

STATE OF SOUTH CAROLINA) AGREEMENT FOR INFORMATION
COUNTY OF CHARLESTON) TECHNOLOGY SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2020, by and between the City of Isle of Palms, S.C. (“City”) and _____ (“Company”).

WHEREAS, City desires to engage the services of Company to provide information technology support services on an as-needed basis to include, among other things, ongoing software, hardware, and network support as well as services to assist in procuring new hardware and software. (the “Services”); and

WHEREAS, Company agrees to perform the services pursuant to the terms and conditions hereinafter set forth.

THEREFORE, in consideration of the mutual covenants and promises set forth herein, City and Company agree as follows:

1. Scope of Services

A. Company would be expected to (1) provide hardware and software procurement recommendations; (2) provide third party software and cybersecurity; (3) provide help desk and end user administrative services; (4) desktop support; (5) identify and provide effective solutions to ongoing issues; (6) provide network engineering and administration services; (7) provide service and database management; (8) provide after hours and emergency services; (9) provide preventative maintenance as needed; (10) examine and assess existing technology of the City; and (11) provide communications (desk phones, cellular phones, voicemail) support, all of which are more fully detailed in the Request for Proposal (2020-04).

B. In providing services under this Agreement, the Company shall perform in

a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. Upon notice to the Company and by mutual agreement between the parties, the Company will, without additional compensation, correct those services not meeting such a standard. Company agrees to comply with all applicable federal, state and local laws, rules and regulations regarding all services performed by Company pursuant to this Agreement.

2. Contract Price. For all services to be performed by Company, City agrees to pay to Company upon completion as detailed Exhibit I, **on an hourly basis which includes anticipated expenses.**

3. Time of Performance. Company understands that some requests may be time sensitive and agrees to complete the services in a timely manner. Provided, however, that if performance by the Company is delayed for reasons or causes beyond the control of Company (including but not limited to, acts of God, weather conditions, site conditions, labor or material shortages, delays caused by City, and casualty losses) the deadline for completion of services shall be extended accordingly.

4. Breach. In the event that either party breaches any provision of this Agreement, and the same continues for a period of seven (7) days after receipt of written notice thereof, then the non-breaching party may exercise any and all remedies at law or in equity regarding the breach of this Agreement. City may terminate for any reason upon thirty (30) days' written notice. Without prejudice to any other rights or remedies available for the said breach, the non-breaching party may terminate this Agreement and cease further performance under this Agreement.

5. Standard of Performance and Insurance; Indemnity. All services to be performed by Company hereunder shall be performed in a skilled, professional and non-negligent manner. Company shall obtain and maintain at his/her/its cost and expense:

- (a) Comprehensive general liability insurance that covers the consultant services performed by Consultant for City with a combined single limit of liability of at least One Million Dollars (\$1,000,000.00).
- (b) Errors and omissions or equivalent insurance that covers the services performed by Company for City with a combined single limit of liability of at least One Million Dollars (\$1,000,000.00).
- (c) Worker's compensation insurance covering Company (if an individual) and all of Company's employees with coverages and limits of coverage required by law.
- (d) In addition to the coverages listed above, Company shall maintain a professional liability insurance policy in the amount of \$2,000,000.00. Said policy need not name the City as an additional insured. It shall be Company's responsibility to pay any retention or deductible for the professional liability insurance. Company agrees to maintain the professional liability insurance for a minimum of two (2) years following termination of this Agreement. Company shall indemnify and hold harmless City from and against all errors, omissions and/or negligent acts causing claims, damages, liabilities and damages arising out of the performance of his/her/its services hereunder. Company certifies that Company is in compliance with all applicable worker's compensation laws, rules and regulations. Neither Company (if an individual) nor Company's employees and agents will be considered City employees. Any claims that may arise under any worker's compensation laws on behalf of any employee of Company and any claims made by any

third party as a consequence of any act or omission on the part of Company or any employee of Company are in no way City's obligation or responsibility. By signing this Agreement, Company certifies that Company is in compliance with these laws and regulations. Company shall deliver to City, concurrent with the execution of this Agreement, one or more certificate(s) of insurance evidencing that Company has the insurance required by this Agreement in full force and effect. City shall be named as additional insured under such Company's comprehensive general liability policy. The insurer will provide at least thirty (30) days prior written notice to City, without fail, of any cancellation, non-renewal, or modification of any of the Company's comprehensive general liability policy or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to City, without fail, of any cancellation of any of the Company's comprehensive general liability policy or coverage evidenced by said certificate(s) for nonpayment of premium. Company shall provide City with appropriate endorsements to Company's comprehensive general liability policy reflecting the status of City as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided City by the insurance company providing such insurance policy to Company. The Company shall require any subcontractor permitted by City to perform work for Company on the project or projects to have in full force and effect the insurance coverage required of the Company under this Agreement before any subcontractor(s) begin(s) work on any project. Company shall require any such subcontractor to provide to Company a certificate of insurance evidencing that such subcontractor has the insurance required by this Agreement in full force and effect. The

