



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

REQUEST FOR PROPOSALS # 460/000-01-2017-01-03
AMENDMENT # One
**FOR Leasing Brokerage Services (Eastern, Middle,
and Western Grand Divisions)**

DATE: May 25, 2017

ESC RFP TRANSACTION NUMBER 460/000-01-2017-01-03 IS AMENDED AS FOLLOWS:

1. This RFP Schedule of Events updates and confirms scheduled RFP dates.

EVENT	TIME (Central Time)	DATE	UPDATED / CONFIRMED
1 RFP Issued		May 3, 2017	Confirmed
2 Disability Accommodation Request Deadline		May 5, 2017	Confirmed
3 Pre-response Conference	1:00 p.m.	May 11, 2017	Confirmed
4 Notice of Intent to Respond Deadline		May 12, 2017	Confirmed
5 Deadline to Submit First Round Written "Questions & Comments" and "Pro Forma Contract Redline" (See RFP Section 1.3.)	2:00 p.m.	May 18, 2017	Confirmed
6 State Response to First Round Written "Questions & Comments" and "Pro Forma Contract Redline"		May 25, 2017	Confirmed
7 Deadline to Submit Second Round Written "Questions & Comments"	2:00 p.m.	June 1, 2017	Confirmed
8 State Response to Second Round of Written "Questions & Comments"		June 7, 2017	Confirmed
9 Response Deadline	2:00 p.m.	June 20, 2017	Confirmed
10 State Completion of Technical Response Evaluations		June 27, 2017	Confirmed
11 State Opening & Scoring of Cost Proposals		June 27, 2017	Confirmed
12 Negotiations (at the State's discretion)		June 27, 2017	Confirmed
13 State Notice of Intent to Award Released and RFP Files Opened for Public Inspection		July 11, 2017	Confirmed
14 Executive Subcommittee of the State Building Commission ("ESC") Approval Sought		July 24, 2017	Confirmed

	EVENT	TIME (Central Time)	DATE	UPDATED / CONFIRMED
15	State sends contract to Respondent for signature		July 24, 2017	Confirmed
16	Respondent Signature Deadline		July 31, 2017	Confirmed

2. State responses to questions and comments in the table below amend and clarify this RFP.

Any restatement of RFP text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFP document.

	QUESTION / COMMENT	STATE RESPONSE
1	Is the <i>Portfolio Summary</i> list accurate on the Eastern Grand Division? I remember an RFP for TDEC in Knoxville from a while back and I know JLL was working on the Knoxville Probation office. It seems that some of the others from across the state have come into question as already renewed.	This list was accurate at the time of assembly during the development of the RFP, but may change prior to contract execution and subsequent issuance of Task Orders under the contract.
2	What is the State's philosophy regarding build-to-suits? I know that with some of the GSA projects I handle build-to-suit is not an option based on federal guidelines. However some projects like TDEC or Corrections may have specific requirements that do not exist within the delineated area. How is it handled?	Build -to-suits are considered on a case by case basis depending on the needs of the agency. They are compared with other responses on a cost basis after minimum requirements have been met. There is neither a preference nor a prohibition on build -to -suits leases.
3	Under the Technical Response & Evaluation Guide, Item A.9 (page 21 of 34) which reads "Provide a statement that the Respondent has been the broker for and completed the execution of at least five (5) commercial leases each year in at least three (3) of the previous five (5) years." Please confirm that we should clarify our office leasing experience relative to other property types, since the majority of the portfolio listed in the Portfolio Summary are office leases and since there are substantial differences in market knowledge between completing an industrial or retail lease versus completing an office lease. Furthermore, please confirm we need to state our experience as tenant representation brokers since there is a difference in market knowledge between working as a landlord's broker and serving as a tenant rep broker. Tenant rep brokers represent companies looking to lease or re-new their lease and usually receive lease proposals from several different landlords or landlord brokers and therefore have a better understanding of the overall office market. Landlord brokers on the other hand typically know the selling points/amenities of property they have listed, but often don't know the financial terms being offered by competing landlords or properties.	Question A.9 represents general minimum requirements for qualification for this RFP and is applicable to all types of commercial leases. It is anticipated that a Respondent would provide more specific qualifications related to the types of leases represented in the state's provided portfolio summary and related to performing tenant representation brokerage services.
4	How does the State handle situations where the Respondent (aka tenant rep broker) also has viable listing in an Agency's proposed boundaries for the solicitation? For example, market data can be very important in setting	Any relationships with a landlord within the market area of a potential market area should be disclosed as a potential conflict of interest. The State will determine the mitigation for such conflict of interest, if it becomes necessary, including the completion of the Task Order by state

