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NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that OKLAHOMA CITY PUBLIC PROPERTY AUTHORITY shall receive sealed proposals at the **OFFICE OF THE CITY CLERK, 200 North Walker Ave., Second Floor Municipal Building, Oklahoma City, Oklahoma 73102** until **4:00 p.m. C.S.T., on the 18TH day of SEPTEMBER, 2012**, for:

UTILIZATION AND DESIGN STUDY FOR THE CIVIC CENTER MUSIC HALL

A mandatory pre-proposal meeting will be held on Tuesday, August 7, 2012 at 10:00am at the Civic Center Music Hall, 201 N. Walker, Oklahoma City, OK.

Proposals shall be made in accordance with the Request for Proposals a copy of which may be obtained in the Office of the City Clerk at the above referenced address and are made a part of this notice as though fully set forth herein.

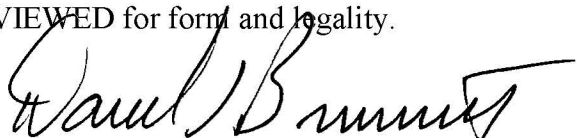
Proposals received after the above stated time and date shall be returned to the Proposer unopened. Proposals timely received in the City Clerk's Office shall be forwarded to the Requesting Department for the Selection Committee to open and review. Provided however the City Clerk may keep one copy of each proposal for its records.

The City of Oklahoma City reserves the right to waive formalities, irregularities and defects in any or all proposals, except as otherwise required by law. The City of Oklahoma City reserves the right to: reject any or all proposals; to reject a portion of any or all proposals; to negotiate and execute or to not negotiate or execute a contract with any proposer; and to solicit new or different proposals. The City of Oklahoma City reserves the right to negotiate and/or contract with one or more proposers for all or a portion of any proposal or proposed services.

(SEAL)

FRANCES KERSEY, CITY CLERK

REVIEWED for form and legality.



ASSISTANT MUNICIPAL COUNSELOR

REQUEST FOR PROPOSAL

**UTILIZATION AND DESIGN STUDY
FOR THE
CIVIC CENTER MUSIC HALL
OKLAHOMA CITY, OKLAHOMA**

Utilization and Design Study
For
Civic Center Music Hall
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REQUEST FOR PROPOSAL
UTILIZATION AND DESIGN STUDY
FOR
THE CIVIC CENTER MUSIC HALL

INVITATION

The Oklahoma City Public Property Authority (OCPPA) and the Civic Center Foundation (Foundation) are requesting proposals from consultants for the completion of a Utilization and Design study for the Civic Center Music Hall (Facility), as described herein. Interested and qualified consultants should have substantial experience in the performance of analysis for governmental agencies and offer specialized expertise in the operation of performing arts facilities.

BACKGROUND

The Civic Center Music Hall, is owned by the City of Oklahoma City, and has been in operation since 1937. In September of 2001, the majority of the facility was renovated. The City and Foundation are committed to establishing the Facility as a premier venue for the performing arts.

The Civic Center Music Hall is a performing arts facility with approximately 280,000 square feet of space. It includes the Thelma Gaylord Theatre, which was renovated in 2001, and is a multiple purpose theatre with 2,498 seats. The Freede Little Theatre was originally constructed in 1937 with seating capacity of 394. It received minor renovations in 2001 to the lobby, dressing rooms and the backstage area. City Space is a rehearsal hall converted to a black box in 2005 with seating capacity of 100. The Meinders Hall of Mirrors and Joel Levine Rehearsal Hall are primarily reception, banquet, and meeting rooms. Square footage is 5,300 and 3,400 respectfully.

The Facility hosts a wide variety of theatrical, musical and dance productions, as well as banquets and reception events. Staged performances include national touring Broadway, regional theatre, classical, pops and youth symphony orchestras, ballet, choral, premier entertainers including James Taylor, Paul Simon, Bill Maher, Kathy Griffin, Bill Cosby, Norah Jones, Alyson Krauss and other concerts.

The Facility is located at 201 North Walker Ave., positioned at the west end of an economically revitalized downtown Oklahoma City.

Attachment "B" provides information on events booked July 1, 2012 through June 30, 2013.

SCOPE OF WORK

The awarded consultant will be required to evaluate the physical condition of the Facility and equipment; recommend renovations and identify associated costs necessary to make the Facility a premier venue from a production perspective as well as an audience perspective; perform a market demand study; and analyze the financial feasibility of upgrading the Facility. The following tasks are provided for illustrative purposes, and not meant to be all-inclusive.

1. Conduct a comprehensive technical/physical assessment of the Facility's existing conditions, including but not limited to the following areas.
 - a. Exterior and interior aesthetics
 - b. Entrance, lobby, restrooms and related amenities.
 - c. Shelled in spaces
 - d. Defined suite spaces on all levels
 - e. Freede Little Theatre
 - f. City Space
 - g. Joel Levine Rehearsal Hall
 - h. Box Office locations
 - i. Coffee shop

It is expected that the process for performing this analysis consists of direct observation, review and interpretation of documents, interviews with personnel and input from management, and evaluation of the actual condition of the major physical elements, systems and operations.

During agreed upon site visits, building staff will be available through a coordinated effort to discuss maintenance issues, past repair/replacement projects, and in general provide information (including drawings and plans) and access to assist in the creation of the Facility Condition Analysis.

2. Identify current level of amenities, then recommend necessary and/or desirable modifications, enhancements, equipment acquisition and refurbishment, and associated costs.
3. Identify the current and projected market demand for any proposed upgraded space, including current and probable users and level of usage. Primary and secondary markets should be identified, with consideration for the types of events relative to each market area. Report on subsidy levels of other comparable facilities, including a review of the source of support.
4. Identify the potential highest and best use of each space within the Facility, and how that relates to its current level and type of usage and current revenues and expenses. In developing the recommended modifications, enhancements and equipment acquisitions as specified in paragraph 3 above, consideration should be given to creatively maximizing the potential use of each upgraded area. This should allow for the greatest access to the Facility by a wide variety of users and audience members, while taking into consideration the needs and requirements of the Facility's current users.
5. Identify direct and indirect benefits of each upgraded space to the Oklahoma City Public Property Authority and the Civic Center Foundation. Include potential benefits that are not readily quantifiable, such as impact on surrounding restaurants and other retail businesses.
6. Analyze the financial feasibility of each upgraded space, considering cost estimate of recommended improvements, the condition of the current market, and other direct and indirect benefits.
7. Provide renderings that illustrate recommended renovations and upgrades.

8. Prepare and present to the Oklahoma City Public Property Authority and the Civic Center Foundation Board of Directors, a report containing summary findings and recommendations as specified in this Scope of Work.

PROPOSAL SUBMISSION

Consultants responding to this RFP should demonstrate a clear understanding of the work to be performed; present a technical team with expertise in the areas of professional multi-use performing arts facilities and markets; demonstrate experience in completing a feasibility analysis; and demonstrate successful experience in providing like services at comparable facilities.

The vendor shall submit the following information with the proposal submitted:

Each consultant shall submit six (6) copies of their proposal. Pricing on all services must be complete and clear as to what is included. Any additional charges for services must be explained in detail. Charges not included in the proposal will not be considered in a contract. The proposal shall be constructed in the following order with the following content.

