

# **ACS/City of Memphis**

## **Email E-Discovery / Archival Solution**

### **Request for Proposal**

**Prepared By:** Information Services  
**Closing Date for Proposals:**08/07/2009  
**Proposals Accepted at:** ATTN: ACS Business Office  
Email E-Discovery / Archival Solution  
5115 Covington Way, Suite 11  
Memphis, TN 38134  
**E-Mail Inquiries:** [requests@memphistn.gov](mailto:requests@memphistn.gov)

# Table of Contents

1.0	Introduction.....	4
1.1	Overview of Work.....	4
1.2	Schedule of Activities.....	4
1.3	Term of Contract.....	4
1.4	Response.....	4
1.5	Sole Responsibility.....	4
1.6	Sole Contact.....	4
2.0	Contract Scope.....	5
2.1	Compliance with Proposed Contract.....	5
2.2	Subcontracting.....	5
3.0	Requirements.....	5
3.1	Maintenance Requirements.....	9
3.2	Training.....	9
3.3	Knowledge Transfer and Documentation.....	9
3.4	Cost.....	10
3.5	No Obligation to Purchase.....	10
3.6	Delivery Time.....	10
4.0	Vendor Qualification.....	10
4.1	Business Operation, Account Manager, Location and Business Compliance.....	10
4.2	Indemnification and Insurance.....	11
4.3	Living Wage Ordinance.....	12
4.4	Qualified Service.....	12
5.0	M/WBE (Minority/Women Business Enterprise) Program.....	12
5.1	M/WBE Definition.....	12
5.2	M/WBE Certification.....	13
5.3	Certified Subcontractor Participation.....	13
6.0	General Information.....	13
6.1	Technology Development.....	14
6.2	Relevant Local and Corporate Experience.....	14
6.3	Pricing.....	14
6.4	Disclosure of Information.....	14
6.5	Proprietary Considerations and Public Records.....	14
6.6	Non-Responsive Proposals.....	14
6.7	Proposal Closing Date.....	14
6.8	Right to Reject.....	14
6.9	Inquiries.....	14
6.10	Prohibitions of Amendments.....	15
6.11	Proposal Cost.....	15
7.0	Response Format and Mandatory Documents.....	15
7.1	Response Preparation.....	15
	1. Cover Letter, Corporate Introductions and Company Background.....	16
	2. Table of Contents.....	17
	3. Response.....	17
	4. References.....	17
	5. Cost Table.....	17
	6. Completeness.....	17
	7. Executive Summary.....	17
8.0	Evaluation Process.....	17
8.1	Evaluation Committee.....	17
8.2	Evaluation Criteria.....	18
8.3	Oral Presentations.....	18
Exhibit 1	Proposed Contract.....	19

**AFFILIATED COMPUTER SERVICES (ACS), INC.  
CITY OF MEMPHIS DIVISION OF INFORMATION SERVICES**

**Request for Proposal  
Email E-Discovery / Archival Solution**

ACS (hereinafter referred to as "ACS") and the City of Memphis (hereinafter referred to as "City") invite qualified Vendor(s) to provide proposals to support and Email E-discovery Archival Solution to be supported by the Information Services Division of the City.

The selected Vendor(s) will be contractually responsible for all services denoted in the document. Vendor(s) may partner with another Vendor(s) to meet the needs of this RFP. ACS will be accountable for the management of this contract.

All questions pertaining to the RFP must be forwarded to ACS at the e-mail address listed on the front page of the document under "**E-Mail Inquiries**" ([requests@memphistn.gov](mailto:requests@memphistn.gov)).

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

## 1.0 Introduction

The Information Services Division (IS) of the City provides services to satisfy the information needs of all Divisions. Subsequently these Divisions use this information to better serve the citizens of Memphis quickly and efficiently. By implementing the Email E-Discovery / Archival the City would be better positioned to serve the Citizens need for information.

## 1.1 Overview of Work

Help implement an E-discovery / Archival solution for the ACS and City with respect for email and other Data services (SQL, Sharepoint, File Servers, etc).

## 1.2 Schedule of Activities

ACTIVITY	DATE
Distribution of RFP	07/01/09
Deadline for Questions	07/17/09
Proposal Due (Mandatory) by 2:00 P.M.	08/07/09
Earliest Date to Open Sealed Proposals by RFP Committee	08/11/09
Oral Presentation by Vendor(s) (optional at City discretion)	TBD

## 1.3 Term of Contract

Term of Contract is for one (1) year with the option to renew for one (1) additional 12 month period.

## 1.4 Response

The Vendor(s) must submit a response with numbering corresponding to the sections 2.0 Contract Scope, 3.0 Requirements and 4.0 Vendor Qualification.

The following definitions are to be used when Vendor(s) is preparing responses.

**Complies:** means that the Vendor(s) accepts the statement/requirement provision in every respect. Vendor **must** also thoroughly explain in detail how their responses to each requirement in the RFP will be met. If Vendor does not thoroughly explain in detail how their response meets the requirements the Vendor may be subject to a lower score for insufficient information.

**Does Not Comply:** means that the Vendor(s) does not accept provision. If the Vendor(s) does not comply with a particular provision then the **Vendor(s) must:**

1. indicate that it does not comply;
2. give reasons for non-compliance; and
3. provide detailed language that would render the provision acceptable to the Evaluation Committee made up of City and ACS Employees.

## 1.5 Sole Responsibility

The successful Vendor(s) shall assume full responsibility for meeting all requirements agreed to in the response to this RFP.

## 1.6 Sole Contact

Further, ACS will consider the selected Vendor(s) to be the sole point of contact with regard to contractual matters, including the performance of warranty services and the payment of any and all charges resulting from contract obligations. Upon contract award, the selected Vendor(s) will be directly responsible for all of its personnel and the selected Vendor(s) will designate an account manager who will serve as the point of contact for the City and ACS for billing, additions, moves, deletions, training, repairs, or any other requests or inquiries.

## 2.0 Contract Scope

### 2.1 Compliance with Proposed Contract

The Vendor(s) must submit a tabulated statement with numbering corresponding to the relevant clauses of Exhibit 1 (Proposed Contract), detailing its level of compliance with Exhibit 1 (Proposed Contract) as listed in Section 1.4. **An alternative contract will not be accepted and any modifications to the terms and conditions of the attached Proposed contract of this RFP may result in disqualifications.**

Indefinite responses such as “noted” as a statement of compliance or “to be discussed” or “to be negotiated” are not acceptable.

### 2.2 Subcontracting

The Vendor(s) will not assign this contract. Nor shall the Vendor(s) subcontract or permit anyone, other than the Vendor’s personnel, to perform any of the services, except with the written consent of the City and ACS.

## 3.0 Requirements

The E-discovery / Archive solution shall deliver at a minimum all necessary software expertise training and knowledge transfer to deliver functionality described below:

### A) System and Data Requirements

#### 1) Data Capture

- a) The solution should capture all mail for groups or end users who are in a policy.
- b) The solution does not require Exchange journaling for mail capture.
- c) The solution allows for the capture of mail for both individuals and entire data stores.
- d) The solution should dynamically update the archive retention policies as the directory changes.
- e) The solution should capture all exchange data included but not limited to: inbox, calendar, contacts, deleted items, journal, notes, sent items, deleted items, tasks, folders, moves, deletions, BCCs, and message threading.
- f) The solution should utilize off host processing, meaning minimize the impact to the exchange system for processing.

