposal to the City. However the City is not obligated to interview any finalist. If interviews are conducted, these providers will be selected based on an evaluation of their Proposals against the criteria described in Section 5 of this RFP. RFP recipients that are not selected to progress to the oral presentations likely will be excluded from further consideration.

RECIPIENT PRESENTATIONS

Details pertaining to the oral presentation phase of the RFP process will be confirmed after Proposal submission, however the presentations are tentatively scheduled to begin the date shown in schedule of activities.

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

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

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

4.7 NEGOTIATIONS

The City may elect to negotiate with one or more Proposers by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The City reserves the right to conduct multiple negotiation rounds or no negotiations at all.

4.8 AWARD OF SERVICES

The City reserves the right to award the Services to the lowest and best proposer or proposers or to make no such award, in its sole discretion. Notification of the City's intent to award will be publicly announced on the City's website and outside City Council Chambers, located on the lobby floor of City Hall, 125 North Main, Memphis, Tennessee 38103.

4.9 PROTESTS

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the award announcement at the following address: City of Memphis Purchasing Agent: 125 North Main, Room 354, Memphis, Tennessee 38103.

4.10 MODIFICATION OR TERMINATION OF RFP PROCESS

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

4.11 SUPPLEMENTAL INFORMATION

If, subsequent to issuance of this RFP, additional relevant material is produced by or becomes available to the City, such material will (where appropriate) be transmitted to all RFP participants for their consideration. Vendor should consider such information in its Proposal, and the City will assume that all changes or additional requirements transmitted have been taken into account in Vendor's Proposal (including with respect to pricing), unless otherwise specified.

4.12 NO REPRESENTATIONS OR WARRANTIES

The City makes no representations or warranties regarding the accuracy or completeness of the information contained in this RFP or otherwise provided by the City through the RFP process. Vendor is responsible for making its own evaluation of information and data contained in this RFP or otherwise provided by the City, and for preparing and submitting responses to the RFP.

The City has attempted to validate the information provided in this RFP, but it is possible that Vendor may detect inconsistencies or potential errors. While Vendor should identify these potential issues in its questions or in an appendix to its Proposal, Vendor should use the information provided on an “as-is” basis for its initial Proposal. Information regarding the City and the Initiative may be revised or updated, and republished for inclusion in a final response.

4.13 PROPOSAL PREPARATIONS COSTS

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

4.14 OWNERSHIP AND INTELLECTUAL PROPERTY

The City will own all of the data contained within the PROJECT MANAGEMENT RFP.

5 EVALUATION MODEL

5.1 QUALIFYING PROPOSALS

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

A Qualifying Proposal is a Proposal that:

- a. Was submitted (in the form and format required) by the due date as specified in Section 4.5.
- b. Conforms to the requirements of the RFP (e.g. includes the requisite number of copies, and customer references).

5.2 EVALUATION OF QUALIFYING PROPOSALS

City will evaluate each Qualifying Proposal based on the degree to which it complies with City's requirements, as articulated in this RFP. The primary categories to be evaluated are:

- a. Scope and Solution/implementation, including whether Vendor accepted the scope of services presented in this RFP, meet the solution/implementation, requirements and constraints, proposes an appropriate development plan, mitigates risks, and delivers value added components.
- b. Pricing, including whether Vendor provides a cost effective pricing methodology.