1. About your firm. Provide firm name, address, contact, and number of years providing facility analysis services and number of years involved in facility design. Include a statement of capability to complete the scope of work.
2. Project team. Include an organizational chart that depicts reporting responsibilities of proposed team members- from senior staff through field personnel, including any subcontractors. Include a biography and a list of like completed facilities for each key staff member working on this project. For any subcontractors, provide a brief (no more than one page) summary of their history and work experience as it relates to this project.
3. Project experience. Provide a brief description of facility analysis (Task 1 of Scope) and facility design experience (Task 2 of Scope). Provide five examples of each Task that are ongoing or were completed in the last 5 years. List contact information for each facility cited in your experience.
4. Approach. Briefly describe your approach to completing the project, including an estimate for the number of meetings and site inspections that will be required to complete the project.
5. While the selection will be based on qualifications and the actual fee will be negotiated upon completion of the selection process, please provide the category and their associated hourly rates. Also, based on your experience with similar projects, please provide an estimated allowance sufficient to cover anticipated expenses such as travel and printing costs. Please provide a breakdown of these anticipated expenses.
 - a. The consultant shall provide financial records of the previous three (3) years
 - b. The consultant shall provide references for a minimum of four (4) previous facility analysis studies for performing arts center or similar facilities of comparable scope. Please include organization, contact name, title, phone number, date of study, and job specifics.
 - c. The consultant shall have been in business for a minimum of five (5) years prior to the contract proposal date.

- d. The consultant shall provide the following information regarding the company
 - i. Company background - brief narrative description of the company
 - ii. Business address and telephone numbers
 - iii. Web site address
 - iv. Number of years providing services
 - v. Name of principal or officers
 - vi. Number of employees
 - vii. Bonding limits (single projects and aggregate)
 - viii. Name of bonding company
 - ix. Copy of insurance certificate identifying coverage limits

- 6. All information in your proposal is considered a public record except for material which qualifies as "trade secret" information. To properly designate material as trade secret under these circumstances, each Consultant must take the following precautions:
 - a. Any trade secret submitted by the Consultant should be submitted in a separate, sealed envelope marked "Trade Secret- Confidential and Proprietary Information- Do Not Disclose Except for the Purpose of Evaluating this Proposal"
 - b. The same trade secret/confidentiality designation should be stamped on each page of the trade secret materials contained in the envelope. Pricing information may not be considered a trade secret. Any Consultant that designates its entire proposal as a trade secret may be disqualified.

PROJECT TIMELINE

<u>Event</u>	<u>Date</u>
RFP Available	July 17, 2012
Questions for Mandatory Pre-Proposal Meeting Due by Noon	August 3, 2012
Mandatory Pre-Proposal Meeting at 10:00 am	August 7, 2012
Proposals Due before 4:00 pm	September 18, 2012
Interviews, if necessary	October 1-5, 2012
Recommendation to Council/Approval to Negotiate	October 23, 2012
Finalization of Contract Terms	November 2, 2012
Contract Award to be effective	November 20, 2012
Delivery of Final Report to OCPPA and Civic Center Foundation	February 25, 2013

Note: All dates are tentative and subject to change.

APPROVAL OF INFORMATION RELEASE

No reports, information or data given to or prepared by the firm under the agreement/contract shall be made available to any individual or organization without prior written approval of the Oklahoma City Public Property Authority.

SELECTION CRITERIA

1. Criteria Listed: Selection of approximately three (3) firms for oral presentations and one for ultimate work for the OCPPA will be based on the following criteria. The selection will be subject to the review and approval by the Trustees of the OCPPA and the Civic Center Foundation.
 1. Experience of similar services based on references of former and/or current clients.
 2. Responsiveness of the written proposal to the purpose and scope of services.
 3. Fee structure
 4. Qualifications of Staff to be assigned, noting persons with primary and secondary responsibility. Education, position in the firm, and years and types of experience will be considered. This will be determined from material provided by the respondent.
 5. Ability to complete the requirements within the requested time schedule.
 6. Demonstrated expertise in the operation of performing arts facilities.
2. Evaluation Committee: Each proposal will be independently evaluated by a committee comprised of the City Manager, or designee; the Finance Director or designee; the Department Head of the requesting department or designee, a Civic Center Foundation board member or designee and at the discretion of the City Manager at least one other member, which may or may not be a City employee or official.
3. Communication with the OCPPA: Any questions regarding this request for proposals should be directed to Kelly Haikin Hadsall, Administrative Specialist, Civic Center Music Hall, 201 North Walker Avenue, Oklahoma City OK 73102. Phone is 405-297-2724. Email is kelly.hadsall@okc.gov.

PAYMENT/INVOICE

1. Payments will be processed promptly after completion of delivery of ordered items and after receipt of properly prepared invoices.
2. FOR ORDERS PLACED BY PO: The original invoice must be mailed directly to The Oklahoma City Public Property Authority, Accounts Payable, 100 N. Walker, Suite 200, Oklahoma City, OK 73102 or invoices may be e-mailed to accountspayable@okc.gov. If invoices are e-mailed, a paper copy should not be mailed. This information is printed on the front of each purchase order. Copies of invoices may be sent to other addresses upon request. However, if the original invoice is sent to any other address, payment will be delayed, or may not be processed at all. Should another trust or government entity be using this contract they may request a different invoice address.
FOR ORDERS PLACED BY P-CARD: Do not send invoices, statements etc. to Accounts Payable for purchasing card orders. Please send all purchasing card documents directly to the cardholder. Cardholders are required to submit itemized transaction details such as invoice/delivery tickets with their monthly purchasing card statement. This is a vital part of the monthly reconciliation process. Your cooperation is appreciated.
3. Invoices must contain the following information:
 - a. Vendor's name and address
 - b. Ship to address (department name)
 - c. Purchase order number- MUST BE INDICATED ON THE INVOICE
 - d. Itemization of each item purchased

GENERAL PROVISIONS

The following documents are attached or by this reference incorporated as a part of this pricing agreement/contract:

- a. Proposal/Pricing Agreement/Contract (Proposers Proposal)
- b. Non-Discrimination statement
- c. Anticollusion Affidavit
- d. Requirements for Proposers

OTHER PROVISIONS

Indemnity: Contractor agrees to hold harmless, defend and indemnify the OCPPA from all claims for damages alleged to arise from Contractor's acts and/or omissions.

Right to Reject: The OCPPA reserves the right to reject any or all proposals or to award the pricing agreement/contract to the next most qualified respondent if the successful respondent does not execute a pricing agreement/contract within 30 days after award of the proposal.

Clarification: The OCPPA reserves the right to request clarification of information submitted and to request additional information from any or all of the respondents.

Withdrawal of Proposal: Any proposal may be withdrawn until the date and time set above for the opening of the proposals. Any proposal not so withdrawn shall constitute an irrevocable offer, for a period of 90 days, to provide the OCPPA the services set forth in the attached request for proposals, or until the proposals have been approved.

Approval of information release: No reports, information or data given to or prepared by the firm under the pricing agreement/contract shall be made available to any individual or organization without prior written approval of the OCPPA.

Termination: This agreement may be terminated at the discretion of either party upon 30 days notice to the other party.

Independent Contractor: Vendor is, and shall remain at all times, an independent contractor with respect to activities and conduct while engaged in the performance of services for the OCPPA under this pricing agreement/contract.

Proposal Guidelines: A copy of the City's Guidelines and Procedures may be obtained from the City Clerk's Office, 200 N. Walker Ave., 2nd floor.

ANTICOLLUSION AFFIDAVIT

THIS FORM MUST BE COMPLETED PRIOR TO PRICING AGREEMENT/CONTRACT AWARD.