#### 2) Data Storage and Security

- a) The solution should allow archived data to be stored in encrypted format.
- b) The solution should allow for the encryption of data during transport.
- c) The solution should allow Active Directory password authentication for user access.
- d) The solution should allow administrators to create a unique password for each user.
- e) The solution should allow administrators to add users by individual user name, by team, and by membership group.
- f) The solution should allow administrators to automatically revoke access privileges when a user is disabled in the Active Directory.
- g) The solution should be able to support contemporaneous indexing of email and all attachments.
- h) The solution should be able to scale to support unlimited exchange servers.
- i) The solution should be able to scale to support up to unlimited users.
- j) The solution should support de-duplication of data on target storage host.

### **3) Retention Policy Management**

- a) The solution should allow retention policies to be set to any length (i.e. 1 day, 15 days, 1 month, 2 years, 10 years etc.)
- b) The solution should allow retention policies to be applied to individual users, teams, departments and/or entire organizations.
- c) The solution should allow for retention policies that can be explicitly prioritized to determine which policy takes precedence.
- d) The solution should allow new users to automatically be placed under the appropriate retention policy based on their group membership or allow for a default coverage policy for all users.
- e) The solution should allow for the retention of emails for employees who are no longer with the company.
- f) The solution should provide for the creation of retention policies allowing mail to be retained based on the membership of the user at the time of capture.
- g) The solution should allow the creation of retention policies allowing mail to be retained based on the current job function, distribution list membership, or geographical location of a user.
- h) The solution should allow unlimited retention of historical data.

### **4) Storage Management**

- a) The solution should support EMC Centerra products for target storage.
- b) The solution should use the same data store for e-discovery, storage management and retention.
- c) The solution should provide for tiered storage solutions as possible and available.
- d) The solution will work with existing Commvault archive solution for Exchange software
- e) The solution should not use stubbing if at all possible.

### **5) Storage Management: End User Control**

- a) The solution should allow users to retrieve the entire message back from the archive and keep it local.
- b) The solution should allow users to return attachments to the archive to reduce their mail server storage.
- c) The solution should allow individual users to have emails auto archived without their involvement.
- d) The solution should allow users to independently search and restore individual messages from their own archives without the assistance of IT.

### **6) Reporting Functionality**

- a) The solution should contain predefined reports for email volume and space used.

### **7) Historical Import**

- a) The solution should allow for the import of all email currently residing in Exchange into the archive.
- b) The solution should allow for the import of all email bounded by date.
- c) The solution should automatically associate imported emails with the correct mailbox and distribution lists.

## **8) Availability**

- a) The solution should continue to function even if Exchange and Active Directory are unavailable.
- b) The solution should continue to allow users to send and receive and retrieve email during internal infrastructure outages.
- c) The solution should provide for the recovery to primary exchange servers after any outage.
- d) The solution should integrate with a business continuity system to provide for full recovery of data from the point of corruption.

## **B) Legal Hold**

### **9) Data: Legal Hold**

- a) The solution should provide for the automatic designation of mailboxes and distribution lists for legal hold.
- b) The solution should provide for the automatic flagging of messages for legal hold.
- c) The solution should provide for the ability to add a policy per case for legal hold.

### **10) Data Recovery**

- a) The solution should allow data to be recovered to any email server.
- b) The solution should allow data to be recovered back to any server to restore only a single storage group.
- c) The solution should allow data to be recovered back to any server to restore only a single data store.
- d) The solution should allow data to be recovered back to any server to restore only a single mailbox.

### **11) Data: End User Access**

- a) The solution should allow end users to perform searches of their own mailbox(s) from a browser.
- b) The solution should allow end users to perform searches of their own mailbox(s) from Outlook.
- c) The solution should allow users to search their personal archive from Microsoft Outlook without an additional login.
- d) The solution should allow users to reply and forward email from their personal archive.

## **C) E-discovery Functionality**

### **12) eDiscovery and Search Permissions**

- a) The solution should grant or restrict access to a user, a set of users, or groups to search across a specified set of mailboxes as defined by administrators.
- b) The solution should grant or restrict access to a user, a set of users, or groups to search across a specified server, data store, or distribution list as defined by administrators.
- c) The solution should grant or restrict access to a user, a set of users, or groups to search across a body of email specified by keywords or any search engine criteria defined in 4.8.

### **13) eDiscovery and Search Criteria and Functionality**

- a) The solution should allow end user and eDiscovery searches by sender and/or recipient.
- b) The solution should allow end user and eDiscovery searches across all sender or recipient alias and distribution lists.
- c) The solution should allow end user and eDiscovery searches by date range.
- d) The solution should allow end user and eDiscovery searches by message only.
- e) The solution should allow end user and eDiscovery searches by attachment only.
- f) The solution should allow search results to be exported back to a native mail format.
- g) The solution should allow search results to be exported to a single mailbox or to users' individual mailboxes.
- h) The solution should allow end user and eDiscovery searches to provide lemmatization, full wildcard and quoted searches.
- i) The solution should be capable of listing the most common terms used in found documents and allowing subsequent searches based on those terms.
- j) The solution should allow end user and eDiscovery searches to provide relevance ranking.
- k) The solution should allow end user and eDiscovery searches to be based on message header properties.
- l) The solution should allow searches to be based on the email policy that has been applied to the message.
- m) The solution should provide simple and complex search results to be returned in under two seconds.
- n) The solution should support queries using Boolean logic.
- o) The solutions should support queries for user mailboxes automatically including all aliases and distribution lists as collected from AD.
- p) The solution should allow search results to be ordered by sender, recipient, date, subject, relevance, and other fields.

## **D) Auditing Infrastructure, Training and Support**

### **14) Administration Auditing**

- a) The solution should provide for logging and auditing of the granting of review privileges.
- b) The solution should provide for the logging and auditing of all searches.
- c) The solution should provide for the logging and auditing of all changes to retention policies.

### **15) Infrastructure**

- a) Describe your organizational infrastructure, including location and type of facilities that we would rely on for services and maintenance.
- b) If needed, customer can request capacity be easily added to solution. In what timeframe does this happen? Describe process and if additional hardware or services will be needed to expand the solution.
- c) Respondent must describe if any routine maintenance is required, and if this maintenance is included in the proposed pricing.

### **16) System Configuration & Training**

- a) Describe the timeframe necessary to provision the solution and have it ready to begin adding user data. How long has it taken the average client to have the system configured for their needs?
- b) Describe the type of training that is required to use your system.
- c) Describe how the respondent proposes to furnish initial and follow-up training.

**17) Support**

- a) The respondent should provide toll-free technical assistance 24/7/365.
- b) Provide a summary of Respondent’s resources (support personnel and otherwise) devoted specifically to technical issues, involving notification technology, as well as support procedures.