- c. Qualifications: including Vendor(s) qualifications and capabilities to perform the services described in this RFP. Information on how the City will weight these categories for each down-selection referenced in Section 4 above is set forth below:

Evaluation Category	Weight	First Down Selection	Award of Services
Scope and Solution	40	XX%	XX%
Pricing	35	XX%	XX%
Qualifications/Experience	25	X%	X%
TOTAL	100%	100%	100%

6 LIST OF ATTACHMENTS AND EXHIBITS

6.1 Exhibit A-1: Vendor Questions Template

6.2 Exhibit A-3: Proposed Standard Contract

Exhibit A-3 - “Proposed Contract” SERVICE AGREEMENT

THIS SERVICE AGREEMENT (hereinafter “Agreement”) is made and entered into as of this date, month and year (the “Effective Date”), by and between the City of Memphis, with offices located at 5125 Elmore Rd. Ste. 6, Memphis, TN 38134 (hereinafter “City”), TBD (hereinafter “Vendor”)

WHEREAS Vendor is ready, willing and able to provide the services outlined in this Agreement, under the terms and conditions described herein, and

WHEREAS, this Agreement includes and incorporates the following exhibits:

Exhibit “A”: Scope of Work

Exhibit “B”: Pricing Sheet / Payment Provisions

Exhibit “C”: Employee Acknowledgement and Confidentiality Agreement

NOW, THEREFORE, in consideration of the promises and the mutual commitments contained herein, the parties agree as follows:

1. Order of Precedence

In the event of any inconsistency between this Agreement, and any other conditions of sale set forth by Vendor, the order of precedence shall be as follows: this Agreement and any other conditions of sale set forth by Vendor.

2. Services

Vendor shall fully provide, and complete all services and deliverables set forth in Exhibit “A” – Scope of Work. All work will be performed in accordance with the specifications set forth in this Agreement. There is no guaranteed minimum or maximum amount of supplemental services to be purchased under this Agreement, and the Agreement does not grant Vendor the exclusive right to provide any products or services.

Nothing in this Agreement shall be deemed or construed to represent that the VENDOR, or any of the VENDOR’s employees or agents, are the agents, representatives, or employees of the CITY. The VENDOR acknowledges that it is an independent 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 VENDOR as to the details of the performance of its obligations hereunder or to exercise a measure of control over the VENDOR is solely for purposes of compliance with local, state and federal regulations and means the VENDOR will follow the desires of the CITY only as to the intended results of the scope of this Agreement. It is further expressly agreed and understood by the VENDOR that neither it nor its employees or agents shall hold itself out contrary to the terms of this paragraph, and the CITY shall not be liable for any representation, act or omission of the VENDOR contrary to the provisions hereof.

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

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

VENDOR shall take affirmative action to ensure that small, minority-owned and women-owned businesses, which have been certified by the CITY, are utilized when possible sources as source of supplies, equipment construction and services.

3. Personnel

All Vendor personnel performing work under this Agreement shall be subject to the prior and continuing approval of CITY OF MEMPHIS. If at any time during the term of this Agreement, any Vendor personnel are not approved by CITY OF MEMPHIS, then Vendor shall, immediately upon receipt of written notice from CITY OF MEMPHIS, replace such personnel with substitute qualified personnel or take such other action as requested by CITY OF MEMPHIS.

CITY OF MEMPHIS and Vendor both agree that it is in their best interests to keep the turnover rate of the Vendor personnel performing the services to a reasonably low level. Accordingly, if CITY OF MEMPHIS believes that Vendor's turnover rate may be excessive and so notifies Vendor, Vendor shall provide data concerning its turnover rate, meet with CITY OF MEMPHIS to discuss the reasons for, and impact of, the turnover rate and otherwise use good-faith, commercially reasonable efforts to keep such turnover rate to a reasonably low level. If appropriate, Vendor shall submit to CITY OF MEMPHIS its proposals for reducing the turnover rate, and the parties shall mutually agree on a program to bring the turnover rate down to an acceptable level. In any event, notwithstanding transfer or turnover of personnel, Vendor remains obligated to perform the services without degradation and in accordance with this Agreement.

Vendor warrants and represents that all personnel furnished by Vendor under this Agreement are the employees or agents of Vendor. Vendor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. CITY OF MEMPHIS and 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 by or on behalf of Vendor. In addition Vendor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of Vendor pursuant to this Agreement.