The undersigned individual, of lawful age, being duly sworn, upon his/her oath, deposes and says: That the undersigned individual has the lawful authority to execute the within and foregoing proposal for, and on behalf of, the proposer; that the proposer has not, directly or indirectly, entered into any agreement, express or implied, with any proposer or proposers, having for its object the controlling of the price or amount of such proposal or proposals, the limiting of the proposals or the proposers, the parceling or farming out to any proposer or proposers or other persons, of any part of the pricing agreement/contract or any part of the subject matter of the proposal or proposals, or of the profits thereof, and that proposer has not and will not divulge the sealed proposal to any person whomsoever, except those having a partnership or other financial interest with the proposer in the said proposal or proposals, until after the said sealed proposal or proposals are opened.

The undersigned individual further states that the proposer has not been a party to any collusion: among proposers in restraint of freedom of competition, by any agreement to propose at a fixed price or to refrain from proposing; or with any city/trust official, city/trust employee or city/trust agent as to the quantity, quality, or price in the prospective pricing agreement/contract, or any other terms of the said prospective pricing agreement/contract; or in any discussions between the proposers or city/trust official, city/trust employee or city/trust agent concerning the exchange of money or other thing of value for special consideration in the letting of a pricing agreement/contract. The proposer states that it has not paid, given or donated or agreed to pay, give or donate to any city/trust official, officer or employee of the City or awarding agency, any money or other thing of value, either directly or indirectly, in the procuring of the award of pricing agreement/contract pursuant to this proposal.

Witness the hands of the parties hereto:

The undersigned individual states that the Proposer will be bound by its proposal, the request for proposals, the terms and conditions of the pricing agreement/contract, and the requirements for proposers.

→ → → THIS FORM TO BE COMPLETED BY THE PROPOSER PRIOR TO PRICING AGREEMENT/CONTRACT AWARD ← ← ←

Sign Here ✕

Signature of Individual _____ Title _____

Printed Name of Individual _____

Company Name and Address [Please Print] _____ Zip Code _____

Telephone Number and Fax Number if any _____

TO BE COMPLETED BY THE NOTARY:

Signed and sworn to before me on this ____ day of _____, _____ by _____.
 State of * _____)

) SS.

[Day] [Month] [Year] [Print the name of the individual who signed above.]

My Commission Number: _____
 [Oklahoma]

 Notary Public Printed Name

My Commission Expires: _____
 [Date/Year]

 Notary Public Signature [49 Okla. Stat. 1985 §119]



The City of
OKLAHOMA CITY

VENDOR REGISTRATION / W-9 FORM
***** SUBSTITUTE W-9 *****

FEDERAL TAXPAYER IDENTIFICATION NUMBER (FIN):
(AKA EMPLOYER IDENTIFICATION NUMBER -EIN)
OR
SOCIAL SECURITY NUMBER:
(IF INDIVIDUAL OR SOLE PROPRIETORSHIP)

The TIN provided must match the name given on the "Name" line below.

Print Here _____
NAME OF BUSINESS OR OWNER, IF SOLE PROPRIETOR/INDIVIDUALLY OWNED

CERTIFICATION: Under penalties of perjury, I certify that:

- (1) The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- (2) I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- (3) I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN.

SIGN HERE: _____ DATE: _____

*****VENDOR REGISTRATION FORM*****
INSTRUCTIONS: Please mark all that apply to you or your company.

- | | | |
|---|--|---|
| <input type="checkbox"/> Sole Proprietor/Individual Owned | <input type="checkbox"/> Medical Provider | <input type="checkbox"/> New Vendor |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Corporation | <input type="checkbox"/> One-Time Vendor |
| <input type="checkbox"/> Limited Liability Company (LLC) | <input type="checkbox"/> Non-Profit (Per IRS 501C3 Regs) | <input type="checkbox"/> Address Change |
| <input type="checkbox"/> Lawyer/Attorney | <input type="checkbox"/> Government | <input type="checkbox"/> Federal Tax ID Number Change |

PURCHASE ORDER ADDRESS:

NAME (AS SHOWN ON YOUR INCOME TAX RETURN)	
BUSINESS NAME, IF DIFFERENT FROM ABOVE.	
STREET OR PO BOX	
CITY, STATE, ZIP	
CONTACT PERSON:	
E-MAIL ADDRESS:	
() TELEPHONE NUMBER.	() FAX NUMBER.

PAYMENT REMITTANCE ADDRESS:

NAME (AS SHOWN ON YOUR INCOME TAX RETURN)	
BUSINESS NAME, IF DIFFERENT FROM ABOVE.	
STREET OR PO BOX	
CITY, STATE, ZIP	
CONTACT PERSON:	
E-MAIL ADDRESS:	
() TELEPHONE NUMBER.	() FAX NUMBER.

Any vendor who accepts payment confirms the following: the invoice is true and correct; the work, service or materials as shown by the invoice or claim have been completed or supplied in accordance with the plans, specifications, orders or requests furnished the vendor; and the vendor has made no payment, directly or indirectly, to any elected official, officer or employee of this City, of money or any other thing of value to obtain payment [62 O.S. § 310.9](#) and [74 O.S. § 310.9](#).

Do you wish to receive payments by electronic funds transfer? _____
Attach an EFT/ACH form (available at www.okc.gov or e-mail vendorregistration@okc.gov to obtain a copy of the form)

I certify that the information supplied herein is correct and that neither the applicant nor any person (or concern) in any connection with the applicant as a principal or officer is now debarred or otherwise declared ineligible by a public agency for bidding or furnishing materials, supplies or services, to any other public agency thereof. **NOTE: Article IV, Section 11 of the City Charter prohibits employees of the City from having a proprietary interest in City Contracts §11-8-113.**

Return to:
Procurement Services:
vendorregistration@okc.gov
(405) 297-2741 Fax (405) 297-2142
100 N. Walker, Suite #100
Oklahoma City, OK 73102

Signature of Person Authorized to Sign _____ Date Signed _____
Print Name _____ Title _____



The City of
OKLAHOMA CITY

**AUTHORIZATION AGREEMENT FOR ELECTRONIC FUNDS
PAYMENT**

To assure prompt processing of your request, please complete the following information:

Please Print

Social Security ID No:

--	--	--	--	--	--	--	--	--	--

Federal Identification No:

--	--	--	--	--	--	--	--	--	--	--	--

Vendor Name: _____

Vendor Address: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Contact Person: _____ Title: _____

I hereby authorize the City Of Oklahoma City and my financial institution to initiate deposit entries to my bank account. In the event of error, I authorize the institution to withdraw and return the same funds to the City Of Oklahoma City.

Financial Institution: _____

Financial Branch: _____ City & State: _____

Type of Account (Please Check One): CHECKING SAVINGS OTHER

ABA Routing Transit Number: _____ Account Number: _____

➡ **A voided check, or a letter from your banking institution guaranteed by an officer confirming the information, is needed to complete this request.** ←

Signature: _____ Date: _____

Title: _____

Procurement Services Division
vendorregistration@okc.gov
100 North Walker, Suite #100
Oklahoma City, OK 73102
(405) 297-2741 – Fax (405) 297-2142

GENERAL INSTRUCTIONS AND REQUIREMENTS FOR PROPOSERS

THESE INSTRUCTIONS, REQUIREMENTS AND ANY SPECIAL INSTRUCTIONS CONTAINED IN THE REQUEST FOR PROPOSALS ARE A PART OF THE TERMS AND CONDITIONS OF THE PROPOSERS PROPOSAL. ANY EXCEPTIONS TO THESE INSTRUCTIONS/REQUIREMENTS OR REQUEST FOR PROPOSALS MUST BE SPECIFIED AND SUBMITTED WITH THE PROPOSER'S PROPOSAL. FAILURE TO INDICATE ANY EXCEPTIONS WILL BE REGARDED AS FULL ACCEPTANCE OF THESE REQUIREMENTS AND INSTRUCTIONS.