**3.1 Maintenance Requirements (ex. hardware, software, on call)– If Applicable**

**Support Options**

The Vendor(s) shall provide all support options available to the City that are directed at providing the appropriate response time. Below are parameters that need to be factored into the support options. The Vendor(s) will provide and list descriptions of all items factored into the support options and the associated costs.

- a. 24x7 on-call support
- b. What is the support matrix contract and varied levels of support available. IE 24x7x365. 8x5x365.
- c. What is the cost breakdown and justification for each level

**3.2 Training – If Applicable**

- a. The Vendor(s) shall provide a recommended training plan; complete with agendas that will be used to train all Exchange System Users, and the IS department members that will provide system support.
- b. The Vendor(s) shall provide all associated costs for the recommended training; user manuals, technical training materials, travel expense including airfare, accommodations, etc.
- c. The Vendor(s) shall deliver at a minimum the following components:
  - 1. Minimum of four (4) days of onsite training for both technical support staff, as well as end-users.
  - 2. Items to provide training on:
    - i. System usage
    - ii. Typical setup problems
    - iii. Interoperability with Exchange 2007 / Commvault Archiving product

**3.3 Knowledge Transfer and Documentation – If Applicable**

During and after implementation the Vendor(s) will work with the stakeholder and IS staff to transition knowledge necessary to maintain and manage the new system(s). When the chosen Vendor(s) completes the implementation the City expects to receive ten (10) bound {Subject to Change} copies of the system documentation.

- a. Hardware
  - 1. The Vendor(s) shall describe in detail all necessary hardware to fully implement the proposed solution
  - 2. The Vendor(s) shall provide a Microsoft Visio diagram that explains the proposed hardware configuration
  - 3. The Vendor(s) shall list with description all necessary hardware and the associated costs

4. The Vendor(s) shall provide low-end and high-end recommended workstation hardware requirements necessary to run all software efficiently and effectively

b. Software

1. The Vendor(s) shall describe in detail all necessary software to fully implement the proposed solution
2. The Vendor(s) shall list with description all necessary software and the associated costs
3. The Vendor(s) shall provide documentation that details the proposed system(s) features and the proposed solution workflow diagram
4. The Vendor(s) shall ensure that City has possession of and modification rights to any custom software, software component, or custom code required to fully implement the solution.

### **3.4 Cost**

The Vendor(s) shall list and describe all associated costs necessary to fully implement the proposed system. Cost submitted should be the Vendor's best and final offer.

The City expects to receive the lowest prices the Vendor(s) is charging other organizations purchasing similar quantities of service, maintenance and equipment. The City reserves the right to terminate the contract if, in the City's opinion, prices are deemed to be out of line with the general marketplace. All pricing should be listed in section (five) 5 of your response.

### **3.5 No Obligation to Purchase**

The City does not guarantee the purchase of any service, maintenance, or equipment during the term of the contract.

### **3.6 Delivery Time**

Services and equipment must be available within 30 days of the time of contract award. Installation must be scheduled at the City's convenience.

## **4.0 Vendor Qualification**

### **4.1 Business Operation, Account Manager, Location and Business Compliance**

- a. Vendor must have experience in providing similar support and services for a minimum of five (5) years.
- b. As part of this RFP the City expects the selected Vendor(s) to provide a dedicated account manager who will be the single point of contact for all issues regarding the Email E-Discovery / Archival Solution. This individual will work with the City and ACS Staff to proactively address any and all problems/issues.
- c. Additionally, the City desires the Vendor(s) of the proposed solution to have a local office in the Shelby county area or neighboring counties ("Crittenden, Desoto, Fayette or Tipton"), preferably in the City of Memphis.

- d. Vendor must also be in compliance with all City of Memphis, Shelby County and Tennessee business licensing, bond and insurance requirements. Vendor must provide a current copy of its business license.

#### 4.2 Indemnification and Insurance

**All listed insurance is required and must be agreed to in the reply of this document.**

- a. **Indemnification:** Vendor shall indemnify, defend and save harmless ACS, their respective agents, officers, appointed and elected officials and employees from and against any and all claims, suits, actions, including workers' compensation suits and costs of any kind, including all defense costs, all attorney's fees, arising as a result of death, personal injury, or damage to real or personal property caused, in whole or in part, by the acts or omissions of Vendor in connection with this Agreement.
- b. **Insurance:** Vendor shall provide and maintain at its own expense during the term of this Agreement the following programs of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) satisfactory to ACS's Risk Manager and evidence of such programs satisfactory to ACS shall be delivered to ACS, on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall contain express conditions that ACS is to be given written notice at least thirty (30) days in advance of any material change or termination of any program of insurance. Such insurance shall be primary to and not contributing with any other insurance maintained by ACS and shall name ACS as additional insured on the Commercial General Liability Policy, Business Automobile liability, excess umbrella liability. Vendor shall include ACS as loss payees on the property and commercial crime insurance policies. All such insurance shall be issued by a company that is licensed to do business in the State where the work is being performed and has a rating equal to or exceeding A- from A.M. Best.

**The following coverages are the minimum amounts required:**

**i. Commercial General Liability Insurance:** including Premises & Operations, Products/Completed Operations, Contractual, Broad Form Property Damage and Personal Injury with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. This coverage will also include a waiver of subrogation clause in favor of ACS. If the above insurance is written on a Claims Made Form, such insurance shall be endorsed to provide an extended reporting period of not less than two years following the expiration or termination of this Agreement.

**ii. Business Automobile Liability Insurance:** endorsed for all owned, non-owned, borrowed, leased, and hired vehicles used by Subcontractor in fulfillment of its obligations under this Subcontract, with a combined single limit of at least one million dollars (\$1,000,000) per accident, and containing a waiver of subrogation clause in favor of Contractor.

**iii. Worker's Compensation:** Vendor shall maintain a program of workers' compensation insurance in an amount and form to meet all applicable requirements of the State of Tennessee, including employer's liability with a Five Hundred Thousand Dollar (\$500,000) limit, covering all persons performing work on behalf of Vendor and all risks to such persons under this Agreement.

**iv. Property Insurance:** against all risks of physical loss or damage to property in Vendor's care, custody, or control and covering not less than the full replacement cost of any property at risk due to this Agreement.

**v. Professional Liability:** that will cover all acts, errors, or omissions by the Vendor in the amount of One Million Dollars (\$1,000,000) per claim with an annual aggregate of at least Two Million Dollars (\$2,000,000) inclusive of legal defense costs.

**vi. Excess Umbrella Liability Insurance:** in the amount of Five Million Dollars (\$5,000,000) per occurrence. ACS shall be included as additional insured.

**vii. Commercial Crime:** Vendor shall maintain a fidelity bond/commercial crime insurance policy, in the amount of not less than Five Million Dollars (\$5,000,000), to insure against loss of money, securities, or other property referred to hereunder which may result from employee dishonesty, forgery or alteration, theft, disappearance and destruction, computer fraud and burglary and robbery. Such insurance shall be primary and name the ACS as loss payee as their interests may appear.

c. **Failure to Procure Insurance:** Failure on the part of Vendor to procure or maintain the required insurance shall constitute a material breach and default of this Agreement upon which ACS may terminate or suspend this Agreement. If coverage is canceled, terminates, or lapses and is not replaced with similar coverage, ACS has the right to go out and purchase insurance. The Vendor will be responsible for all costs and deductibles associated with the purchased insurance.

d. **Claims Procedure:** The Vendor agrees to notify ACS immediately of any claim that may involve ACS. Notification should be sent to the ACS Project Director.