QUESTION / COMMENT	STATE RESPONSE
boundaries and creating competition. Are there any disclosure rules at the onset of an engagement when the boundaries have not been established?	personnel.
5 In an effort to provide best-in-class transaction management services under the RFP, we would like to confirm that we can consult with a company experienced in state government real estate protocols and with extensive benchmarking expertise, and that since their role will not be transactional in nature, that the geographic constraints for brokerage subcontractors do not apply.	All consultants working with the Contractor who are engaged on matters directly related to the services the Contractor is providing to the State must be disclosed to the State for purposes of managing any conflicts of interest. The geographic constraint is related to those subcontractors of Contractor who are providing services directly in support of the work required under a Task Order.
6 The RFP states that the State can self-perform 50-60 leases per year. Is this number reflective of the entire State of Tennessee or for each Grand Division?	This is reflective of the anticipated capacity of state staff over the entire state, per year.
7 What criteria does the State use to determine if a lease transaction will be self-performed or submitted to a Respondent to complete?	There are several factors that may be considered, depending on the specific circumstances. Criteria may include: availability of state staff, potential conflicts of interest, availability of market competition and potential of incumbent landlord to be the successful Respondent.
8 Can a Respondent who represents landlords in the Eastern Grand Division submit a proposal for this RFP? If so, will the Respondent need to identify all potential conflicts (i.e. listings) within the Eastern Grand Division since the boundaries may not be established at the time of engaging the Respondent?	Yes, this would need to be disclosed for each Task Order Number One or Task Order Number Two as a possible conflict of interest, where it may apply.
9 While it will obviously be our preference to do as much work as possible under the contract, as a small business, it is not feasible to have staff just waiting and hoping for an assignment. Since there is no guaranteed or even intended volume of work, please confirm that a Respondent can decline to perform a requested task order if proper staffing is not available? If so, the section XX of the contract will be amended accordingly to allow the vendor to accept or decline each task order.	Potential availability and ability to perform work will be taken into account in both the initial qualifications for selection of the successful Respondent and for the assignment of the work of each Task Order. As the state is relying on these services to supplement state staff, the state may consider rejection of such services procured under this contract a failure to perform. The state may work with a successful broker to determine if schedules can be adjusted to allow the contractor to perform. It is also noted that per section D.5 of the contract, upon approval of the state, the successful Respondent may subcontract for such services so long as such subcontractors are approved by the State in accordance with Section D.5 of the Pro Forma Contract.
10 Page 5, Section A.5 – Additional Services – It's our understanding that we only need to submit a Personnel Rate Schedule if and when we receive an Additional Services Task Order describing the special services that State wishes us to perform. Is that correct?	The Personnel Rate Schedule will be submitted by the best evaluated Respondent prior to entering into the negotiations phase of this RFP per section 5.3, Negotiations. The response to an Additional Services Task Order will use those rates in responding to and invoicing for services of an Additional Services Task Order per Contract section C.3.3.
11 The State can terminate the contract for convenience. Please articulate your policy for payment of transactions that are underway but not completed at the time of the potential termination.	The procedure for payments of partially completed transactions or task orders is found in paragraph 2 of section D.3, Termination for Convenience. Essentially the state will reimburse appropriate out-of-pocket expenses incurred after assignment and prior to termination. Out-of-pocket expenses would include actual documented personnel time and other costs related to the cancelled task order or transaction. See item #3 below.

QUESTION / COMMENT	STATE RESPONSE
<p>12 Where can we find the actual expiration dates and tenant agency for the leases listed in the Portfolio Summary? We downloaded some information from the State's website, but the map/data was dated April 2016.</p>	<p>The actual expiration dates are available on the following sites: https://www.tn.gov/generalservices/topic/lease-management http://www.tn.gov/finance/article/fa-osa-realestate-leasing-info These represent the current data. For the purposes of state leasing, the tenant is the State of Tennessee.</p>
<p>13 What is the typical term of State leases?</p>	<p>Most leases average 5 or 10 years, but there is no typical term. Current leases range from 1-15 years.</p>
<p>14 What are the criteria under which the State would engage the Respondent to perform a Task Order Number One and then use in-house staff to negotiate the lease, assuming the agency project moves forward?</p>	<p>See the answer to question 7.</p>
<p>15 How often does the State anticipate the Respondent would be hired to perform a Task Order Number One and not be engaged to perform a Task Order Number Two?</p>	<p>Unknown as it is situationally based, but this is expected to be a small minority of the cases. See also the answer to question 7 for possible criteria.</p>
<p>16 <u>A.1. Contractor Commission.</u> The State shall not be obligated to participate in any dispute between the landlord and Contractor involving Lease Commission payments.</p> <p>Whose responsibility is it to pay "Lease Commission": Is this a (50/50) split between the State & Lessor, where the State pays through "Task Orders" and the Lessor pays through the lease agreement?</p>	<p>Per section C of the contract:</p> <ul style="list-style-type: none"> • The Lease Commission under Task Order Number Two is solely paid by the landlord. • Task Order Number One is paid by the state only if the related Task Order Number Two is not assigned to the respondent. • All Additional Services Task Orders are solely paid by the state.
<p>17 Reference to Pro Forma Contract Sections B.1. and A.5.</p> <p>Is the "Maximum Liability" quoted in this section (B.1.) considered to be the MAX payment allowed "PER YEAR" in the Contract?</p> <p>How was this amount calculated or estimated by the State as being reasonable in the market for an Independent Contractor?</p> <p>In arriving at the 'Max Liability' amounts in this section, what real life factors were considered and how many events were estimated to be involved monthly in your determination.</p> <p>As in the case of delegating a subcontractor to accomplish a specific task order that would not be an hourly worker, is it acceptable to submit a "Flat Rate" for this situation?</p>	<p>The stated Maximum Liability is for the entire initial 3-year term of the contract and is for Task Order Number One and Additional Services Task Order work only.</p> <p>Amounts were determined based on internal accounting practices. The amount may be adjusted by amendment if necessary, with the approval of the State Building Commission.</p> <p>Subcontract work is required to be billed in the same manner as prime contract work. For work of an Additional Services Task Order, that requires an hourly rate. If personnel rates for subcontract work differs from that of prime contract work that should be reflected on the hourly rate schedule as submitted to the state per RFP section 5.3, Negotiations.</p>
<p>18 The amount of work awarded to the</p>	<p>The state will not pay for services outside of the work of</p>