1. **EXAMINATION BY PROPOSERS.** All proposers must examine the request for proposals, drawings, schedules, special instructions and these general requirements prior to submitting any proposal. Failure to examine is at the proposer's own risk.

2. **SUBMISSION OF FORMS.** All proposals must be completed in ink or typewritten, on the forms provided by the contracting entity prior to contract award. Any erasures or other changes must be initialed by the individual signing the proposal. The non-discrimination statement must be completed prior to pricing agreement/contract award. The anti-collusion affidavit must be executed by the proposer or an authorized representative and notarized prior to pricing agreement/contract award. The notarization must contain: [1] the notary's signature [2] jurisdiction where notarization took place (i.e., State of __, County of __), [3] date of notarization, [4] the notary's commission expiration date [5] the notary's commission number (Oklahoma) [6] the notarial seal and [7] comply with all other applicable laws.

3. **ORIGINAL PROPOSAL FILED WITH CITY CLERK/SECRETARY.** Hard Copy Proposals: An original of the bid/proposal must be filed with the City Clerk/Secretary in a sealed envelope which clearly identifies: [1] the proposal number, [2] description, [3] proposal opening date, and [4] the proposer's name and address. All proposals must be time stamped by the City Clerk's/Secretary's office before the hour specified on the opening data. Request for proposal (RFP) will be posted on the City's web site at: www.okc.gov. The request for proposal may be downloaded from that site. Only sealed, hard copy RFPs will be accepted in reply.

4. **DESCRIPTIVE TERMS.** Unless the term "no substitute" is used, the use of brand name, manufacturer, make, or catalogue designation in describing an item does not restrict proposers to that particular brand name, etc. The term is simply to indicate the type, character, quality and/or performance equivalence of the item desired. However, the proposed substitution item must be of such character, quality and/or performance equivalence as that indicated in the request for proposals. A proposed substituted item must include complete data as to the manufacturer's name, type, model number, any descriptive bulletins and specifications.

5. **EXCEPTIONS.** Any exceptions [variances] to these instructions or request for proposals must be submitted in writing with the proposer's proposal. Failure to indicate any exceptions [variances] will be regarded as full compliance with these requirements, request for proposals and instructions and will be construed to mean that the proposer proposes to furnish the exact commodity as described in the request for proposals/requirements.

6. **UNIT PRICES.** A unit price for each unit proposed must be shown and include packaging and/or packing, if any, unless otherwise specified. If the quantity is an estimate, the unit price only shall be listed. On items where a quantity is specified, a total shall be entered in the appropriate column of the proposal schedule. If an error is made in extension of the price, the unit price shall prevail. Items or estimated quantity will be awarded on a "no guarantee" basis. Prices shall be extended in decimals, not fractions, and shall include transportation and delivery charges, prepaid by the proposer to the destination specified in the special instructions of the request for proposals.

7. **EXEMPTIONS FROM CERTAIN TAXES.** The purchase of certain items of equipment and/or materials by the contracting entity is exempt from the payment of excise, transportation and sales tax imposed by the federal, state and/or city governments. Such taxes must not be included in the proposal prices. Upon request, applicable federal excise exemption certificates will be furnished.

8. **PAYMENTS AND DISCOUNTS.**

[a] Payment for the materials, supplies, or equipment as specified in the pricing agreement/contract shall be processed promptly after completion of delivery of items and after receipt of properly prepared invoice(s) and/or notarized claim voucher, if applicable. Purchases may be made using a purchasing card however, processing fees may not be added.

[b] Discounts for prompt payment will not be considered in proposal evaluations, unless otherwise specified. However, offered discounts will be taken if payment is made within the discount period.

[c] Late charges cannot be assessed against the City or a Trust.

9. **DELIVERY.**

[a] All prices quoted shall be based on delivery F.O.B. Oklahoma City, Oklahoma or to any points located within the municipal corporate limits (unless otherwise stated in the special instructions) with all charges prepaid to the actual point of delivery.

[b] Proposals must show the number of days required for delivery under normal conditions. Unrealistically short or long delivery promises may cause bids/proposals to be rejected. A successful proposer is required to keep the purchasing agent advised at all times of the status of the order. All materials, supplies or equipment shall be delivered within thirty (30) days from the date of the award of the pricing agreement/contract, unless specified otherwise.

10. AWARD OF PRICING AGREEMENTS/CONTRACTS. The contracting entity reserves the rights to: award by item, groups of items or all items of the proposal; to reject any or all proposals in whole or in part; and, waive technical defects, irregularities and/or omissions.

11. PROPOSAL BONDS. If required by the request for proposals, a proposal bond [or a certified check or cashier's check] in the required amount must accompany the proposal. This bond may be retained by the contracting entity as liquidated damages should the successful proposer fail to comply with the terms of this bid/proposal. The City Clerk's/Secretary's office may return all bonds or deposits to unsuccessful proposers after the pricing agreement/contract has been awarded.

12. PERFORMANCE BONDS. If required by the request for proposals, the successful proposer must post the performance bond, a certified or cashier's check in the amount required prior to award of pricing agreement/contract. The proposal bond or deposit may be returned to the successful proposer upon the posting of the performance bond.

13. PATENTS. The proposer agrees to indemnify and save harmless the contracting entity, the purchasing agent and assistants from all suits and actions of every nature and description brought against the proposer and/or any assistants because or for the use of patented appliances, products or processes. The proposer shall pay all royalties and charges which are legal and equitable evidence of such payment or satisfaction shall be submitted upon request of the City/Trust, as a necessary requirement in connection with the final execution of any pricing agreement/contract in which patented appliances, products or processes are to be used.

14. TERMINATION.

[a] The performance of services and/or the delivery of items under any pricing agreement/contract may be terminated by the contracting entity, in whole or in part, whenever it is determined to be in the best interest of the contracting entity.

[b] Any such termination will be effected by delivery to the proposer of a termination notice specifying the extent to which performance or services and/or delivery of ordered commodities is terminated, and the date the termination becomes effective.

[c] After receipt of a termination notice, the proposer shall stop performance of services and/or accept no further orders under the pricing agreement/contract.

15. COMPLIANCE WITH APPLICABLE LAW. All proposers must comply with all applicable federal, state or local laws and regulations. Including Title VI and all provisions of the Civil Rights Act of 1964 42, U.S.C. 2000d-et seq.

16. SELF-INSURED. The City or Trust is self-insured for its own negligence, subject to the Governmental Tort Claims Act, Title 51 sections 151 et.seq.

17. RIGHT TO AUDIT. The contracting entity shall at all times have the right to examine books, papers and records of the successful proposer relative to all aspects of the pricing agreements/contracts awarded as a result of this request for proposal to confirm pricing agreement/contract compliance. Failure to provide the requested information may result in termination of the pricing agreement/contract. This right to audit only affects pricing agreement/contract compliance as a result of this request for proposal, and does not apply to vendor records beyond the scope of the pricing agreement/contract.

18. PROPRIETARY INFORMATION/CONFIDENTIALITY. Responses to the RFP submitted to the City become the property of the CITY upon receipt. At such time as a Proposer or Proposers are recommended to CITY, all proposals become a matter of public record and shall be regarded as such. The CITY is subject to the Oklahoma Open Records Act, Title 51, Section 34A et a seq. Although the Act recognizes that certain confidential information may be protected from disclosure, the CITY is not in a position to establish that the information a Proposer submits is worthy of being treated confidentially. If a request is made for information which a Proposer has marked "Confidential," "Trade Secret," or "Proprietary," the Proposer must identify and mark each page so requested and provide specific citations for the specific basis under the law and why exempt from disclosure under the Open Records Act. at the time of submittal of the proposal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the District Court. If the Proposer fails to identify proprietary, confidential as financial information or trade secret information protected by law, the Proposer agrees that by submission of the proposal those sections shall be deemed non-proprietary and

available upon public request. Notwithstanding this provision, Proposers must not identify the entire proposal as proprietary/confidential or a trade secret. Pricing is not confidential and is a public record.