#### **4.3 Living Wage Ordinance**

In accordance with Ordinance No. 5185, commonly referenced as the Living Wage Ordinance, any contractor or subcontractor holding a service agreement with ACS on behalf of the City of Memphis must pay a living wage to each of its employees in the amount of \$10 per hour with health benefits for employees and their dependents or \$12 per hour without health benefits. Proof of such compensation must be evidenced by payroll reports which shall include information required by City (Exhibit 1, Exhibit D).

#### **4.4 Qualified Service**

Vendor must have adequately qualified employees who are available to perform the services that are requested. Vendor may be requested to provide resumes for employees who will perform the services.

### **5.0 M/WBE (Minority/Women Business Enterprise) Program**

The City has a Minority/Women Business Enterprise Program that is designed to increase the participation of minority and women-owned businesses in the City's purchasing activities.

#### **5.1 M/WBE Definition**

In accordance with the City of Memphis Ordinance No. 4388, minority-owned businesses are defined as those that are 51% owned and controlled by African Americans. Women-owned businesses are defined as those that are 51% owned and controlled by one or more women,

but not African Americans. To qualify as an M/WBE Vendor, a firm must be included on the list of certified M/WBE's, available from:

**Office of Compliance  
125 N. Main, Room 440  
Memphis, TN 38103**

A list of certified M/WBE Vendor is available from the Office of Compliance, at the address listed above.

**5.2 M/WBE Certification**

Only those Vendors that have been certified by the Uniform Certification Agency (UCA) in Shelby County and its surrounding counties are eligible to qualify as M/WBE businesses. If the Contractor is a certified firm, enter the following information and submit a copy of your UCA certification:

Minority (MBE): \_\_\_\_\_ Women (WBE): \_\_\_\_\_  
 Certification Number: \_\_\_\_\_  
 COMPLY (Insert YES or NO): \_\_\_\_\_  
 EXCEPTION (Insert YES or NO & Specify): \_\_\_\_\_

**5.3 Certified Subcontractor Participation**

The City also encourages non-M/WBE Vendor to seek participation in this proposal with an M/WBE Vendor (vendor must adhere to the same provisions stated in section 5.2). Even if you are not an M/WBE Vendor, please explain below any participation by an M/WBE Vendor that is proposed for the project. Include name, address and certification number if any M/WBE participant, plus the estimated percentage of the contract to be awarded to the participant, as follows:

\$ Show the dollar value of the subcontract to be awarded to this Vendor.

% Show the percentage of the total proposal represented by the subcontractor.

M/WBE-Indicate whether the Vendor is MBE by inserting an M, or WBE by inserting a W.

Submission of this proposal commits the Vendor to the firms listed below:

\$	%	M/WBE	Certified Subcontractor's Name, Address and Telephone	Certification #

For additional information regarding certification as an M/WBE Vendor, please contact: Ms. Carlee McCullough at (901) 576-6545.

**6.0 General Information**

This section covers topics describing the obligations and expectations Vendor.

Advisory – Vendors are encouraged to review this RFP thoroughly, including all requirements, terms, conditions, deadlines and cost information to ensure submission of a timely and responsive proposal. Vendors must fully document all costs and thoroughly explain the anticipated benefits to the City.

## **6.1 Technology Development**

The Vendor(s) must keep abreast of technological advances and make the City aware of new technology as it becomes available, within the scope of services provided under the requirements of this RFP.

## **6.2 Relevant Local and Corporate Experience**

ACS requires that each Vendor provide verifiable, documented evidence of local government and corporate experience, preferable in an environment comparable in size and scope to the City, for all the services detailed in its proposal. It is the responsibility of the Vendor to explain how past experiences relate to its proposal, including appropriate quantifiable data. Only verifiable experience with references will be considered.

## **6.3 Pricing**

The cost to the City for the Vendors' various services must be submitted in a cost table in section five (5) of Vendor's response. It should be noted that the City's goal is to provide the best public service possible and that cost will be only one factor in the evaluation of proposals. Cost submitted should be the Vendor's best and final offer.

## **6.4 Disclosure of Information**

Once the final contract is awarded, the selected Vendor(s) shall not disclose any details in connection with City or ACS information without the advance written approval of the City's Contract Administrator. The Vendor may identify its services to clients provided that during the performance period of the contract, the Vendor shall not publish or disseminate commercial advertisements, press releases or feature articles using the name of the City without written consent of the Contract Administrator.

## **6.5 Proprietary Considerations and Public Records**

Responses to this RFP become the exclusive property of the City and are public record according to the City of Memphis Open Records Ordinance No. 5206.

## **6.6 Non-Responsive Proposals**

The City reserves the right to deem proposals non-responsive if any of the documents required by the City are omitted; dates/times related to the RFP are missed, or if the basic required components of the solution and related services are not addressed.

## **6.7 Proposal Closing Date**

**Written responses to this RFP must be received by ACS no later than 2:00 PM CENTRAL TIME on the date listed in Section 1.2, Scheduled Activities as "Proposals Due (Mandatory)".** Sealed responses must be addressed as it appears on the front page of this document titled "Proposal Accepted at".

## **6.8 Right to Reject**

Notwithstanding any other provisions of this RFP, the City reserves the right to reject any or all proposals.

## **6.9 Inquiries**

All questions pertaining to the RFP must be forwarded to ACS at the e-mail address listed on the front page of this document under "**E-Mail Inquiries**" (requests@memphistn.gov) ("Appropriate Contact") no later than 4:00 pm CENTRAL TIME on the date listed in Section

1.2, Scheduled Activities - "Deadline for Questions". All questions received by the stated time will be answered in a timely manner. Failure to address questions to the appropriate contact may disqualify a proposal from consideration. Written responses to all properly presented questions will be provided at least 24 hours prior to proposal closure via the City website at <http://www.memphistn.gov/>. **Responses will not be emailed, only posted to the website.**

#### **6.10 Prohibitions of Amendments**

Once a proposal has been submitted, the City will not accept any amendments or enhancements to the proposal.

#### **6.11 Proposal Cost**

The City will provide no reimbursement of any kind for any costs incurred in responding to this RFP.

### **7.0 Response Format and Mandatory Documents**

This section provides an outline of the format and structure of the response to the document. Failure to submit a response that conforms to the format outlined in the section will be considered non-responsive and, as such, will disqualify the Vendor. Vendors must submit **one (1) original and ten (10) copies** of the proposal, including **two (2) on CD** and must be able to be viewed using Microsoft Office Products or Adobe Acrobat software, supporting manuals, brochures and reports on or before, but no later than **2:00 p.m. CENTRAL TIME on the date listed in Section 1.2, Schedule of Activities as "Proposals Due (Mandatory)."** Proposals received after the closing time and date will be considered late and not entitled to participate in the process. Proposals, copies and related information should be sealed in a single package with the address of the Vendor in the upper left-hand corner and clearly marked with the project name listed on the cover page of this RFP. Sealed responses must be addressed as it appears on the front page of this document titled "Proposal Accepted at".