Vendor shall conduct all necessary employment eligibility verifications for the Vendor personnel performing work under this Agreement. Additionally, Vendor will perform Background Checks on any employee assigned to this agreement, upon request by the CITY OF MEMPHIS.

VENDOR shall not engage, on a full-time, part-time or any other basis, during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employ of the CITY.

4. Warranties

Vendor warrants that:

- a. Vendor shall strictly comply with the specifications, requirements, standards, and representations set forth in this Agreement and the attachments thereto.
- b. All tasks, deliverables, goods, services, and other work shall be provided by the Vendor in a timely and professional manner by qualified personnel.
- c. All tasks, deliverables, goods, services, and other work performed by Vendor shall be complete, uniform in appearance, and in accordance with generally applicable standards in the industry and shall perform according to the requirements as set forth in Exhibit "A" – Scope of Work..
- d. None of the Vendor work product(s) or Vendor material(s) provided under this agreement to CITY OF MEMPHIS, nor Vendor's performance of the services will: (i) infringe on the copyrights, trademarks, service marks, trade secrets or trade names of any third party arising or enforceable under the laws of the United States, (ii) infringe on any existing patents of any third party, or (iii) contain confidential or proprietary material misappropriated from any third party.
- e. In the event that warranty or non-warranty repairs are necessary, Vendor shall respond in person on the same day as a service request on a downed system is made and no later than twenty-four hours after service is requested on a downed node.
- f. In the event that any service provided under this Agreement are found to be non-compliant with the above warranty, Vendor shall for a period of twelve (12) months from the event(s) giving rise to the claim, either: a) correct the defective service item(s) at Vendor's expense, or b) provide CITY OF MEMPHIS with an equitable adjustment in the contract price.

5. Compensation

All compensation to Vendor under this Agreement shall be paid by CITY OF MEMPHIS and shall be set forth on the Pricing Sheet annexed hereto as Exhibit "B" – Pricing Sheet.

Vendor will submit to the CITY OF MEMPHIS invoices, with supporting documentation, detailing the City's contract number and the services provided thereunder. The CITY OF MEMPHIS shall use its best efforts to remit payment based on the VENDOR'S invoice within thirty (30) calendar days after receipt of accurate invoice(s) and approval by the City. Accurate and timely invoices shall be delivered to the following address:

CITY OF MEMPHIS/Information Services
5125 Elmore Street, Suite #6
Memphis, TN 38134
ATTN: Annette Glasper

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 goods or work provided nor as final approval of any of the costs invoiced therein, and the CITY'S payment shall not relieve the VENDOR from its obligation to replace any goods or correct any work that does not conform to this Agreement, even if the unsatisfactory character of such goods or work may have been apparent or detected at the time such payment was made. Work, data or components that do not conform to the requirements of this Agreement shall be rejected by the CITY and replaced by the VENDOR, without delay or additional cost to the CITY.

6. Term of Contract

The term of this Agreement shall commence upon the date of execution by the CITY OF MEMPHIS and shall expire on **TBD** thereafter, unless sooner terminated, in whole or in part, as provided in this Agreement.

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 may immediately terminate this Agreement upon written notice to the VENDOR. In the event of such termination, the VENDOR shall be entitled to receive just and equitable compensation for any satisfactory work performed up to the termination date. Such termination by the CITY shall not be deemed a Breach of Contract by the CITY, and the VENDOR shall have no right to any actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount that have not been earned as of the date of termination.

The VENDOR shall submit to the CITY a final contract invoice, within forty-five (45) calendar days from the termination VENDOR further acknowledges and agrees that the CITY will not be responsible for any invoices, pertaining to this Agreement, submitted after the final contract invoice deadline date. The VENDOR shall close its accounting records at the end of the Agreement period in such a manner that reimbursable expenditures and revenue collections are NOT carried forward.