NOTICE of "OKLAHOMA TAXPAYER AND CITIZEN PROTECTION ACT OF 2007"

The State of Oklahoma enacted the "Oklahoma Taxpayer and Citizen Protection Act of 2007" which prohibits entities and persons entering into a contract with a public employer for the physical performance of services within this state unless said contractor/vendor has registered and participated in Status Verification System for the purpose of verifying the work eligibility status and information of all new employees hired on or after November 1, 2007. Although the prohibition becomes effective for contracts entered after July 1, 2008, this section is included in these specifications to provide notice to contractor/vendors and in an effort to encourage contractor/vendors to prepare for the effects of the "Oklahoma Taxpayer and Citizen Protection Act of 2007." Therefore, included with this specification is a copy of the Immigration Affidavit that contractor/vendors will be required to submit with any contracts with a public employer for physical performance of services within the State of Oklahoma beginning after July 1, 2008.

IMMIGRATION INDEMNIFICATION

The Contractor/vendor shall indemnify, defend, and hold harmless the City and its participating and affected public trusts against any and all losses, expenses, damages, costs, or attorney fees directly or indirectly resulting from the failure of the Contractor/vendor, or any of its agents, representatives, subcontractor/vendors, materialmen, or suppliers, to register or participate in the Status Verification System as set forth in the "Oklahoma Taxpayer and Citizen Protection Act of 2007," or the violation of said Act, or any suspension, termination, or invalidation of the Contract due to said failure or violation.

THE CITY OF OKLAHOMA CITY IMMIGRATION AFFIDAVIT

The undersigned as Contractor/vendor or Contractor's Authorized Agent, being of lawful age and being first duly sworn on oath, hereby swears, affirms and states that the Contractor/vendor has registered and participates in the Status Verification System as set forth in "Oklahoma Taxpayer and Citizen Protection Act of 2007" to verify the work eligibility status of all new employees hired on or after November 1, 2007. This Affidavit must be signed by the Contractor/vendor, notarized, dated and completed by the Notary Public, and submitted prior to contract award.

STATE OF _____)
) ss.
COUNTY OF _____)

The undersigned, as Vendor/Contractor or Authorized Agent, hereby expressly adopts and affirmatively incorporates herein by reference the above recitation as the sworn statement of the Contractor/vendor and the signatory.

Name of Individual, Partnership, Limited Liability Company, or Corporation hereinafter called Contractor

Signature of Vendor/Contractor or Authorized Agent

Type or print name and title of person who signed above

Signed and sworn to or affirmed before me on this ____ day of _____, 20____,

by _____ as the above named Contractor or Contractor's Authorized Agent.
(Insert name of person signing above)

My Commission expires _____
Notary Public

My Commission number _____

This Affidavit required prior to contract award by 25 Oklahoma Statutes (2007) §§ 1312

Request for Proposals Confidentiality Requirements

Responses to the RFP submitted to the City become the property of the CITY upon receipt. At such time as a Proposer or Proposers are recommended to CITY, all proposals become a matter of public record and shall be regarded as such.

The CITY is subject to the Oklahoma Open Records Act, Title 51, Section 34A et a seq. Although the Act recognizes that certain confidential information may be protected from disclosure, the CITY is not in a position to establish that the information a Proposer submits is worthy of being treated confidentially. If a request is made for information which a Proposer has marked "Confidential," "Trade Secret," or "Proprietary,"

The Proposer must identify and mark each page so requested and provide specific citations for the specific basis under the law and why exempt from disclosure under the Open Records Act at the time of submittal of the proposal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the District Court. If the Proposer fails to identify proprietary, confidential as financial information or trade secret information protected by law, the Proposer agrees that by submission of the proposal those sections shall be deemed non-proprietary and available upon public request. Notwithstanding this provision, Proposers must not identify the entire proposal as proprietary/confidential or a trade secret... Pricing is not confidential and is a public record.

SAMPLE CONTRACT

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) entered this ____ day of _____, 20__ , by and between _____ (“Consultant”), and _____ The City of Oklahoma City (“Client”), a municipal corporation organized under the laws of the State of Oklahoma (hereinafter the term “Client” shall mean The City of Oklahoma City).

WITNESSETH:

WHEREAS, on _____, The City of Oklahoma City prepared a Request for Proposals (“RFP”) seeking a utilization and design study; and

WHEREAS, on _____, The City of Oklahoma City received responses to its RFP; and

WHEREAS, an RFP selection committee reviewed the responses and interviewed potential consultants; and

WHEREAS, the Consultant represented itself, both in its response (“Proposal”) and its interviews (“Interviews”) as an expert in this field with skilled professionals willing, able, and capable of timely providing the professional services requested and required by the Client in the RFP; and

WHEREAS, based upon the representations, guarantees, and warranties expressed by the Consultant both in the Proposal and the Interviews, the RFP selection committee recommended The City of Oklahoma City selected and entered into this Agreement with the Consultant; and

WHEREAS, Client retains Consultant to provide professional services as an independent contractor; and

WHEREAS, Consultant agrees to provide Client all professional services, in accordance with the standards exercised by experts in the field, necessary to provide the Client services, products, solutions and deliverables that meet all the purposes and functionality requested or described in the RFP and in this Agreement.

NOW, THEREFORE, for and in consideration of the above premises and the mutual covenants set forth herein, the Client and Consultant hereby mutually agree as follows:

1. Professional Services Agreement

Subject to the terms and conditions of this Agreement, Client retains Consultant, an independent contractor, to provide Client all professional services, in accordance with the standards exercised by experts in the field, necessary to provide the Client's services, products, solutions, and deliverables that meet all the purposes and functionality requested or described in the RFP and in this Agreement.

(a) This Agreement governs the Scope of Services including, but not limited to, all services, products, solutions and deliverables to be provided by Consultant to the Client. The Attachments are incorporated into this Agreement by reference and, should there be a conflict in language, terms, conditions, or provisions, shall have the priority and precedential value as set forth in this paragraph.

(b) The text of this Agreement, together with the Attachments, constitutes the entire Agreement and the only understanding and agreement between the Client and Consultant with respect to the services, products, solutions and deliverables to be provided by Consultant hereunder. This Agreement may only be amended, modified or changed in writing when signed by all parties, or their respective specifically authorized representatives, as set forth in this Agreement.