#### **The following outline is required to be used for Vendor responses**

(Including headings, sections and paragraphs)

1. Cover Letter, Corporate Introductions and Company Background
2. Table of Contents
3. Response
4. References
5. Cost Table
6. Completeness
7. Executive Summary

#### **7.1 Response Preparation**

In preparing a response to this RFP, the following should be considered:

- a. Proposals should be written clearly, unambiguously and to the extent possible in such a manner that evaluation committee members with little or no technical expertise will understand it.
- b. Proposals should be specific and complete in every detail. However, Vendors are welcome to outline alternative or additional services, provided the associated costs and benefits to the City are clearly presented. While the City and ACS encourage Vendor creativity in response to the RFP, the evaluation of proposals will be based primarily on responses to the required elements.
- c. Proposals may be deemed non-responsive if they are substantially an advertisement of

- past accomplishments and corporate history.
- d. Proposals must conform to the outline, including headings, sections and paragraphs. Vendors may further subdivide specific paragraphs or add relevant sections at the end of their proposals. However, the proposal must be clearly organized so the evaluating committee is able to easily locate responses to specific items.
- e. All specified information must be provided in accordance with the outline. Reference to other documents must only be used to supplement and/or substantiate information outlined in the body of the proposal.
- f. All pages must be sequentially numbered.
- g. All responses shall be firm offers and may not be withdrawn for a period of 120 calendar days following the date listed in Section 1.2, Schedule of Activities as "Proposal Due (Mandatory)".

## 1. **Cover Letter, Corporate Introductions and Company Background**

This section shall comprise no more than four (4) pages, including name and address of the firm or joint venture submitting the proposal and the name, address and telephone number of the person(s) authorized to represent the firm or joint venture. If the proposal is being submitted by or on behalf of more than one entity, all entities represented must be clearly identified.

Vendor must provide a brief company description, history and financial status. In addition, Vendor should submit the following information:

- a) **Name.** The name under which the bidder is licensed to do business.
- b) **Address.** The address of the bidder's headquarters office.
- c) **Local Address.** The address of the bidder's local office responsible for the proposed work, if different from the headquarters office.
- d) **Local Officers.** Names, titles and telephone numbers of local officers or representatives of the bidder.
- e) **Years of Local Service Experience.** The number of years the bidder has actively participated in work in Shelby County and its neighboring counties similar to that described in this RFP Section 1.1 Overview of Work.
- f) **Size of Staff.** The number of bidder employees: internationally, nationally and locally. Information must include the total number of employees in Shelby County and its neighboring counties; in particular, the number of technical and support staff presently supporting similar service, their qualifications and length of service.
- g) **Annual Report.** The bidder's most recent annual report or current audited financials. The financial stability of the Vendor and the Vendor's length of time in business will be closely evaluated.
- h) **Customer List.** Names, address and telephone numbers of customers to whom the bidder provides the same/similar services as quoted in this document. References may be contacted to describe their experience with the bidder, including the quality of the bidder's technical support and maintenance. Particular attention will be paid to the number of Shelby and neighboring county customers and the quality of service rendered to those customers.
- i) **Record with the City.** Description of past bidder experience in delivering products or services to The City similar to those required under the contract.
- j) **Warranties.** Description of warranties available from or through the bidder, including manufacturer's warranties on components.
- k) **Current Contract Obligations.** Existing Vendor contractual commitments of similar scope and priority and their estimated impact on the Vendor's ability to service this contract, if awarded.

- I) **Other.** Other general information, as determined by the Vendor to be of importance in evaluating the Vendor.

**2. Table of Contents**

The table of contents should provide a comprehensive listing of the material in the proposal arranged by section, with a listing of the subject(s) in each section and with pages numbered. The numbering of the proposal must conform to that specified in this RFP Section 7.0, 2. Table of Contents.

**3. Response**

The Vendor must thoroughly discuss and explain in detail how their response to each requirement in the RFP will be met as stated in section 1.4.

**4. References**

Vendor must provide references that are able to confirm the successful installation and support of other clients of equal size. The references must include the name, address and telephone number of top-level management contact person for each reference and must include the equipment and services supported within the scope of this RFP. ACS must be able to contact the reference without notification to the Vendor. A minimum of three (3) and a maximum of six (6) references must be provided. At least two (2) references should be for contracts of similar size or larger.

**5. Cost Table**

The cost to the City for the Vendors' various services must be submitted in a cost table. Cost submitted should be the Vendor's best and final offer.

**6. Completeness**

Although the City and ACS have made every reasonable effort, there is no representation made regarding the completeness of the contract requirements. The Vendor is expected to review the requirements and make appropriate recommendations. Any required services, products, or equipment not specified in the proposal will be the sole responsibility of the Vendor and should be listed in this section.

**7. Executive Summary**

Vendor shall describe in non-technical terms their approach to implementing the requested service, identifying any unique or distinctive services to which the Vendor wishes the evaluation committee to give particular attention. Do not include any pricing in this section.

**8.0 Evaluation Process**

The evaluation process involves a thorough review of the proposals and selection of a Vendor.

**8.1 Evaluation Committee**

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

## 8.2 Evaluation Criteria

The following criteria and accompanying point system shall be used in the evaluation of the Proposals. The City of Memphis and ACS reserves the right to change or modify the criteria. Proposals will be evaluated on the compliance with City requests.

Evaluation Criteria	Weight
Is the respondent an M/WBE or did the Respondent include M/WBE participation in the proposal?	10.0%
Does the Respondent purpose to perform the work at a fair and reasonable cost?	5.0%
How well did the Respondent document the ability, capacity, and skill, to provide the product/service?	5.0%
Can the Respondent perform the scope of services as set forth in the RFP and produce the required outcomes?	5.0%
Did the Respondent include the requirement of a least 3 references?	5.0%
Did the Respondent turn in a concise and complete RFP?	5.0%
Past Experience with the City?	5.0%
Headquarters located in Memphis or Shelby County?	5.0%
How well did the respondent document plans to provide continuous improvement to the product/services being provided?	5.0%
Did the respondent provide the documentation to provide a measure of the financial stability of the company?	10.0%
Work in conjunction to provide all aspects of (Section 3.0 A)	10.0%
Work in conjunction to provide all aspects of (Section 3.0 B)	10.0%
Work in conjunction to provide all aspects of (Section 3.0 C)	5.0%
Work in conjunction to provide all aspects of (Section 3.0 D)	5.0%
Expand at a later point to file systems and other server systems.	5.0%
Expand to support tiered backend storage for SQL DB and Archived material.	5.0%
<b>Total Score</b>	<b>100.0%</b>

## 8.3 Oral Presentations

After preliminary evaluations are completed, a short list of qualified Vendors may be invited to give an oral presentation. This presentation is optional at the discretion of the City. **However, no proposal may be altered or enhanced during an oral presentation.**

# Exhibit 1

DRAFT

## “Proposed Contract” SERVICES AGREEMENT

THIS SERVICES AGREEMENT (hereinafter “Agreement”) is made and entered into as of this date, month and year (the “Effective Date”), by and between ACS GOVERNMENT SYSTEMS, INC., with offices located at 1800 M Street, NW, Washington, DC 20036 (hereafter “ACS”), acting on behalf of the City of Memphis, Tennessee, and Vendor with offices located at Vendor Address (hereinafter "Vendor").