7. Indemnification and Insurance

- a. Indemnification: Vendor shall indemnify, defend, and hold harmless CITY OF MEMPHIS and the City, its respective agents, officers, employees and elected and appointed officials from and against any and all losses, claims, suits, actions, and costs of any kind, including all reasonable costs of investigation or defense (including attorneys' fees), that arise or are alleged to have arisen out of, or in connection with, the (i) acts or omissions of Vendor or Vendor personnel, or (ii) breach by Vendor of any term of this Agreement. In addition, Vendor shall indemnify, hold harmless and defend CITY OF MEMPHIS and the City from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorney's fees, for or by reason of any actual or

alleged infringement of any United States' patent, copyright, or any actual or alleged trade secret disclosure, arising from or related to the operation and utilization of Vendor's work under this Agreement.

b. The Company shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. The Company shall require all subcontractors to carry insurance as outlined below, in case they are not protected by the policies carried by the Company. The Company is required to provide copies of the insurance policies upon request. The Company shall furnish the Risk Manager a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the state of Tennessee.

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

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

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

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

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

City of Memphis
Attn: Purchasing Agent
125 North Main, Room 354
Memphis, TN 38103

The Certificate of Insurance shall state the following: “The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies.” The additional insured endorsements shall be attached to the Certificate of Insurance and the Certificate of Insurance shall also state: “The additional insured endorsement is attached to the Certificate of Insurance.”

• **WORKERS COMPENSATION:**

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

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

AUTOMOBILE LIABILITY:

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

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

COMMERCIAL GENERAL LIABILITY:

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

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

ERRORS AND OMISSIONS LIABILITY:

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

\$2,000,000 Per Project / 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.

8. Compliance with Applicable Law/Conflict of Interest

Vendor shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference. VENDOR certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall obtain, 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.

Vendor shall indemnify and hold harmless CITY OF MEMPHIS and the City from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorney's fees, arising from or related to any violation on the part of Vendor, its employees, agents, or subcontractors of any such law, rules, regulations, ordinances or directives.

All Vendor personnel providing services under this Agreement which require specific Federal, State, or local governmental licenses or credentials shall maintain such licenses or credentials current and valid throughout the period of Agreement performance. Any Vendor agent or employee who drives a vehicle in performance of contract operations shall have a valid operator's license for that vehicle class; evidence of vehicle insurance coverage for the driver will be required prior to assignment to such duties. Vendor shall maintain a file of required insurance, licenses and credentials for the business entity and for all subject employees which is current at all times and accessible for CITY OF MEMPHIS inspection.

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. VENDOR covenants that it has no public or private interest, and shall not acquire, any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and the VENDOR covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the VENDOR or any agent or representative of the VENDOR, to any officer, official, agent or employee of the CITY, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. The VENDOR warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the CITY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the VENDOR in connection with any work contemplated or performed relative to this Agreement. For breach or violation of this provision, the CITY may cancel this Agreement without any liability to VENDOR and shall have the right to recover or withhold the full amount of such gratuities and to terminate this Agreement.

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

9. Fair Labor Standards/Employment of Illegal Immigrants

Vendor shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless CITY OF MEMPHIS and the City, their officers, employees and agents from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorney's fees arising under any wage and hour law, including but not limited to, the Federal Fair Labor Standards Act, for work performed by Vendor's employees for which CITY OF MEMPHIS or the City may be found jointly or solely liable.

VENDOR hereby certifies to comply with all applicable local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States. VENDOR shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event the VENDOR fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this agreement may be canceled, terminated or suspended in whole or in part by the City, and the VENDOR may be prohibited from contracting to supply goods and/or services to the City for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with the City.

10. Nondiscrimination and Affirmative Action

Vendor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and will be treated equally without regard to or because of race, creed, color, religion, ancestry, national origin, sexual orientation, sex, age, condition of physical or mental handicap, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Vendor shall certify, at CITY OF MEMPHIS' request that it is in full compliance with all applicable EEO rules and laws.

11. Records and Audits

Vendor shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Vendor shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. Vendor agrees that CITY OF MEMPHIS shall, upon reasonable notice and scheduling, have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement (i.e. invoicing/billing, incident log (s) and time card (s)). Vendor shall keep and maintain this documentation and it shall be made available to CITY OF MEMPHIS during the term of this Agreement and for a period of 5 years thereafter unless written permission of CITY OF MEMPHIS is given to dispose of any such material prior to such time. All such material shall be maintained by Vendor at a location in Memphis, Tennessee, provided that if any such material is located outside of Memphis, then, at CITY OF MEMPHIS' option, Vendor shall, at its sole expense, have such material delivered to its location in Memphis, Tennessee for inspection by CITY OF MEMPHIS and the City within five (5) days of CITY OF MEMPHIS' request for such material.

Failure on the part of Vendor to comply with the provisions of this paragraph shall constitute a material breach of this Agreement upon which CITY OF MEMPHIS may terminate or suspend this Agreement as provided in Section 19(a) of this Agreement.

12. Governing Law; Jurisdiction and Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

The Parties hereby submit and consent to the exclusive jurisdiction of any state or federal court located within Shelby County or the United States Western District of Federal Court within the State of Tennessee and irrevocably agree that all actions or proceedings relating to this Agreement, other than any action or proceeding required by this Agreement to be submitted to arbitration, will be litigated in such courts, and each of the Parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in such court.

13. Severability

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

14. Penalties and Liquidated Damages

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

15. Suspended or Debarred Entities

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

16. Prohibition Against Assignment, Delegation and Subcontracting

This Agreement, or any interest herein, including, but not limited to, any claim for monies due or to become due with respect thereto, shall not be assigned or delegated, or both, by Vendor, and any assignment or delegation shall be null and void. Except as may be approved in writing by CITY OF MEMPHIS no performance of this Agreement, or any part thereof, shall be subcontracted by Vendor, and any such subcontract shall be null and void.

17. Termination and Suspension

- (a) Termination for Cause: Either Party may terminate this Agreement for cause. Events constituting cause shall include, but not be limited to: (i) commencement of bankruptcy or insolvency proceedings by or against the other party; (ii) continued, flagrantly unsatisfactory performance by either party's personnel; (iii) continued failure to meet the performance standards described in this Agreement or Exhibit "A"; or (iv) breach of any provision of this Agreement; (v) the VENDOR or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting. If termination is for reasons of cause, the terminating party shall issue a written notice of intent to the other party. The terminated party shall have ten (10) days from the receipt of said notice to cure the identified defects, if curable. If, at the terminating party's sole determination, the Agreement is terminated for cause, the terminated party shall be paid for those satisfactory services provided and accepted by the terminating party up to the time of termination. The VENDOR shall be liable to the CITY for any loss, damage, or additional cost incurred thereby, including but not limited to any difference between the cost for procuring such like services and the price specified herein, attorney's fees and costs.
- (b) Termination for Convenience: CITY OF MEMPHIS may, in its sole discretion, terminate the Agreement for convenience. In the event of a termination for convenience, CITY OF MEMPHIS shall pay the Vendor for the services performed and/or materials provided and accepted in accordance with the Agreement's provisions, up to the effective time of termination as specified in the Notice of Termination for Convenience. Termination for Convenience costs shall be subject to audit by CITY OF MEMPHIS for determinations of reasonableness. If Default is later determined to be based on an event which did not constitute Cause, Termination shall be treated as if for Convenience.
- Under any termination, CITY OF MEMPHIS shall provide disposition instructions to Vendor for work product paid for or otherwise belonging to CITY OF MEMPHIS or the City, which is in the custody of the Vendor. Vendor further agrees to comply with any assistance reasonably requested by CITY OF MEMPHIS to facilitate the orderly transfer of the services to CITY OF MEMPHIS or its designee. VENDOR shall deliver to the CITY all hard copy and electronic files maintained on behalf of the CITY within fourteen (14) calendar days of termination of this Agreement.
- (c) Suspension: CITY OF MEMPHIS may, at its sole option, issue to Vendor a total or partial Notice of Suspension of Work. In the event of a suspension of project work, CITY OF MEMPHIS shall pay Vendor for the services performed and/or materials provided and accepted in accordance with the Agreement's provisions, up to the effective time of suspension as specified in the Notice of Suspension. Vendor will also deliver all the completed and partially completed deliverables to and as directed by CITY OF MEMPHIS. If Vendor does not receive written notice to continue the suspension, resume or terminate the Project within a 30 day period immediately following Vendor's receipt of CITY OF MEMPHIS' Notice of Suspension, then the Agreement will terminate automatically for the convenience of CITY OF MEMPHIS, in accordance with Section 18(b).