(c) If there is a conflict in language, terms, conditions, or provisions, in this Agreement between the text of this document, Professional Services Agreement pages 1 through 16, and any language, term, condition, or provision any Attachment, the text of this document, Professional Service Agreement pages 1 through 16 shall govern and control over any conflicting language, term, condition, or provision in any Attachment. As among the Attachments any

conflict in the language, terms, conditions, or provisions shall be governed in the following order of priority and precedence:

Attachment “A” (“Response to Requirements and Scope of Services”),

Attachment “B” (“Consultant’s Company Resources and Qualifications of Staff”),

Attachment “C” (“Clients’ Resources”),

Attachment “D” (“Price Schedule Sheets and Cost Summary for All Locations”),

Attachment “E” (“Insurance”),

Attachment “F” (“Consultant’s Interview and Proposal”), and then

Attachment “G” (“Request for Proposals and Addenda”),

2. Response to Requirements and Scope of Services

(a) Consultant is solely responsible for the actions, non-action, omissions, and performance of Consultant’s employees, agents, contractors, and subcontractors (herein collectively included in the term “Consultant’s Project Team”) and to ensure:

(1) the timely provision of the Project and Response to Requirements and timely performance of the Scope of Services as each are defined in **Attachment “A”**,

(2) Consultant will be solely responsible to ensure the Consultant’s Project Team fully understands the Project, the Scope of Services, the Deliverables, the schedule for performance, and the Client’s goals and purposes. Consultant will be solely responsible to ensure the Consultant’s Project Team is adequately trained, instructed, and managed so that Consultant timely provides the Project and satisfies Consultant’s obligations under this Agreement. Consultant may not change the Consultant’s Project Team as set forth on **Attachment “B”** (“Consultant’s Company Resources and Qualifications of Staff”) without the prior written consent of the Clients’ Contract Administrator. The Clients’ Administrative Team is set forth on **Attachment “C”** (“Clients’

Resources”). The Clients’ Contract Administrator is the City Manager or designee, as stated in writing.

(b) Consultant shall comply with all applicable federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the performance or services provided under this Agreement. Consultant shall obtain all patents, licenses and any other permission required to provide all services, products, solutions and deliverables and for use of all services, products, solutions and deliverables by the Client.

3. Compensation

(a) The City of Oklahoma City shall pay Consultant the compensation after completion of projects as specified in **Attachment “D”** (“Price Schedule Sheets and Cost Summary for All Locations”) subject to the submission of appropriate documentation and completion and acceptance of the related services, products, solutions and deliverables. No payment will be due or owing for any incomplete or undocumented milestones, including but not limited to all services, products, solutions and deliverables.

(b) The Client and Consultant acknowledge that the compensation to be paid Consultant pursuant to this Agreement has been established at an amount reasonable for the availability and services of Consultant and Consultant’s Project Team both on site at the request of Client and the services to be performed by Consultant off site and for any and all travel costs and expenses.

(c) Provided however the Client may, in accordance with this Agreement, withhold five (5%) percent of any payment due Consultant as retainage until formal final acceptance of the PROJECT by the City of Oklahoma City after timely completion as set forth on **Attachment “A”**.

(d) Provided further, the Client may reduce any milestone payment to Consultant by one percent for every calendar day any milestone, including but not limited to any required services, products, solutions and deliverables, is provided after the date set forth on **Attachment “D”** (“Price Schedule Sheets and Cost Summary for all locations”). Such reduction is and shall be deemed liquidated damages for untimely performance

specifically and mutually agreed by the parties and not a retainage and shall not be deemed to waive any rights of the Client for breach of contract or for failure to perform.

4. Independent Contractor Status

(a) The parties hereby acknowledge and covenant that:

(1) Consultant is an independent contractor and will act exclusively as an independent contractor is not an agent or employee of the Client in performing the duties in this Agreement.

(2) The parties do not intend, and will not hold out that there exists, any corporation, joint venture, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent contractor relationship.

(b) All payments to Consultant pursuant to this Agreement shall be due and payable in the State of Oklahoma, even if services of Consultant are performed outside the State of Oklahoma.

(c) The Client will not withhold any social security tax, workmen's compensation, medicare tax, federal unemployment tax, federal income tax, or state income tax from any compensation paid to Consultant as Consultant is an independent contractor and the members of its Consultant's Project Team are not employees of the Client or either of them. Any such taxes, if due, are the responsibilities of Consultant and will not be charged to or due from the City of Oklahoma City.

(d) Consultant acknowledges that as an independent contractor it and its Consultant Project Team are not eligible to participate in any health, welfare or retirement benefit programs provided by the Client for its employees.

5. Termination and Stop Work.

(a) This Agreement shall commence upon execution by the last party hereto and shall continue in effect as stated herein, unless terminated by either party as provided for herein, until the Project is completed and accepted as provided herein. The Clients' Contract Administrator is hereby authorized to issue notices of termination or suspension on behalf of the Client. This Agreement can be terminated, with or without cause, upon written notice, at the option of the Client.

(1) Upon receipt of a notice of termination for the *convenience* from the Client, Consultant shall (1) immediately discontinue all services and activities (unless the notice directs otherwise), and (2), upon payment for milestones fully performed and accepted, Consultant shall deliver to the Client all work, products, deliverables, documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated or created in performing this Agreement, whether same are complete or incomplete, unless the notice directs otherwise. Upon termination for the *convenience* by the Client, the Client shall pay Consultant for completed milestones, up to the time of the notice of termination for *convenience* services, in accordance with the terms, limits and conditions of the Agreement and as further limited by the “not to exceed” amounts set out in this Agreement.

(2) Upon notice of termination for *cause* from the Client, Consultant shall not be entitled to any prior or future milestone payments, including, but not limited to, any services, performances, work, products, deliverables, solutions, costs, or expenses, and Consultant shall release and waive any interest in any retainage. The Client shall hold any outstanding payments for prior completed services or expenses and any retainage as security for payment of any costs, expenses, or damages incurred by the Client by reason of Consultant’s breach or other cause. Provided, however, upon notice of termination for cause, Consultant shall deliver to the Client services, products, solutions and deliverables including, but limited to, all documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated or created in performing this Agreement, whether complete or incomplete, unless the notice directs otherwise.

(3) The rights and remedies of the Client provided in this paragraph are in addition to any other rights and remedies provided by law or under the Agreement. Termination herein shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required for to be provided by Consultant under this Agreement.

(b) Upon notice to Consultant, the Client may issue a stop work order suspending any services, performances, work, products, deliverables, or solutions under this Agreement. The stop work order shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required for to be provided by Consultant under this Agreement. In the event the Client issues a stop work order to Consultant, the Client will provide a copy of such stop work order to Consultant. Upon receipt of a stop work order issued by the Client, Consultant shall suspend all work, services and activities except such work, services and activities expressly directed by the Client in the stop work order. This Agreement, and any or all work, services, and activities thereunder, may be suspended up to thirty (30) days by the Client, without cause and without cost to Client, upon notice to Consultant; provided however, Consultant shall be entitled to an extension of all subsequent deadlines for a period equal to the suspension periods for those suspended work, services, and activities only. The Clients' Contract Administrator is hereby authorized to issue stop work orders on behalf of the Client.

6. Obligation upon Termination for *Convenience*.

Except for the any warranties, indemnification, confidentiality, or insurance required or provided by the Consultant under this Agreement, which shall survive the termination of this Agreement for *convenience* or for *cause*, in the event this Agreement is terminated for convenience hereunder, the Client shall pay Consultant for such properly documented invoices, if any, in accordance with the provisions of this Agreement above, through the date of termination for *convenience* and the period set forth in the notice, and thereafter the Client shall have no further liability under this Agreement to Consultant and Consultant shall have no further obligations to the Client.

7. Warranties

(a) Consultant warrants that all services, products, solutions and deliverables performed or provided under this Agreement shall be performed consistent with generally prevailing professional standards and expertise. Consultant shall maintain during the course of this Agreement said standard of care, expertise, skill, diligence and professional competency for any and all such services, products, solutions and deliverables. Consultant agrees to require all members of the Consultant's Project Team to provide any and all services, products, solutions and deliverables at said same standard of care, expertise, skill, diligence and professional competence required of Consultant.