WHEREAS, ACS is operating under contract to perform information technology services for the City of Memphis, Tennessee;

WHEREAS, ACS is empowered under its contract with the City of Memphis to act on behalf of the City of Memphis, including agencies, departments or representatives thereof for the purpose of procuring information technology services;

WHEREAS, ACS on behalf of the City of Memphis desires to obtain from Vendor certain services;

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
- Exhibit “D”: Living Wage Ordinance

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. Third Party Beneficiary

ACS and Vendor understand and agree that this Agreement is entered into for the benefit of the City of Memphis, Tennessee and that the City of Memphis (“City” or ‘Client’) is hereby expressly made a third party beneficiary of this Agreement.

### 3. 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. ACS may, upon 15 days prior written notice, terminate any services set forth in Exhibit A pursuant to this Agreement.

### 4. Personnel

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

ACS 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 ACS believes that Vendor's turnover rate may be excessive and so notifies Vendor, Vendor shall provide data concerning its turnover rate, meet with ACS 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 ACS 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. ACS 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, if requested by ACS.

### 5. 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 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 ACS, 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 ACS with an equitable adjustment in the contract price.

## 6. Compensation

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

Vendor will invoice ACS on a monthly basis in arrears. Properly submitted invoices pursuant to this Agreement shall be due and payable by ACS thirty (30) days after receipt thereof, subject to receipt of an accurate and timely invoice delivered to the following address:

ACS State and Local Solutions, Inc.  
PO Box 981245  
El Paso, TX 79998-1245  
ATTN: Memphis/ESG/30411030

## 7. Term of Contract

The term of this Agreement shall commence on \_\_\_\_\_ and shall expire \_\_\_\_\_ thereafter, unless sooner terminated, in whole or in part, as provided in this

Agreement. ACS will have the option to extend the contract term for one (1) additional period of 12 months.

8. Indemnification and Insurance

- a. Indemnification: Vendor shall indemnify, defend, and hold harmless ACS 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) negligent or intentional 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 ACS 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 State's 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. Insurance: Vendor shall provide and maintain at its own expense during the term of this Agreement the following programs of insurance covering its operations hereunder. Such insurance shall be provided by insurer(s) satisfactory to ACS' Risk Manager, and evidence of such programs satisfactory to ACS shall be delivered to ACS' Contract Administrator, on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall contain express conditions that ACS is to be given written notice at least thirty (30) days in advance of any material change or termination of any program of insurance.

Such insurance shall be primary to and not contributing with any other insurance maintained by ACS, and shall name ACS as additional insured on the Commercial General Liability Policy, Business Automobile liability, excess umbrella liability. Vendor shall include ACS as loss payees on the property and commercial crime insurance policies.

All such insurance shall be issued by a company that is licensed to do business in the State where the work is being performed and has a rating equal to or exceeding **A-** from A.M. Best. ACS shall have the right to include additional requirements or modify the current requirements at anytime during the term of this Agreement as it becomes necessary. The following coverage's are the minimum amounts required but not limited to:

- i. **Commercial General Liability Insurance**, including Premises & Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) general aggregate. The general aggregate should apply per location or per project or both. This coverage will also include a waiver of subrogation clause in favor of ACS.

If the above insurance is written on a Claims Made Form, such insurance shall be endorsed to provide an extended reporting period of not less than two years following the expiration or termination of this Agreement.

- ii. **Business Automobile Liability Insurance**, endorsed for all owned, non-owned, borrowed, leased, and hired vehicles used by Subcontractor in fulfillment of its obligations under this Subcontract, with a combined single limit of at least one million dollars (\$1,000,000) per accident, and containing a waiver of subrogation clause in favor of Contractor.
- iii. **Worker's Compensation** in an amount and form to meet all applicable requirements of the State where the work is being performed, including employer's liability, with a five hundred thousand dollar (\$500,000) limit, covering all persons performing work on behalf of Subcontractor and all risks to such persons under this Agreement, and containing a waiver of subrogation clause in favor of Contractor.
- iv. **Property Insurance** against all risks of physical loss or damage to property in Subcontractor's care, custody, or control and covering not less than the full replacement cost of any property at risk due to this Agreement.
- v. **Professional Liability** to cover all acts, errors, or omissions by the Subcontractor in the amount of one million dollars (\$1,000,000) per claim, with an annual aggregate of at least two million dollars (\$2,000,000), inclusive of legal defense costs.
- vi. **Commercial Crime:** In the event that Subcontractor responsibility under this Subcontract involves the handling of money, checks, credit cards, securities, and/or third party property, Subcontractor shall maintain a fidelity bond/commercial crime insurance policy including coverage for property of third parties in an amount equal to the estimated annual amount of funds and/or third party property that Subcontractor shall have in its care, custody, or control but in any case not less than five Million Dollars (\$5,000,000) to insure against loss of money, securities, or other property referred to hereunder which may result from employee dishonesty, forgery or alteration, theft, disappearance and destruction, computer fraud, and burglary and robbery. Such insurance shall be primary and name the Customer and ACS as loss payee as their interests may appear.
- vii. **Excess Umbrella Liability Insurance** in the amount of five million dollars (\$5,000,000) per occurrence and listing Customer and ACS as additional insureds.

**Failure to Procure Insurance:** Failure on the part of Vendor to procure or maintain the required insurance shall constitute a material breach and default of this Agreement upon which ACS may terminate or suspend this Agreement. If coverage is canceled, terminates, or lapses and is not replaced with similar coverage, ACS has the right to go out and purchase insurance. The Vendor will be responsible for all costs and deductibles associated with the purchased insurance.

Claims Procedure: The Vendor agrees to notify ACS immediately of any claim that may involve ACS. Notification should be sent to the ACS' Project Director.

9. Compliance with Applicable Law

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 shall indemnify and hold harmless ACS 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 ACS inspection.

10. Fair Labor Standards

Vendor shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless ACS 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 ACS or the City may be found jointly or solely liable.

11. 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 ACS' request that it is in full compliance with all applicable EEO rules and laws.

12. 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 ACS 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 ACS during the term of this Agreement and for a period of 5 years thereafter unless written permission of ACS 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 ACS' option, Vendor shall, at its sole expense, have such material delivered to its location in Memphis, Tennessee for inspection by ACS and the City within five (5) days of ACS' 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 ACS may terminate or suspend this Agreement as provided in Section 19(a) of this Agreement.

### 13. Living Wage Ordinance

In accordance with Ordinance No. 5185, commonly referenced as the Living Wage Ordinance, any contractor or subcontractor holding a service agreement with ACS on behalf of the City of Memphis must pay a living wage to each of its employees in the amount of \$10 per hour with health benefits for employees and their dependents or \$12 per hour without health benefits. Proof of such compensation must be evidenced by payroll reports which shall include information required by City (Exhibit D).