QUESTION / COMMENT	STATE RESPONSE
<p>Contractor under this Contract will be determined based on the State's need and the amount of funding available from various funding sources. This Contract makes no guarantees, either stated or implied, about the demand for Services requested within. The State is under no obligation to request Services from the Contractor in any specific dollar amounts or to request any Services at all from the Contractor during any period of this Contract. ** Notwithstanding no guarantee by the State to request services under "Task Orders", the State shall pay a minimum contractor Admin fee in the amount of _____ per month for expenses involved in setup and to maintain Contractor's government services division under the contract.</p>	<p>assigned task orders and makes no representation of minimum payments. A Respondent is not required to set up or maintain a "government services division" under this contract.</p>
<p>19 B.1.1. In the event that the Contractor is unable to complete the work of a Task Order Number One or an Additional Services Task Order, or in the event that the lease process does not result in a fully approved, executed and commenced lease, the Contractor shall not be entitled to any compensation pursuant to the terms of this Contract or an associated Lease Commission Agreement with any prospective lessor. **Contractor shall be compensated as defined in C.3.1, C.3.3, and C.4 for all services, time and work allocated to this request, as a Modified Task.</p>	<p>It is assumed that this question refers to Contract Section C.3.4 as no section B.1.1 exists.</p> <p>The requested language change cannot be accommodated. Please refer to the comment below:</p> <p>The intent of this language is that the broker will not be compensated if the failure is at no fault of the state. If the failure is due to state cancellation of a task or other fault of the state, compensation would be provided per section D.3, paragraph 2.</p>
<p>20 Under <u>Task Order Number One</u>. Section(s) 1a and 1d: Please expand on what would be needed with these tasks.</p>	<p>1a requires a study of the market area to determine all appropriate and available properties and the prevailing rates for such properties. This may require various methods of searching including online, peer to peer, in-person visits, and other appropriate methods.</p> <p>1d relies on the professional expertise of the successful responded as well as the knowledge of state staff to determine what additional items might be needed in a given situation.</p>

3. Delete *Pro Forma* Contract (RFP Attachment 6.7.) in its entirety and replace it with the attached (changes are highlighted in yellow).

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
AND
CONTRACTOR NAME
TO
SBC PROJECT NUMBER XXX/XXX-XX-XXXX

This Contract, by and between the State of Tennessee, Department of **General Services**, hereinafter referred to as the "State" and **Contractor Legal Entity Name**, hereinafter referred to as the "Contractor," is for the provision of **lease brokerage services**, as further defined in the "SCOPE OF SERVICES."

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

DEFINITIONS:

Additional Services Task Order: means any work outside of Task Order Number One or Task Order Number Two and generally described in section A.5, as assigned by the Director of Leasing, and to be compensated hourly according to the Personnel Rate Schedule (attached as Attachment D.3). (See Section A.5 and Contract attachment D)

Base Lease Commission Rate: means ____%.

Best Valued Proposal: means the proposal, under the terms of the Method of Evaluation (see Attachment C.4.1), which is determined by the State to be lowest cost after taking into consideration all costs associated with the lease, including but not limited to: actual lease payments, moving costs, furniture costs, self-performance costs, and other costs outside of the actual lease costs reasonably construed by the State to be associated with the procurement of the lease.

Compliance: means the STREAM internal compliance team.

Director of Leasing: means the STREAM Director of Leasing.

Lease Commission: means the amount paid by the landlord to the Contractor in accordance with the terms of this Contract and the Lease Commission Agreement.

Lease Commission Agreement: means a form approved by the State for use between the landlord and the Contractor which determines the Lease Commission.

Modified Lease Commission Rate: means ____% (50% of the Base Lease Commission Rate).

Procurement File: means the physical paper and electronic file of all documents related to the procurement of a lease. A list of required documents for the file will be provided by the State.

Services: means any work and work product including all mandatory deliverables requested by the State and performed by the Contractor pursuant to this Contract.

SPG: means Statement of Procurement Goal, which is the written document approved by the STREAM Director of Leasing and prepared prior to completion of the market survey and prior to issuance of the advertisement. The SPG sets forth the desired terms on which the State would like to enter into a Lease and may be issued in draft form.

STREAM: State of Tennessee Real Estate Asset Management Division of the Department of General Services for the State.

Task Order Number One: means the document created by the Director of Leasing for completion by the Contractor during the preliminary process of procuring a lease. The task order will describe the work to be completed by the Contractor and the time frame in which it must be completed. (See Section A3 and Contract attachment B)

Task Order Number Two: means the document created by the Director of Leasing for completion by the Contractor for the procurement of a lease. The task order will describe work to be completed by the Contractor and the time frame in which it must be completed. (See Section A3 and Contract attachment C)

User Agency: means the State agency, board, institution or commission for which the leased space is being procured.