(b) During the term of this Agreement, Clients' initial remedy for any breach of the above warranty shall be to permit Consultant one additional opportunity to perform the services, or provide the products, solutions and deliverables within the original milestone time schedule and without additional cost to Client but subject to the liquidated damages provision. If Consultant cannot perform the services, or provide the products, solutions and deliverables according to the standards and requirements set forth in this Agreement within thirty (30) calendar days of the original milestone performance date, the Client shall be entitled to recover, should the Client so determine to be in their best interest, any fees paid to Consultant for previously paid milestones including but not limited to, services, products, solutions, and deliverables and Consultant shall make payment within thirty (30) days of a demand by The City of Oklahoma City. Should Consultant fail to reimburse The City of Oklahoma City within thirty (30) days of demand, the Client shall also be entitled to interest at 1.5% percent per month on all outstanding debt and repayment obligations.

(c) The Consultant also acknowledges and agrees to provide all express and implied, warrants required or provided for by Oklahoma statutory and case law. This warrant is in addition to other warranties provided in or applicable to this Agreement and may not be waived by any other provision, expressed or implied, in this Agreement or in any Attachment hereto.

8. Indemnification

(a) Consultant agrees to release, defend, and indemnify the Client, and each of them, and hold the Client, and each of them, harmless against any losses, claims, damages, liabilities, expenses (including all reasonable legal fees and expenses), judgments, fines or settlements in connection resulted from the intentional acts or omissions, negligence, and misconduct of Consultant and the Consultant's Project Team. Any such reimbursement shall be made by Consultant within thirty (30) days of an appropriate finding of facts, whether by mutual agreement or by a court of law.

(c) The provisions of this paragraph shall survive the expiration of this Agreement. It is understood that these indemnities and hold harmless provisions are not limited or defined by the insurance required under the insurance provisions of this Agreement.

9. Confidentiality

Consultant acknowledges that in the course of training and providing other support services to Client, Client may provide Consultant with access to valuable information of a confidential and proprietary nature including but not limited to information relating to Clients' employees, customers, marketing strategies, business processes and strategies, security systems, data and technology. Consultant agrees that during the time period this Agreement is in effect, and thereafter, neither Consultant nor Consultant's Project Team shall, without the written consent of Client, disclose to any person, other than a member of Clients' Administrative Team of the Clients' Contract Administrator, any information obtained by Consultant. Consultant will require and maintain adequate confidentiality agreements with its employees, agents, contractors, and subcontractors.

10. Miscellaneous.

(a) **Validity.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

(b) **No Waiver.** The failure or neglect of any party hereto to insist, in any one or more instances, upon the strict performance of any of the terms or conditions of this Agreement, or waiver by any party of strict performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment in the future of such term or condition, but such term or condition shall continue in full force and effect.

(c) **No Assignment without Consent.** The parties hereby agree that as this is an agreement for the provision of specialized professional services, therefore Consultant may not assign this Agreement in whole or in part without the prior written consent of the Client. In addition, Consultant agrees that the Consultant's Project Manager may not be removed or replaced without the express written consent of the Clients' Contract Administrator.

(d) **Venue and Applicable Law.** Client and Consultant hereby agree that any dispute, legal proceeding or action which may arise between or among them arising out of or in connection with this Agreement shall be adjudicated before a court located in Oklahoma City, Oklahoma, and each hereby submit to the exclusive personal jurisdiction

of the courts of the State of Oklahoma located in Oklahoma City, Oklahoma and of the Federal District Court for the Western District of Oklahoma, located in Oklahoma City, with respect to any action or legal proceeding commenced by any party. The Consultant irrevocably waives any objection they now or hereafter may have respecting the venue of any such action or proceeding brought in such a court or respecting the fact that such court is an inconvenient forum, relating to or arising out of this Agreement, and consents to the service of process in any such action or legal proceeding by means of registered or certified mail, return receipt requested, in care of the address set forth in the notice provision of this paragraph. This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma.

(e) **Descriptive Headings.** The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

(f) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

(g) **Amendments.** This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written amendment executed by each of the parties hereto. However, the Clients' Contract Administrator, in her discretion, is authorized to revise or modify the Scope of Work, List of Products, Solutions, and Deliverables, and the Schedule of Fees on behalf of the Client.

(h) **Entire Contract.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

(i) **Time is of Essence.** Both the Client and Consultant expressly agree that time is of the essence with respect to this Agreement, and the time for performance of each task shall be made a part of the Agreement and shall be strictly observed and enforced. Any failure on the part of the Client to timely object to the time of performance shall not waive any right of the Client to object at a later time.

(j) **Upgrades and Substitutions.** During the performance of this Agreement, if any software named in this Agreement is upgraded in the software provider's product line by software performing the same functions, but using improved technology, then the newer product will be substituted upon the direct and approval of the Clients' Contract Administrator, or her written designee, and implemented by Consultant for no increase in costs or fees.

(k) **No Extra Work.** No claims for extra work, product, services, solution, or deliverables of any kind or nature or character shall be recognized or paid by or be binding upon the Client unless such services, work, product, solution, or deliverable is first requested and approved in writing by the Clients' Contract Administrator. Provided however, The City of Oklahoma City may contract separately in writing for such additional work or services at a rate or price as the parties may in their discretion agree.

(l) **Notices.** Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if hand delivered, or sent by facsimile transmission (upon confirmation of receipt), or if sent by certified mail (upon the sooner of the expiration of three (3) days after deposit in United States post office facilities properly addressed with first class postage prepaid or acknowledgment of receipt). All notices and payments to a party will be sent to the addresses set forth below or to such other address or person as such party may designate by notice to each other party hereunder:

To CONSULTANT:

Telephone _____
Fax _____

To CLIENT:

The City of Oklahoma City
Attention: City Clerk
200 North Walker Ave, 2nd Floor
Oklahoma City, Oklahoma 73102
Telephone: (405) 297-2391
Fax: (405) 297-3121

(m) **Effective.** This Agreement shall become effective upon execution by the last party and the provision by Consultant of certificates evidencing the required insurance and the required bonds, if any.

10. Nondiscrimination.

In connection with the performance of work and/or services under this Agreement, Consultant agrees as follows:

(a) Consultant shall not discriminate against any employee or applicant for employment because of age, race, creed, color, religion, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Consultant shall take action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, religion, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. Consultant shall agree to post, in conspicuous places, available to employees and applicants for employment, notices provided by the City Clerk of the City of Oklahoma City setting forth provisions of § 25-41 of the Oklahoma City Municipal Code, 2011.

(b) In the event of Consultant's noncompliance with this nondiscrimination clause, this Agreement may be suspended, canceled or terminated by the Client. The Client may declare Consultant ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by Consultant.

(c) Consultant agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Agreement.

12. Anti-collusion.

Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement. Consultant further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

13. CLIENT Responsibilities.

(a) The Client shall only provide such space, equipment and personnel to assist Consultant as expressly set forth in **Attachment “C”** (Clients’ Resources).

(b) All financial obligations of the Client under this Agreement shall be solely the obligations of The City of Oklahoma City regardless of how stated herein.

14. Insurance.

(a) Consultant shall obtain and provide Client with a copy of the certificate of insurance and shall maintain such insurance throughout the term of this Agreement as required and in the form and in the amount set forth in **Attachment “E”** which is incorporated herein by reference.

(b) Consultant shall be responsible for providing the Client actual notice of any change, reduction, suspension, lapse or cancellation of any insurance provided under this Agreement at least thirty (30) days prior to such change, reduction, suspension, lapse or cancellation.