### 14. 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.

### 15. 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.

### 16. Penalties and Liquidated Damages

Vendor recognizes that various ACS losses, penalties (including service level penalties), and/or liquidated damages may be assessed against ACS for certain failures to perform. In any such case where ACS' failure to perform is due to some act or omission, or failure to perform on

Vendor's part, Vendor agrees to pay or reimburse ACS for such assessments and ACS 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 ACS is penalized by Client due to the Vendor's act, omission, or failure to perform.

17. 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 ACS without delay. Such notice shall contain all relevant particulars of any debarment, suspension, or proposed debarment.

18. Prohibition Against Assignment, Delegation and Subcontracting

This Agreement, or any interest therein, 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 ACS no performance of this Agreement, or any part thereof, shall be subcontracted by Vendor, and any such subcontract shall be null and void.

19. 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"; and (iv) breach of any other material condition of this Agreement. If termination is for reasons of cause, the terminating party shall issue a written cure notice to the other party. The terminated party shall have ten (10) days from the receipt of said notice to provide a written Corrective Action Plan (CAP) to the terminating party. If the CAP, as may be amended by the parties, is found to be acceptable to the terminating party, the terminated party shall proceed to cure the identified defects. Such additional time to cure defects shall not waive either party's rights to terminate the Agreement if the identified defects in the Cure Notice are not corrected to the satisfaction of the terminating party. If, at the terminating party's sole determination, the Agreement is terminated for cause, the terminated party shall be paid for those services provided and accepted by the terminating party up to the time of termination.

(b) Termination for Convenience: ACS may, in its sole discretion, terminate the Agreement for convenience. In the event of a termination for convenience, ACS 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 ACS 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, ACS shall provide disposition instructions to Vendor for work product paid for or otherwise belonging to ACS or the City, which is in the custody of the Vendor. Vendor further agrees to comply with any assistance reasonably requested by ACS to facilitate the orderly transfer of the services to ACS or its designee.

(c) Suspension: ACS 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, ACS 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 ACS. 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 ACS' Notice of Suspension, then the Agreement will terminate automatically for the convenience of ACS, in accordance with Section 19(b).

## 20. 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.

## 21. ACS' and City Facilities

Except to the extent otherwise approved by the City and/or ACS, in their sole discretion, Vendor shall use any and all items provided by the City and/or ACS for the sole and exclusive purpose of providing the services described in this Agreement. Use of City and/or ACS 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 and/or ACS in an efficient manner. To the extent that Vendor utilizes such City and/or ACS provided items in any manner that unnecessarily increases facility costs or other costs incurred by the City and/or ACS, City and/or ACS 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 and/or ACS 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 and/or ACS.

Vendor, its employees and agents shall keep any and all items provided by the City and/or ACS 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 ACS' standard policies and procedures as made available to Vendor regarding access to and use of such City and/or ACS provided items, including procedures for the physical security of the City and/or ACS facilities.

Vendor shall permit City and its agents and representatives, including ACS, to enter into those portions of the City and/or ACS 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 and/or ACS facilities without the City's and/or ACS' prior written approval. Any improvements to the City and/or ACS facilities will become the property of the City and/or ACS.

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

22. 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 ACS or its employees, directors, officers, consultants, attorneys or any elected or appointed officials in concluding this Agreement.

23. 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 Indemnification, Records and Audits, Penalties, and Confidentiality provisions of the Agreement shall survive for a period of five (5) years following the expiration or earlier termination of this Agreement.

24. Confidentiality

Vendor agrees during the term of this Agreement and thereafter that it will take all steps reasonably necessary to hold ACS' 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 ACS or the City without the express, prior written permission of ACS 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 ACS, 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.

25. Software

If in the event Vendor should develop software under this Agreement, and for which it is fully paid by ACS (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 utilize or permit others to utilize any Client Proprietary Software, or the ideas, concepts, techniques, and materials associated therewith, to provide services to others.

26. 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.

27. Conditional Agreement

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

28. 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. Addresses may be changed by either party giving ten days prior written notice thereof to the other party.

If to ACS:  
ACS Government Systems, Inc.  
1800 M Street, NW  
Washington, DC 20036  
Attn: GCS Director of Contracts

If to Vendor:  
VENDOR INFORMATION

29. 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, ACS and Vendor have caused this Agreement to be signed by their duly authorized agents on the day and year first set forth hereinabove.

**ACS GOVERNMENT SYSTEMS, INC.**

**VENDOR COMPANY NAME**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **EXHIBIT A**

### **SCOPE OF WORK**

The scope of work is based on the services the Vendor will provide

**EXHIBIT B**  
**PRICING SHEET / PAYMENT PROVISIONS**

The following fixed cost(s) shall apply for purposes of this Agreement. The prices shall remain in effect throughout the term of this Agreement. The Vendor may submit to ACS, for its consideration, a written request for a contract price adjustment prior to the beginning of each successive contract year (i.e. the two option years) as set forth in the Agreement.

**EXHIBIT C  
EMPLOYEE ACKNOWLEDGEMENT AND  
CONFIDENTIALITY AGREEMENT**

PROJECT NAME:	
VENDOR NAME:	
CLIENT:	ACS Government Systems, Inc., and the City of Memphis, Tennessee

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: \_\_\_\_\_

**EXHIBIT D**  
**Living Wage Ordinance**

ORDINANCE NO: 5257

**AN ORDINANCE TO AMEND CHAPTER 2, ARTICLE XI, CODE OF ORDINANCES, CITY OF MEMPHIS, SO AS TO ADD AN ANNUAL ADJUSTMENT TO THE LIVING WAGE**

**WHEREAS**, the Memphis City Council along with the Administration recognizes that the living wage should be adjusted annually in accordance with the Poverty Level Index.

**NOW, THEREFORE,**

**SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS**, That Chapter 2, Article XI, Code of Ordinances, City of Memphis be amended as follows:

**Sec. 2-416. Annual adjustment of living wage.**

- (a) The living wage rate shall be modified July 1, 2008 to incorporate the update, if any, made to the federal poverty level income for a household size of four (4) by the Secretary of the Department of Health and Human Services.
- (b) The living wage rate for employees of service contractors shall be modified in accordance with the date the RFP is issued, and such RFP will contain the actual rate (in dollars per hour, with and without benefits) which applies for that RFP.
- (c) In the case of contract renewals, the living wage rate applicable as of the date of the renewal shall be the effective living wage rate.
- (d) The Director of the Division of Finance shall report to the Memphis City Council no later than the first meeting in April 2009 the impact, if any, to the City's FY 2009 O&M budget.

**SECTION 2. BE IT FURTHER ORDAINED**, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

**SECTION 3. BE IT FURTHER ORDAINED**, That this Ordinance shall take effect from and after the date it shall have been passed by the council, signed by the chairman of the council, certified and delivered to the office of the mayor in writing by the comptroller and become effective as otherwise provided by law.

BILL MORRISON

JANIS FULLILOVE  
MYRON LOWERY  
Council Members

SCOTT MCCORMICK  
Chairman of the Council

Attest:

Patrice Thomas, Comptroller.