A. SCOPE OF SERVICES:

A.1 The Contractor shall provide all Services as required, described, and detailed herein and shall meet all service and delivery timelines as specified by the Contract. Services of the Contract will be as assigned in a Task Order Number One, a Task Order Number Two, or an Additional Services Task Order.

A.2 Within 60 days and prior to any work being assigned, all personnel identified to work on this Contract as part of the response, shall attend at no additional cost to the State, training relative to these Services, as provided by the State. Training shall include instruction on the applicable statutes; the State leasing process; State Building Commission ("SBC") policy items 7 and 12; and, the State, Real Estate Asset Management, Lease Communication and Negotiations Policy and Procedures. The State is only obligated to provide a single training session. If, during the term of the Contract, new personnel are proposed by Contractor to perform work under this Contract with the State, the new personnel shall be approved by the State and also be required to receive the training at no additional cost to the State. Any additional training shall be performed by the Contractor pursuant to a State approved training plan.

A.3 Task Order Number One. The Contractor shall, upon receipt of a properly executed Task Order Number One (form attached as Attachment B) from the State, within 30 days or as otherwise instructed by the Director of Leasing, provide all Services as required, described and detailed in Task Order Number One and pursuant to the direction of the accompanying draft SPG (form attached as Attachment B.4), Strategy Memo (example attached as Attachment B.5), and any additional exhibits specifically described in Task Order Number One.

1. The Services requested by Task Order Number One may include:

- a. Completion of a market survey. The market survey should identify the prevailing commercial rental rates in the identified market and all properties that meet the requirements of the draft SPG,
- b. Site visits, including an inspection and analysis of the existing location, coordinated with the User Agency, if it is possible for the incumbent location to be considered, identifying deficiencies as compared to the draft SPG or to identify if the incumbent location may not be available,
- c. Site visits of other locations, as necessary, to carry out the work above and to identify locations not able to be identified remotely,
- d. Other items as required for a complete evaluation of the best way to satisfy the space need, and
- e. A report and recommendation which based upon the Contractor's analysis of potential suitable locations in the target market, the Contractor's assessment of prevailing rental rates in that market and evaluation of the incumbent location identifies how the State can best satisfy the procurement need set forth by the draft SPG.

2. Upon completion of Task Order Number One, Contractor shall provide documentation of a through e above, and signed Conflict of Interest Statements (attached as Attachment A) from all participants.

3. Compensation for Task Order Number One shall be as defined in C.3.1.

A.4 Task Order Number Two. The Contractor shall, upon receipt of a properly executed Task Order Number Two from the State, within seven (7) weeks or as otherwise instructed by the Director of Leasing, provide all Services as required, described and detailed in Task Order Number Two and pursuant to the direction of the final SPG report and recommendation, Strategy Memo and any other procurement documents specifically made an exhibit to Task Order Number Two. These services may include:

1. Pre-Advertisement.

- a. Prior to acceptance of any appointment under Task Order Number Two, the Contractor shall provide written certification that all Contractor employees involved with the procurement have been trained according to A.2;
- b. Contractor shall establish a communications log which contemporaneously creates a record of procurement details, including conversations, methods, and relevant parties; and,
- c. Contractor shall prepare an advertisement soliciting lease proposals pursuant to the State template and work with State to place the ads.

2. Proposal Process.

- a. Contractor shall work with State employees to assure that all prospective lessors who respond to advertisements receive proposal packages with the Lease Proposal Form, the Leasing Proposal Request, Lease Templates, or other appropriate materials. (See Attachment C.4)
- b. Contractor shall also send a State approved Lease Commission Agreement. The Lease Commission Agreement shall be signed and returned by the prospective lessor in order to participate in the lease process, but shall not obligate the prospective lessor to compensate the Contractor in any manner unless, or until, an approved lease has been executed by the State.
- c. Contractor shall ensure that the incumbent in the market is aware of and has an opportunity to propose, if appropriate.
- d. If suitable lease locations have been identified in the market analysis, Contractor may contact them directly and make them aware of the advertisement and invite a proposal.
- e. All proposals received by the State lease solicitation coordinator will be held until following the expiration of the published submission period. At the expiration of the submission period, the State lease solicitation coordinator shall open the proposals received and make an initial determination of responsiveness of the proposals. Proposals which are found to be responsive shall be turned over to the Contractor to further address pursuant to the terms of this Contract.

3. Negotiations. Contractor shall engage in communications and negotiations with lease proposers only and exclusively pursuant to provisions of the Lease Communications and Negotiations Policy and Procedures.

4. Analyses. Contractor shall conduct its economic analysis of competing proposals pursuant to the following considerations:

- a. Contractor shall not review any proposals prior to the conclusion of the proposal period.
- b. Initial review will evaluate the proposal against the SPG to determine the ability of the proposer to meet the needs of the State. Contractor shall document in writing why any rejected proposal does not meet the needs of the State and submit that document to Compliance for approval.
- c. A proposer may be contacted by the Contractor concerning any terms or non-conforming conditions of its proposal to determine proposer flexibility in meeting the needs of the State as set forth in the advertisement. All modifications proposed after such contact must be approved by Compliance.