Company and City shall be named as additional insureds under such policies. The insurer will provide 30-day written notice to City and Company, without fail, of any cancellation, non-renewal, or modification of the subcontractor's comprehensive general liability policy or coverage evidenced by said certificate(s) for any cause, except for nonpayment of premium. The insurer will provide at least ten (10) days prior written notice to City, without fail, of any cancellation of any of the subcontractor's comprehensive general liability policy or coverage evidenced by said certificate(s) for nonpayment of premium. City shall also be provided with appropriate endorsements to subcontractor's comprehensive general liability policy reflecting the status of City as an additional insured and requiring that the foregoing required notice of cancellation, material alteration or non-renewal be provided City by the insurance company providing subcontractor's comprehensive general liability policy.

6. Notices. All notices, consents, and approvals required by any provision of this Agreement shall be in writing and shall be deemed to be properly given and received when personally delivered to the representatives of each party or when deposited in the United States mail, registered or certified, with return receipt requested, postage prepaid, and addressed to:

City of Isle of Palms:

Representative: Desirée Fragoso, Interim City Administrator

Address: PO Box 508, Isle of Palms, SC 29451

(Company):

Representative:

Address:

7. Mediation. Any claim, dispute, or controversy arising under or in connection with this Agreement shall be subject to mediation as a condition precedent to litigation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the proposed mediator. Mediation shall be conducted in Charleston County, South Carolina. The mediator shall be a member of the South Carolina Bar and shall be selected by mutual consent and agreement of the parties. If a party fails to object to the mediator proposed by the party requesting mediation within 30 days of the initial request for mediation, the mediator shall be deemed selected as proposed. If the parties fail to agree upon a mutually acceptable mediator within 60 days of the initial request for mediation, the mediator shall be selected from the official roster of active certified mediators in Charleston County, as provided by the South Carolina Supreme Court's Commission on Alternative Dispute Resolution and Board of Arbitrator and Mediator Certification, by choosing in alphabetical order the first available circuit court mediator from the roster. The parties shall equally divide the mediator's fee and any filing fees. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction. Nothing contained herein shall preclude either party from seeking enforcement of the terms of mediation pursuant to this Paragraph through a court of competent jurisdiction, and the prevailing party shall also be entitled to reimbursement by the losing party for all reasonable fees and costs, including attorney's fees, incurred in the proceedings seeking enforcement.

8. Entire Agreement; Amendments. This Agreement constitutes the entire Agreement between the parties and supersedes and nullifies all prior or contemporaneous agreements or representations by either party which are not expressly stated in this agreement. Neither party is relying upon any representation not expressly contained herein.

This Agreement may be amended only by a written agreement signed by each party.

9. Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by a party in the performance of its obligations under this Agreement is not a consent or waiver to or of any other breach or default in the performance by that party of the same or any other obligations of that party with respect to this Agreement. Failure on the part of a party to complain of any act of the other party or to declare a party in default with respect to this Agreement, irrespective of how long that failure continues, does not constitute a waiver by that party of its rights with respect to that default until the applicable statute-of-limitation period has run.

10. Governing Law; Severability. This Agreement is governed by and shall be construed and interpreted in accordance with the laws of the State of South Carolina, excluding any conflict-of-laws rule or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction. If any provision of this Agreement is held invalid or unenforceable to any extent by a court of competent jurisdiction, the remainder of this Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

11. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

12. Section Headings. The headings of Sections or paragraphs used in this Agreement have been inserted for convenience only and are not to be used in determining the contents contained herein.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, by and through the undersigned officers, as of the date stated above.

WITNESS:

The City of Isle of Palms, S.C.

By: _____

Title: _____

(as to City)

_____ (Company)

By: _____

Title: _____

(as to Company)

EXHIBIT I

(Attached Contract's Proposal, dated _____)