THE FOREGOING ORDINANCE  
# 5257 PASSED  
1st Reading 3-18-08  
2nd Reading 4-1-08  
3rd Reading 4-15-08

Approved: *Scott McCormick*  
Chairman of Council

Date Signed: 05-06-2008

Approved: *[Signature]*  
Mayor, City of Memphis

Date Signed: 5/14/08

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

*Valerie C. Snipes*  
Comptroller

**AN ORDINANCE TO AMEND CHAPTER 2, CODE OF ORDINANCES, CITY OF MEMPHIS, SO AS TO ESTABLISH A LIVING WAGE**

**WHEREAS**, under the leadership of Councilman Joe Brown the Living Wage issue was introduced to the Memphis City Council and as it is important to the health and welfare of all residents of the City of Memphis that working people are paid a wage that enables them to lift their families out of poverty; and

**WHEREAS**, the City awards taxpayer-funded contracts to businesses to provide services to the public and to City government; and

**WHEREAS**, the purpose of this ordinance is to ensure that businesses receiving service contracts from the City pay a living wage.

NOW, THEREFORE,

**SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS**, That Chapter 2, Code of Ordinances, City of Memphis, be amended so as to create the following:

**Chapter 2  
Administration**

**Art. XI Living Wage**

**2-407 --- 2-425**

**ARTICLE XI – Living Wage**

**Section 2-407. Definitions:**

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

**City** - means the City of Memphis, including those city departments which exercise independent control over their expenditure of funds.

**Contractor** - means any person that enters into a service contract with the city.

**Employee** - means any person who is employed full-time, part-time or on a temporary basis as a service employee of a contractor or subcontractor on a city service contract.

**Employer** - means any person, company or corporation that employs two or more employees at any one time within a calendar year and who is a contractor or subcontractor provided, however, that corporations organized under Section 501 (C)(3) of the Internal Revenue Code of 1954, 226 U.S.C. 501 (C)(3) shall be exempted as to all employees other than child care workers.

**Person** – means any individual, business entity, corporation, partnership or joint venture.

**Service Contract** - means a contract awarded to a contractor by the city primarily for the furnishing of services to or for the city (as opposed to the purchase of goods or other property or the leasing of property). Service contract includes subcontracts but does not include any contract, whether or not a subcontract, which: (1) involves only the purchase of goods; (2) involves services provided by student interns; (3) is a contract in existence prior to the effective date of this article; or (4) is a contract with a school district, municipality or other unit of government.

**Subcontractor** – means any person not an employee that enters into a contract (and that employs employees for such purpose) with a contractor to assist the contractor in performing service contracts.

**Section 2-408. Payment of minimum compensation to employees.**

All employees employed and work performed as part of a service contract with the city shall receive an hourly wage no less than that set under the authority of this article. The minimum hourly wage shall be as defined by the University of Memphis Fogleman College of Business for the Memphis area, which today is at least \$10 per hour with health benefits for employees and their dependents or \$12 per hour without health benefits.

**Section 2-409. Monitoring and Enforcement.**

a. The comptroller shall monitor compliance with this law and may contract with non-governmental agencies to investigate possible violations.

b. The Mayor or his or her designee may promulgate rules to implement the provisions of this law and may delegate such authority to the comptroller.

c. The comptroller shall submit an annual report to the Mayor and the City Council summarizing and assessing the implementation of and compliance with this new law during the preceding year.

**Section 2-410. Required records – payroll reports.**

(a) Contractor to submit.

The service contractor shall submit 2 complete copies of the payroll reports and the payrolls of each subcontractor, consecutively numbered, not later than 14 days from the end of their respective payroll periods, 1 copy to be sent to the contracting agency, the other to the Comptroller where the same will be available for public inspection during regular business hours.

(b) Contents.

The payrolls shall contain:

- (1) the name of the prime service contractor and any subcontractor, if any;
- (2) a designation of the project and location;
- (3) the name, Social Security Number, and occupation of each employee;
- (4) the classification in accordance with the classification fixed in the contract;
- (5) the number of hours worked daily by the service worker at straight time and overtime and the hourly wage rate for each;
- (6) the gross wages paid to the service worker per pay period; and
- (7) such other data as may be required by the Comptroller from time to time.

- (c) Prime contractor responsible for subcontractors.

The prime service contractor shall be responsible for the submission of all subcontractors' payrolls covering work performed.

- (d) Signed statement of compliance.

Each copy of the payroll shall be accompanied by a statement signed by the contractor or the subcontractor, as the case may be, indicating:

- (1) that the payroll is correct;
- (2) that the wage rates contained therein are not less than those established by this ordinance as set forth in the contract;
- (3) that the classification set forth for each service worker conforms with the work that the service worker performed; and
- (4) that the service contractor has complied with the provisions of this article.

**Section 2-411. Article applicable to new service contracts.**

The provisions of this article shall apply to:

- (1) A service contract consummated after the effective date of this article.
- (2) A service contract amendment consummated after the effective date of this article.

**Section 2-412. Retaliation and Discrimination Barred.**

It shall be unlawful for any employer to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of this law, for seeking or communicating information regarding rights conferred by this law, for exercising any other rights protected under this law, or for participating in any investigatory or court proceeding relating to this law. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of this law, or who seeks or communicates information regarding rights conferred by this law in circumstances where he or she in good faith believes this law applies. Taking adverse employment action against a covered employee(s) or his or her representative within sixty days of the covered employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any covered employee subjected to any action that violates the subsection may pursue administrative remedies or bring a civil action in a court of competent jurisdiction.

**Section 2-413. Penalties.**

- (a) Debarment for 2 years.

In the event the Comptroller determines, with approval from the full Council, that any service contractor has failed to pay the living wage rate or has otherwise violated the provisions of this article and that such failure was intentional, no contract shall be awarded to such service contractor, or to any person in which such service contractor has an interest until 2 years have elapsed from the date of such determination.

**Section 2-414. Collective Bargaining.**

Parties subject to this article may, by collective bargaining agreement, provide that such agreements shall supersede the requirements of this article.

**Section 2-415. Exemptions.**

The following are not covered employees for purposes of this article:

- (1) A person who provides solely volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; and
- (2) A person employed in construction work that is subject to the provisions pursuant to the Prevailing Wage ordinance; and
- (3) Any and all Employees in the Hospitality industry, including, but not limited to, any and all employees working for restaurants and limited and full-service hotels and lodging establishments within the city limits of Memphis and Shelby County.

**Sections 2-416 – 2-425. Reserved.**

**SECTION 2. BE IT FURTHER ORDAINED,** That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

**SECTION 3. BE IT FURTHER ORDAINED,** That this Ordinance shall take effect from and after the date it shall have been passed by the council, signed by the chairman of the council, certified and delivered to the office of the mayor in writing by the comptroller, and become effective as otherwise provided by law.

TAJUAN STOUT MITCHELL  
Chairman of the Council

Attest:  
Patrice Thomas, Comptroller.

**THE FOREGOING ORDINANCE**

# 5185 **PASSED**  
 1st Reading 10-03-2006  
 2nd Reading 11-01-2006  
 3rd Reading 11-21-2006

Approved *Tajuan Mitchell*  
Chairman of Council

Date Signed: 12-15-06

Approved: *[Signature]*  
Mayor, City of Memphis

Date Signed: 12-11-06

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

*[Signature]*  
Comptroller