- d. Clarifications and corrections - It is in the best interest of the State to have as much competition as possible. If defects, ambiguities, or mistakes exist, Contractor shall document in writing and submit to Compliance for a determination on how best to proceed:
 - e. Contractor shall conduct economic evaluation of each proposal to determine net present value of the total cost to the State. All expenses that are contemplated, including but not limited to base rent, any operating expense or pass through expenses, moving costs or parking costs are to be included.
 - f. Should there be only a single proposer, there should be no deviations from the standard process by the Contractor.
5. User Agency Communications.
- a. STREAM shall be a party to all communications with the User Agency.
 - b. As proposals which meet the SPG requirements are identified as possibilities for leasing, User Agency input on the prospective locations may be solicited and any comments made a part of the leasing file.
 - c. If desired by User Agency and consented to by STREAM, User Agency inspection of prospective sites may take place with STREAM representative during this period, but any visitation by User Agency shall not unreasonably or unnecessarily delay the leasing process. User Agency concurrence with lease location selection is not a prerequisite to approval and lease execution.
6. Special Circumstances. For a build to suit, complicated buildout of an existing location, or other related special circumstances, address any buildout, work phasing or landlord finance issues with Compliance for any policy issues prior to submitting recommendation of a lease for approval.
7. Lease Recommendation and Documentation. The Contractor will provide a written recommendation, (a "Lease Recommendation") including the following, to the State for the lease which is in the best interest of the State.
- a. Upon completion of the evaluation and any negotiations, Contractor shall rank responses with the Best Valued Proposal first and all other proposals, in descending order.
 - b. Contractor shall provide a copy of the proposed lease terms of the recommended lease to Compliance for presentation to the finance department to determine if there are any capital lease issues.
 - c. Contractor shall submit a Lease Recommendation for award along with copies of the economic analysis, communications logs, conflict of interest forms, and such other similar documents which may be required for approval to the Director of Leasing. The Lease Recommendation should include the reasons for selecting or rejecting the Best Valued Proposal and should include any score sheets or pricing matrixes used in the award.
 - d. Contractor shall provide a report showing the difference of the initial and final cost of the lease and any Lease Commission that may be earned. Director of Leasing shall review the lease recommendation and ask for any revisions made with the Lease Recommendation to be resubmitted until it can be approved. A Lease Recommendation that is not the Best Valued Proposer will require further approval.
 - e. Contractor shall assemble the Procurement File and submit to the State who will maintain the file for public inspection.
 - f. Contractor shall perform corrections or reasonable modifications to the Services of Task Order Number Two as required by the State.

8. Upon completion of Task Order Number Two, Contractor shall provide all documents referenced in 1-7 above, signed Conflict of Interest Statements for all participating employees, and shall deliver a lease which fulfills the direction of the SPG; is on the State Lease Template, is agreed to by the proposed lessor; and, is ready for final State execution.
9. The Contractor's compensation for all Services ordered pursuant to Task Order Number Two shall be as defined in C.3.2.

A.5 Additional Services. Additional Services under this Contract shall be performed according to the terms of a properly executed Additional Services Task Order by the Contractor.

1. Upon receipt of an Additional Services Task Order Request for Proposal Form (form attached as Attachment D.1), Contractor shall assemble a response outlining:
 - a. a description of the work,
 - b. the Contractor's intended plan for performing the work,
 - c. the Contractor's proposed personnel to perform the work,
 - d. an estimate of the number of hours of each individual along with the rates for said individual from the Personnel Rate Schedule attached hereto as Attachment D.3,
 - e. an estimate of all proposed travel related expenses related to the work as outlined in C.4, and
 - f. a total amount as a "Not to Exceed" cost for the work.
2. Upon receipt of a properly executed Additional Services Task Order Authorization Form (form attached as Attachment D.2) the Contractor shall provide the Services within the specified duration.
3. The Services that may be requested by the State and performed by the Contractor pursuant to an Additional Services Task Order shall include:
 - a. Market Rent Rate Study by County for the assigned Grand Division. Template will be provided by the State with the Additional Services Task Order Request Form attached as D.1;
 - b. Consumer Price Index / Inflation Study by County for the assigned Grand Division – identifying historical/trend inflation related to property in each county for 5 and 10 year terms;
 - c. Market development reports by county that may affect availability and values of real estate (example: major road projects, increased/decreased industry, and other market trend factors; and,
 - d. Other similar studies and reports that may be required by the State from time to time related to real estate and leasing operations where the specific expertise, knowledge or market familiarity of a broker would be helpful in obtaining such information.
4. The Contractor's compensation for all Services ordered pursuant to an Additional Services Task Order shall be as defined in Section C.3.3.

A.6 Amendments and Modifications. Any executed task order, as described in Section A.3, A.4, or A.5, may be amended, or modified or cancelled by the State.

B. CONTRACT PERIOD:

- B.1 Contract Period. This Contract shall be effective for the period commencing on the date of full and complete execution of this Contract, and ending on **Date (3 Years)**. The Contractor hereby acknowledges and affirms that the State shall have no obligation for Services rendered by the Contractor which were not authorized within this specified contract period.