18. No Amendments

The terms of this Agreement may not be varied or modified in any manner, except in a subsequent writing executed by an authorized representative of each party. 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 and specifically identified as a waiver of any succeeding breach thereto or of any other provision herein contained. 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.

19. CITY OF MEMPHIS Facilities

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

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

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

Vendor shall permit City and its agents and representatives, including CITY OF MEMPHIS, to enter into those portions of the CITY OF MEMPHIS facilities occupied by Vendor staff at any time to perform facilities-related services.

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

When the CITY OF MEMPHIS facilities are no longer required for performance of the services described in Exhibit "A", Vendor shall return such facilities to the CITY OF MEMPHIS in substantially the same condition as when Vendor began use of such facilities, subject to reasonable wear and tear.

20. Due Diligence and Non-Reliance

Vendor represents, warrants and covenants that it has had opportunity to conduct, and has conducted, due diligence with respect to the City's IT environment, and all other items and conditions it deems necessary to conclude this Agreement, and Vendor represents, warrants and covenants that it has not relied upon any written or oral statement of CITY OF MEMPHIS or its employees, directors, officers, consultants, attorneys or any elected or appointed officials in concluding this Agreement.

21. Obligations Extended Beyond Period of Performance

Vendor, its employees, agents, and subcontractors shall not disclose any details in connection with this Agreement to any party, except as may be otherwise provided herein or required by law, for a period of no less than five (5) years from the termination of this Agreement and any subsequent amendments. In addition, the Warranty, Indemnification, Records and Audits, Penalties, Confidentiality and other provisions of the Agreement, which require performance after the contract termination/expiration date, shall survive for a period of five (5) years following the expiration or earlier termination of this Agreement.

22. Confidentiality

Vendor agrees during the term of this Agreement and thereafter that it will take all steps reasonably necessary to hold CITY OF MEMPHIS' and the City's proprietary, confidential and trade secret information in trust and confidence. Vendor shall not use or disclose to any person, firm or entity any proprietary, confidential or trade secret information of CITY OF MEMPHIS or the City without the express, prior written permission of CITY OF MEMPHIS or the City. In addition, Vendor agrees to keep the terms, conditions, and pricing contained herein confidential. The provisions of this Paragraph shall survive the expiration or other termination of this Agreement.

Vendor shall obtain an executed copy of Exhibit "B" – Employee Acknowledgement and Confidentiality Agreement – for each of its employees performing work under this Agreement. Such Employee Acknowledgement and Confidentiality Agreements shall be delivered to CITY OF MEMPHIS, on or immediately after the effective date of this Agreement but in no event later than the date any such employee first performs work under this Agreement.