(2) Should any insurance required by this Agreement be changed, reduced, suspended or cancelled, or otherwise lapse for any reason during the term of this Agreement, The City of Oklahoma City may terminate this Agreement for cause and in addition regardless of whether the Client terminates this Agreement, Consultant shall also be liable and responsible for any claim by Client on their own behalf or on behalf of another, for:

- (a) any loss or damages, including direct, indirect, and consequential; and
- (b) any cost or expense, including attorney fees, court costs and administrative expenses; and

(c) any other loss, damage cost or expense which would have been covered or assumed by the insurer had the changed, reduced, suspended, terminated, or lapsed policy been in effect without limitation as to the policy amount.

(3) The City of Oklahoma City reserves the right to withhold payment of any funds otherwise due Consultant to pay any claim or potential claim which it reasonably believes would otherwise be payable under the insurance policy but only if there is a lapse or termination of any required insurance coverage, or if there is a change in coverage and such change results in a material reduction in the dollar value of coverage or materially changes the policy's scope of coverage.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

This Professional Service Agreement was approved by

_____ as the Consultant this _____ day of _____, 20____.

Attest:

By _____

By _____

Print Name _____

Print Name _____

As _____

As _____

STATE OF _____)

SS.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, as _____ of _____ herein the Consultant.

Notary

(Seal)

My Commission Expires: _____

My Commission Number: _____

This Professional Service Agreement was approved by the City of Oklahoma City
this _____ day of _____, 20_____.

Attest:

City Clerk

Mayor

Reviewed for form and legality.

Assistant Municipal Counselor

Professional Service Agreement

Attachments

The following Attachments are incorporated by reference into the Agreement by and between the Client and Consultant and shall have the priority and precedence as first set forth in paragraph one of this Agreement.

The Attachments include:

Attachment “A” (“Response to Requirements and Scope of Services”),

Attachment “B” (“Consultant’s Company Resources and Qualifications of Staff”),

Attachment “C” (“Clients’ Resources”),

Attachment “D” (“Price Schedule Sheets and Cost Summary for all locations”),

Attachment “E” (“Insurance”),

Attachment “F” (“Consultant’s Interview and Proposal”), and then

Attachment “G” (“Request for Proposals and Addenda”).

Professional Service Agreement

Attachment “A” (“Response to Requirements and Scope of Services”),

Attached behind this page is a copy of the Response to Requirements and Scope of Services to be provided by the Consultant in accordance with this Agreement.

Professional Service Agreement

Attachment “B” (“Consultant’s Company Resources and Qualifications of Staff”),

**Consultant’s Project Manager shall be _____
and Consultant may not change Consultant’s Project Manager without the prior
written consent of the Clients’ Contract Administrator.**

**The Consultant may not modify, revise or change any other member of the
Consultant’s Project Team without the prior written consent of the Clients’
Contract Administrator, which if the Consultant clearly and convincingly presents
verifiable documentation and information that the Consultant’s Project Team
replacement is equally skilled with the listed team member, the Clients’ Contract
Administrator’s consent will not ne unreasonably withheld.**

**Attached behind this page is a copy of the Consultant’s company resources and
qualifications of staff.**

Professional Service Agreement

Attachment “C” (“Clients’ Resources”),

**Attached behind this page is a list of Clients’ Contract Administrator,
Administrative Team, Technical Team and .other Resources.**

Professional Service Agreement

Attachment “D” (“Price Schedule Sheets and Cost Summary for all locations”),

Attached behind this page are the Price Schedule Sheets and Cost Summary for all locations. Payments will be made subject to the submission of appropriate documentation and completion and acceptance of the related services, products, solutions and deliverables.

Professional Service Agreement

Attachment “E” (“Insurance”),

Attached behind this page is a Certificate of Insurance provided by the Consultant to meet the requirements listed below. The Consultant shall maintain the insurance required below until the Project is finally and formally accepted by the City of Oklahoma City.

Consultant shall provide, pay for, carry and maintain the types of insurance described herein with companies eligible to do business in the State of Oklahoma throughout the term of this Agreement. All liability policies shall provide that The City of Oklahoma City is named as an additional insured as to the acts and omissions of Consultant. A certificate of insurance on the form approved by the Client shall be provided to the Client with the execution of this Agreement by Consultant. The certificate shall provide that the policy not be cancelled or modified to reduce the amount of coverage without thirty (30) days prior written notice to and approval by the Client.

(a) All liability policies (except professional liability policies) shall provide that the Client is named additional insureds as to the acts and omissions of Consultant under this Agreement. The insurance coverage and limits required must be evidenced by properly executed Certificates of Insurance on the forms furnished by the Client. The certificate must be signed by the authorized representative of the insurance company(s) shown in the certificate with proof that he/she is an authorized representative thereof. In addition, certified, true and exact copies of all insurance policies required shall be provided upon request to the Client on a timely basis. The required policies of insurance shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

The Client shall be given written notice by registered or certified mail no less than thirty (30) days prior to any cancellation, intent not to renew, or reduction in the policies' coverage except in the application of the aggregate limits provisions. In the event of a reduction in any aggregate limit, Consultant shall immediately notify the Client and shall make reasonable efforts to have the full

amount of the limits appearing on the certificate reinstated. If at any time the Client requests a written statement from the insurance company(s) as to any impairments to the aggregate limit, Consultant hereby agrees to promptly authorize and have delivered to the Client such statement. Consultant authorizes the Client to confirm all information so furnished as to Consultant's compliance with these insurance requirements with Consultant's insurance agents, brokers, surety and insurance carriers. All insurance coverage of Consultant shall be primary to any insurance or self-insurance program carried by the Client.

(b) Consultant shall not commence any services nor occupy any City-owned property or work site unless and until the required insurance is in effect and the required certificates of insurance are provided.

(c) The amounts of such insurance shall be not less than The City of Oklahoma City's maximum liability under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, as amended from time to time, and which currently are:

(i). Property damage liability in an amount not less than Twenty-Five Thousand Dollars (\$25,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

(ii) All other liability in an amount not less than One Hundred Seventy-Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

(iii) Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

Automobile liability insurance shall be maintained by Consultant as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles. The amounts of such insurance shall be not less than The City of Oklahoma City's several maximum liability under the

Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, as amended from time to time, and which currently are:

(i) Bodily injury liability

\$175,000.00 (limit each person); and

\$1,000,000.00 (limit each occurrence); and

(ii) Property damage liability

\$25,000.00 (limit each person); and

\$1,000,000.00 (limit each occurrence),

(iii) Bodily injury and property damage liability

\$1,000,000.00 (combined single limit each accident)

Insurance premiums and costs are expenses assumed by Consultant and recouped through their fees and not as an expense or separate cost to the Client.

Professional Service Agreement

Attachment “F” (“Consultant’s Interview and Proposal”), and then

A copy of the consultant’s interview (if applicable) and Proposal is attached to this section.

Professional Service Agreement

Attachment “G” (“Request for Proposals and Addenda”),

Attached behind this page is a copy of the City of Oklahoma City’s Request for Proposals and any Addenda.

Utilization study schedule

ATTACHMENT "B"

Grand Total - Count: 704

CitySpace - Count: 222

Move In - Count: 1

Move Out - Count: 1

Performance - Count: 58

Rehearsal - Count: 162

Freede Little Theatre - Count: 63

Performance - Count: 16

Rehearsal - Count: 47

Joel Levine Rehearsal Hall - Count: 7

Rehearsal - Count: 7

Meinders Hall of Mirrors - Count: 101

Move In - Count: 32

Move Out - Count: 30

Reception - Count: 35

Rehearsal - Count: 4

Thelma Gaylord Performing Arts Theatre - Count: 310

Move In - Count: 50

Move Out - Count: 39

Performance - Count: 119

Reception - Count: 1

Rehearsal - Count: 101

Vinita Cravens Donor Lounge - Count: 1

Donor Reception - Count: 1