- B.2 Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total Contract Period of no more than five (5) years, provided that such an extension the Contract Period is effected prior to the current Contract expiration date by means of a Contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be affected through Contract amendment, and shall be based upon payment rates provided in the original Contract.
- B.3 In Process Work Term Extension. The State reserves the right to extend this Contract for a period beginning at the end of the final term for the purpose of completing all task order activities associated with any authorized work initiated during the term(s) of this Contract. No new Task Order Number Ones, Task Order Number Twos, or Additional Services are anticipated to be assigned during the last four weeks of the Contract Period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1 Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Hundred Thousand and No/100 Dollars (\$100,000.00) for work of Task Order Number One, as outlined in Section A.3 and Two Hundred Thousand and No/100 Dollars (\$200,000.00) for any contracted Additional Services, as outlined in Section A.5. The payment rates provided in Section C.3.1 or C.3.3 and the Travel Compensation provided in Section C.4, shall constitute the entire compensation payable the Contractor from the State for all Services and Contractor obligations hereunder regardless of the difficulty, hours worked, materials or equipment required. The maximum liability includes, but is not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

Notwithstanding the foregoing to the contrary, the work of Task Order Number Two, the payment rates for which are provided in Section C.3.2, is not funded through the maximum liability of this Contract. It is anticipated that work of Task Order Number Two will have a value of approximately One Million and No/100 Dollars (\$1,000,000.00), to be paid separately by third party landlords.

The amount of work awarded to the Contractor under this Contract will be determined based on the State's need and the amount of funding available from various funding sources. This Contract makes no guarantees, either stated or implied, about the demand for Services requested within. The State is under no obligation to request Services from the Contractor in any specific dollar amounts or to request any Services at all from the Contractor during any period of this Contract.

- C.2 Compensation Firm. The payment rates set forth in Section C.3 below for Services under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3 Payment Methodology. The Contractor's compensation shall be contingent upon the satisfactory completion of Services defined in Section A. The Contractor shall submit invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service no more than monthly. The Contractor shall be compensated based on direct amount rates for units of service authorized by the State in accordance with the payment rates as detailed in section C.3.
- C.3.1 Subject to the terms of this Contract, the Contractor's compensation under Task Order Number One shall be an amount equal to \$1,000.00 for each completed Task Order Number One, unless the Contractor is awarded the work for Task Order Number Two relative to the same lease request. Assignment of Task Order Number One shall not otherwise entitle the Contractor to all or any portion of a Lease Commission under a Task Order Number Two. Should the State choose to proceed with the work of Task Order Number Two using State staff or other means, or fail to assign the work within nine (9) months of receipt of the final Services of Task Order Number One, the Contractor shall be entitled to submit an invoice for compensation of the work of Task Order Number One.

C.3.2 Subject to the terms of this Contract, the Contractor's compensation under Task Order Number Two shall be the Lease Commission. The Lease Commission shall be:

1. Except for new leases at an existing location, addressed in subsection 3 below, for new leases with an initial term of ten (10) years or less, the Lease Commission shall be the Base Lease Commission Rate multiplied by the total of all rental installments as shown in block 7 of the Lease Template (agreement attached as Attachment C.4.3), for the term of the lease as described in block 5 of the Lease Template;
2. For new leases which exceed ten (10) years in length, the Lease Commission shall be the Base Lease Commission Rate multiplied by the total of all rental installments as shown in block 7 of the Lease Template for the first ten (10) years of the lease, plus the Modified Lease Commission Rate multiplied by the total of all rental installments as shown in block 7 of the Lease Template for the remainder of the term of the lease as described in block 5 of the Lease Template; or
3. For new leases at the same location as the previous lease location, the Lease Commission shall be the Modified Lease Commission Rate multiplied by the total of all monthly rental installments as shown in block 7 of the Lease Template, for the total term of the Lease as described in block 5 of the Lease Template; and,
4. In the event the State exercises a renewal option for a term of years provided for under the lease for such space, the Lease Commission shall be the Modified Lease Commission Rate multiplied by the total of all monthly rental installments as shown in block 7 of the Lease Template, for the total renewal term of the Lease as described in block 5 of the Lease Template.

Except as otherwise set forth in this Contract and in a specific Task Order Number Two, the Lease Commission payable by the lessor shall be the only compensation due the Contractor for Services provided under a Task Order Number Two regardless of the difficulty, hours worked, materials or equipment required, and shall include all applicable taxes, fees, overheads, travel, advertising, staffing and all other direct and indirect costs incurred or to be incurred by the Contractor in the performance of its Services under a Task Order Number Two.

The State reserves the right to require modifications to the Lease Commission Agreement should there be conflicts with any State statutes, policies or rules as those are updated from time to time, or due to any amendments to this Contract which may cause such modification.

C.3.3 Subject to the terms of this Contract, the Contractor's compensation under an Additional Services Task Order shall be limited to the amount approved unless subsequently modified. Contractor shall invoice for the actual costs of the work as follows:

1. Each individual that actually performed work,
2. The total number of hours of each individual along with the rates for said individual from the rate schedule submitted with the RFP, and
3. Any previously approved expenses directly related to the work.

The total amount of the invoice shall not exceed the total amount approved for such Services and within the total amount, the amount of the expenses shall not exceed the amount of expenses approved.

Personnel rates for individuals completing an Additional Services Task Order under this Contract shall be as indicated on Attachment D.3 as provided prior to, negotiated during, and agreed upon during, the negotiations phase of the RFP for this Contract, or as updated no more often than annually and accepted by the State.

C.3.4 In the event that the Contractor is unable to complete the work of a Task Order Number One or an Additional Services Task Order, or in the event that the lease process does not result in a fully approved, executed and commenced lease, the Contractor shall not be entitled to any compensation pursuant to the terms of this Contract or an associated Lease Commission Agreement with any prospective lessor.