23. Software

If in the event Vendor should develop software under this Agreement, and for which it is fully paid by CITY OF MEMPHIS (hereafter "Client Proprietary Software"), Vendor recognizes that said software is the exclusive property of the City and that the City reserves the right to use, market, license, or sell it to others. The Vendor agrees that the Client Proprietary Software is a trade secret of the City, is protected by civil and criminal law and by the law of copyright, and is very valuable to the City and that its use and disclosure must be carefully and continuously controlled. The Vendor further understands that operator manuals, training aids, and other written materials for such Client Proprietary Software are subject to the Copyright Act of the United States. Vendor shall not publish, utilize or permit others to utilize any Client Proprietary Software, or the ideas, concepts, techniques, and materials associated therewith, to provide services to others. The signing of this Agreement shall constitute a complete transfer of ownership, intellectual property and copyright of all documents from the VENDOR to the CITY.

24. Termination of Prior Agreements

This Agreement, together with the exhibits thereto, constitute the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes any prior discussions, negotiations, proposals, agreements and understandings.

25. Conditional Agreement

This Agreement is conditioned upon the City approving the commitment of funds for this project and approving the contract through CITY OF MEMPHIS.

26. Notices

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties at the following addresses. Contact information and addresses may be changed by either party upon giving ten days prior written notice thereof to the other party.

CITY OF MEMPHIS:

TBD

5125 Elmore, Suite #6

Memphis, TN 38134

Attn: Information Services

With a copy to:

City Attorney

125 North Main, Room 336

Memphis, TN 38103

27. Authority

The undersigned represent that they are authorized to execute this Agreement on behalf of the parties hereto, and each party has relied upon the authority of the other in executing this Agreement.

IN WITNESS WHEREOF, CITY OF MEMPHIS and Vendor have caused this Agreement to be signed by their duly authorized agents on the day and year first set forth hereinabove.

CITY OF MEMPHIS

TBD

A C Wharton, Jr., Mayor

Signature

Herman Morris, Jr., City Attorney

Printed Name

Brent Nair, Chief Information Officer
Director, Information Services

Title

Date

Date

Exhibit A
SCOPE OF WORK

EXHIBIT B
PRICING SHEET / PAYMENT PROVISIONS

EXHIBIT C

**EMPLOYEE ACKNOWLEDGEMENT AND
CONFIDENTIALITY AGREEMENT**

PROJECT NAME:	
VENDOR NAME:	
CLIENT:	CITY OF MEMPHIS

GENERAL INFORMATION:

Your employer has entered into a contract with the CLIENT identified herein to provide certain services to CLIENT. In order to perform services or work under this contract, your signature on this Employee Acknowledgement and Confidentiality Agreement is required.

EMPLOYEE ACKNOWLEDGEMENT:

I understand and agree that the VENDOR, referenced above, is my sole employer for purposes of the above referenced contract, I understand and agree that I must rely exclusively upon my employer for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above referenced contract.

I understand and agree that I am not an employee of the CLIENT for any purpose whatsoever, and that I do not have and will not acquire any rights or benefits of any kind from the CLIENT by virtue of my performance of work under the above referenced contract.

I hereby agree that I will not divulge to any unauthorized person any data or information obtained while performing work related to the above referenced contract. I agree to forward all requests for the release of any data or information received by me to the CLIENT's Project Director, for the above referenced Contract, and to my immediate supervisor.

I agree to keep confidential all records and all data and information pertaining to persons and/or entities receiving services from the CLIENT.

All materials, including, but not limited to, data, information, computer program, design, and details of systems feature and marking plans, which the VENDOR gains access to or knowledge of in the performance of this Agreement shall be deemed proprietary information of CLIENT. I hereby agree not to disclose for a period of five (5) years, commencing with the date of the termination of this Agreement, any part of the proprietary information to other persons, and I agree to keep proprietary information confidential. Information is not considered confidential if it can be obtained through open records procedures or independently through a third party who has legal authority to release the material.

I agree to return all confidential materials to my immediate supervisor upon completion of the Contract, or termination of my employment with my employer, whichever occurs first. I acknowledge that violation of this agreement will subject me to civil and/or criminal action and that the CLIENT may seek all possible legal redress.

SIGNATURE: _____

NAME (Print): _____

DATE: ____/____/____

POSITION: _____