C.4 Travel Compensation. Travel compensation will only be allowed for Additional Services Task Orders. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time. The Contractor must include (in addition to other invoice requirements of the Contract) a complete itemization of travel compensation requested in accordance with and attaching to the invoice appropriate documentation and receipts as required by the above-referenced "State Comprehensive Travel Regulations

C.5 Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.4, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Original: Stacey Nelson, Director of Leasing
Department of General Services, Real Estate Asset Management
312 Rosa L. Parks Avenue
W. R. Snodgrass Tennessee Tower, 24th Floor
Nashville, Tennessee 37243-1102
Stacey.Nelson@tn.gov
Telephone # (615) 532-9016

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
 - (1) Invoice Number (assigned by the contractor);
 - (2) Invoice Date;
 - (3) Contract Number SBC Project No. ~~XXX/XXX-XX-XXXX~~
 - (4) Customer Account Name: Department of General Services, Real Estate Asset Management;
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced State Agency);
 - (6) Contractor Name;
 - (7) Contractor Federal Employer Identification, Social Security, or Tennessee Edison Registration ID Number Referenced in Preamble of this Contract;
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax);
 - (9) Contractor Remittance Address;
 - (10) Description of Delivered Service;
 - (11) Total Amount Due for delivered service (as stipulated in Section C.4. above);
 - (12) Further, invoices will include, as applicable, the name of each individual, the individual's job title, the number of hours worked during the period, the hourly rate, the total compensation requested for the individual, the total amount due the Contractor for the period involved, each project expenditure to-date, total expenditures to date and balance of funds remaining in the Contract.
- b. The Contractor understands and agrees that an invoice under this Contract shall:
 - (1) include only charges for Services described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed Services and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.6.

- C.6 Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced. All invoices must be submitted within ninety (90) days of the conclusion of this Contract.
- C.7 Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of the Contract, not to constitute proper remuneration for compensable services.
- C.8 Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor by the State under this or any contract between the Contractor and the State of Tennessee.
- C.9 Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State a "Supplier Direct Deposit Authorization Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). This form can be found at <http://www.tn.gov/finance/article/fa-accfin-swa>. Please follow the instructions at the top of the form regarding submission of the form.
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract. This form can be found at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>. Please submit this form with the ACH form as indicated at the top of the ACH form regarding submission of the form.

D. STANDARD TERMS AND CONDITIONS:

- D.1 Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by the appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to the Office of the State Architect, the Commissioner of General Services, the Comptroller of the Treasury, and the Office of the Attorney General).
- D.2 Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Office of the State Architect, the Commissioner of General Services, the Comptroller of the Treasury, and the Office of the Attorney General).
- D.3 Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized Services completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any Services which have not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract. Any reimbursement pursuant to this paragraph shall not exceed \$1,000 for any Task Order One ordered under A.3, the total amount or "Not to Exceed" cost of an Additional Services Task Order ordered under A.5, or the reasonably anticipated lease commission from the commission agreement obtained from a

landlord pursuant to a Task Order Number Two ordered under A.4

In the event that the State terminates the work of a task order for convenience prior to completion by the Contractor, the Contractor may submit under Section C.6 an appropriately documented invoice for reimbursement of appropriate out-of-pocket expenses actually incurred, including compensation for Task Order Number One, if applicable, made pursuant to the terms of the task order, prior to the termination date of the Contract.

- D.4 Termination for Cause. The State shall have the right to immediately terminate the Contract or any Task Orders and withhold payments to the Contractor in excess of fair compensation for satisfactory, authorized and completed Services for the following causes: a) Contractor's failure to disclose any conflict or potential conflict of interest existing at the date of the Contract or during any task order work under the Contract; b) misrepresentations by the Contractor in the response to the request for proposal or committed during the negotiations for this Contract; c) failure to comply with the assertions and promises set forth in the request for proposals;
- a. If, during Contractor performance of the Contract, the State observes Contractor a) failure to adhere to the leasing policies, practices and procedures made available to the Contractor; b) failure to produce Services under task orders within time limits set by the task orders; c) failure to produce Services consistent with the quality of examples provided in response to the request for proposals; or, d) failure to correct on repeated offenses then the State shall notify Contractor in writing of the specific deficiency, shall specify what is needed to cure or correct said failure to follow policy and procedure, and, may specify a reasonable period in which to cure the deficiency. If State determines that additional training is necessary to resolve the specified failure to follow policy and procedure, it shall be performed at no additional cost to the State. Continued failure by Contractor to follow State policy and procedure after notification of specific deficiency and following additional training and/or curative measures shall be cause to revoke approval of Contractor employee to perform under Contract. Additionally, any changes in personnel during the term shall be approved by the State and within 60 days of such approval prior to any work shall attend same training; and,
 - b. Following written notice to Contractor of termination for cause, Contractor shall immediately end all work under any task order and promptly return to State any and all documents or materials provided to Contractor pursuant to any task order pursuant to this Contract.
- D.5 Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the Services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest", "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed. Additionally, the State shall have the right to withdraw its approval of any subcontractor who fails to perform under the terms of this Contract, in the State's sole opinion.
- D.6 Conflicts of Interest. The Contractor warrants that no part of their compensation under this Contract shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or Contractor to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

The Contractor acknowledges, understands, and agrees that it and its performance under this Contract are subject to State Building Commission Policy and Procedure 12.02, "Organizational Conflicts of Interest," (the "SBC Conflict Policy"), and that Contractor has read and understands all of the provisions and requirements of same.

- D.7 Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8 Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Exhibit A, hereto, with each invoice, as described in C.3, during the period of this Contract. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.9 Licensure. The Contractor and its employees and all sub-contractors shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.10 Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.11 Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

- D.12 Progress Reports. Contractor shall provide a report by the 15th of each month on the status of each Task Order Number Two in progress and Contractor shall provide a report by the 15th of each month detailing the individual savings, as described in A.4.d. above, and cumulative savings and commissions on all completed leases.
- D.13 Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14 Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.15 Contractor Commission. The State shall not be obligated to participate in any dispute between the landlord and Contractor involving Lease Commission payments.
- D.16 Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the maximum liability. This limitation of liability is cumulative and not per incident.
- D.17 Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.18 State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

- D.19 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.20 Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.
- D.21 Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.22 Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1 Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2 Grand Division Regions. The boundaries of the Grand Divisions referred to herein are defined by Tennessee Code Annotated §4-1-202 for the Eastern Grand Division, §4-1-203 for the Middle Grand Division, and/or §4-1-204 for the Western Grand Division.
- E.3 Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address set forth below or to that of such party of address, as may be hereafter specified by written notice.

The State:

Stacey Nelson, Director of Leasing
 Department of General Services, Real Estate Asset Management
 312 Rosa L. Parks Avenue
 W. R. Snodgrass Tennessee Tower, 24th Floor
 Nashville, Tennessee 37243-1102
Stacey.Nelson@tn.gov
 Telephone # (615) 532-9016

The Contractor:

Contactor Name & Title
 Firm Name
 Address
 City, State Zip
 Email Address
 Telephone # Number
 FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.4 Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized Services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.5 Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- E.6 Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- E.7 Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance including without limitation, the coverages set forth in this Section E.7. Such insurance shall provide for policy limits equal or greater to the amounts set forth herein and shall list the State as additional insured.

A copy of the appropriate policy or a Certificate of Coverage fully listing all limits of liability shall verify all required insurance. Such insurance shall be maintained through the life of the Contract. Renewal policies or certificates of coverage must be forwarded to the State within thirty (30) days upon issuance. Failure to maintain required insurance could be cause for cancellation of the Contract.

- a. Workers Compensation and Employer’s Liability:
 (without restriction as to whether covered by Workmen’s Compensation law):
 Workers Compensation: according to statute
 Employer’s Liability:
 Each Accident: \$100,000
 Disease – Policy Limit: \$500,000
 Disease – Each Employee: \$100,000
- b. Commercial General Liability Insurance:
 - 1. The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - 2. The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

c. Business Automobile Liability:

Including owned, hired, and non-owned vehicles; or, if there are no owned vehicles, Contractor may provide written certification of such and provide coverage limited to hired and non-owned vehicles.

Bodily injury and property damage combined single limits:

Each Occurrence: \$500,000

d. Professional Liability Insurance:

Each Claim: \$1,000,000

Aggregate: \$2,000,000

E.8. Incorporation of Additional Documents. Included in this Contract are the following documents:

- I) Amendments to the Contract
- II) The Master Contract and attachments
 - Attachment A Conflict of Interest Disclosure Statement
 - Attachment B Task Order Number One
 - Attachment B.1 Space Action Request Transmittal
 - Attachment B.2 Office Space Needs Survey Sheet
 - Attachment B.3 Space Needs Analysis Report
 - Attachment B.4 Statement of Procurement Goals (Draft)
 - Attachment B.5 Strategy Memo
 - Attachment C Task Order Number Two
 - Attachment C.1 Advertisement Sample
 - Attachment C.2 Communication Log
 - Attachment C.3 Statement Of Procurement Goals (Final)
 - Attachment C.4 Stream Leasing Proposal Package
 - Attachment C.4.1 Leasing Proposal Request
 - Attachment C.4.2 Lease Proposal Form
 - Attachment C.4.3 State is Tenant – Standard Pro Forma Lease Template (TL)
 - Attachment C.4.4 Proposal Evaluation Method (Section IV)
 - Attachment D.1 Additional Services Task Order Request for Proposal Form
 - Attachment D. 2 Additional Services Task Order Authorization Form
 - Attachment D.3 Personnel Rate Schedule
- III) The Request for Proposal and its associated amendments (incorporated by reference)
- IV) The Proposer's Proposal (incorporated by reference)

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

(The remainder of this page left blank intentionally)

This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one (1) counterpart, even though no one (1) counterpart contains the signatures of all parties to this instrument. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures.

IN WITNESS WHEREOF:

CONTRACTOR LEGAL ENTITY NAME:

Contractor Signatory, Contractor Title

DATE: _____

STATE OF TENNESSEE,

OFFICE OF THE STATE ARCHITECT:

Ann McGauran, State Architect

DATE: _____

DEPARTMENT OF GENERAL SERVICES:

Robert E. Oglesby, Commissioner

DATE: _____

APPROVED AS TO COMPLIANCE WITH POLICY AND STATUTE:

Justin P. Wilson, Comptroller of the Treasury

DATE: _____

APPROVED AS TO COMPLIANCE WITH FORM AND LEGALITY:

Herbert H. Slatery III, Attorney General and Reporter

DATE: _____

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY
