

CITY OF DALTON
FORTINET NETWORKING EQUIPMENT DEPLOYMENT
PROFESSIONAL SERVICE AGREEMENT

THIS PROFESSIONAL SERVICE AGREEMENT is made and entered into on this 7th day of June, 2021 by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and **BION Security LLC**, hereinafter referred to as "CONTRACTOR".

WHEREAS, CITY owns **28 building sites** that need to be configured onto the city's network; and

WHEREAS, CITY owns networking equipment that needs to be **configured** and deployed throughout the city; and

WHEREAS, CONTRACTOR desires to **configure the network equipment utilizing modern security best practices**; and

WITNESSETH: That the parties hereto for the considerations hereinafter mentioned covenant and agree as follows:

1. **WORK SITE:** CONTRACTOR shall work remotely from a secure environment with access to the city's networking lab, located at 300 W. Waugh St Dalton, Georgia 30720.

2. **USE OF PROPERTY:** CONTRACTOR shall have use and possession of the subject property at the following days and times to complete the project:

Days: **86 Days**

Time of day: **6:00 AM to 11:59 PM**

In the event that CONTRACTOR should desire to use the subject property on additional dates or times, CONTRACTOR shall obtain written authorization from the Dalton City Information Technology Director. CONTRACTOR shall restrict the public use of or access to the subject property except as may be authorized by the Dalton City Information Technology Director. The subject property shall be used in conformity with all laws, statutes, ordinances, rules, restrictions and orders of any federal, state or municipal governments or agencies thereof having jurisdiction over the use of the subject property. The subject property shall be used and virtually accessed for the subject project and related functions

only and not for any other commercial operations. The use and access of the networking equipment for any other usages other than specified by the Dalton City I.T. Department Director is prohibited. Any such access shall be approved by the CITY and in accordance with applicable federal, state and local statutes, ordinances, rules and regulations in force during the term of the Agreement.

3. PROJECT: The CONTRACTOR shall complete the project and perform the professional services in the scope of work, which is included herein by reference and the specifications provided in the CONTRACTOR's proposal attached hereto as Exhibit "A".

4. DATE OF COMMENCEMENT: The CONTRACTOR shall commence work on the project within 3 days of receiving Notice to Proceed by the CITY.

5. DATE OF COMPLETION: The CONTRACTOR shall complete the project on or before August 31, 2021

6. CONTRACT SUM AND CONTINGENCY: The CITY shall pay to CONTRACTOR an hourly rate of \$110 Dollars for the complete performance of the project and terms of this Agreement. In addition to the contract sum, the CITY shall pay the CONTRACTOR an amount not to exceed \$30,000 for professional services rendered to the CITY. In addition, CITY shall pay to CONTRACTOR for any additional work performed pursuant to any mutually agreed to change orders. All change orders shall be in writing signed by both parties. CONTRACTOR shall notify the Dalton City Information Technology Director prior to commencing work pursuant to a change order.

7. CONTRACT PENALTY: The CONTRACTOR shall pay to the CITY the amount of \$100.00 Dollars per calendar day for unexcused delay in completion of the project past the date of completion.

8. PAYMENT: The CITY shall pay the hourly rate to CONTRACTOR upon complete performance of the project and terms of this Agreement. Final payment shall be made no later than 30 days after receipt of invoice. Upon completion of any additional services, said additional services shall be paid within 30 days of receipt of invoice from CONTRACTOR. Payment shall be made via electronic funds transfer (EFT).

9. SURRENDER OF subject property: CONTRACTOR shall, no later than 1 day after completion of the project, surrender possession of the subject property and shall not virtually access the subject property. All login credentials to the subject property will be changed upon completion of project. All configurations and implementation techniques shall become the intellectual property of the CITY for said project.

10. CITY COVENANTS: CITY covenants and agrees:

- (a) to provide all available information, data, reports, records and diagrams to which CITY has possession or control which are necessary for CONTRACTOR to perform the scope of services provided for herein;
 - (b) to provide reasonable assistance and cooperation to CONTRACTOR in obtaining any information or documentation which are necessary for CONTRACTOR to perform the scope of services provided for herein;
 - (c) to designate a representative authorized to act on the CITY's behalf with respect to the project. Unless otherwise provided, said CITY representative shall be the Dalton City Information Technology Director;
 - (d) to permit access to the subject property virtually and obtain permission to extend temporary access necessary for CONTRACTOR to complete the scope of services;
 - (e) to provide reasonable assistance to CONTRACTOR in registering subject equipment to the manufacturer for the scope of services;
11. CONTRACTOR COVENANTS: CONTRACTOR covenants and agrees:
- (a) to perform the scope of services in a professional manner, using that degree of care and skill ordinarily exercised by contractors practicing in the same or similar field;
 - (b) to use only employees qualified to complete the work with sufficient experience in same or substantially similar projects;
 - (c) to use only properly licensed employees for any work requiring a specialty or professional network certifications;
 - (d) to designate a representative authorized to act on the CONTRACTOR's behalf with respect to the project;
 - (e) That its employees are qualified and or certified to configure networking equipment, and utilize best modern security practices, as described in the SCOPE OF WORK
 - (f) to use the subject property in a safe, careful and lawful manner;
 - (g) to promptly report in writing to CITY any unsafe or defective condition of the subject property and any adverse condition, which shall include but not be limited to, D.O.A. (Dead on Arrival) equipment, faulty firmware, faulty datacom connections, or damaged property that may adversely affect CONTRACTOR's

ability to complete the scope of services or other terms of this Agreement;

- (h) to promptly report in writing to CITY any damage to or injuries sustained on the subject property and to promptly repair any damage to the subject property which is made necessary by any act of CONTRACTOR, its employees, agents;
- (i) to perform all work on the project in a good and workmanlike manner, free from faults and defects, and in conformance with the terms of this Agreement;
- (j) to determine the appropriate method, details and means of performing the scope of services provided by this Agreement;
- (k) to exercise the ordinary standard of care in complying with the laws, codes, and regulations applicable to the CONTRACTOR's services;
- (l) to exercise diligence and to complete delivery of the scope of services in a timely manner consistent with the exercise of due care;
- (m) to attend meetings to make presentations or to otherwise review the progress of the work as set out in the scope of services at the reasonable request of the CITY;
- (n) to prepare and submit to the CITY reports required by the scope of services or upon the written request of the CITY.
- (o) to keep the integrity subject property in a safe and orderly condition and to protect from unwanted logins, damage, or theft any intellectual property necessary for completion of the project;

12. INDEMNITY: CONTRACTOR shall indemnify CITY from and hold CITY harmless against all claims, demands and judgments for loss, damage or injury to person or Subject property, resulting from or incurring by reason of CONTRACTOR'S use and occupancy or non-occupancy of the subject property or by the negligence or willful acts of CONTRACTOR, its agents, officers, employees, invitees or licensees and from all expenses incurred by CITY as a result thereof including, without limitation, reasonable attorneys' fees and expenses and court costs, except if arising from or caused by the sole fault or negligence of CITY or any of CITY's employees, agents or representatives acting on behalf of the CITY.

Additionally, pursuant to State law, CITY shall not indemnify or hold harmless CONTRACTOR for any claims arising from the actions or omissions of CONTRACTOR or any third party.

Additionally, CONTRACTOR agrees that all personal Subject property that may be at any time at the subject property shall be at CONTRACTOR's sole risk or at the risk of those claiming through CONTRACTOR and that CITY shall not be liable for any damage to or loss of such personal Subject property except if arising from or caused by the sole fault or negligence of

CITY.

13. INSURANCE: CONTRACTOR agrees to carry at its own expense through the term of this Agreement the types and amounts of insurance required to maintain status as a Vendor of the City of Dalton. CONTRACTOR shall provide CITY with copies or evidence of such insurance coverage prior to the commencement date of the Agreement. Such insurance policies shall name CITY as an additional insured and shall be issued by such insurance companies and on such forms as may be approved by CITY. Said insurance shall include the following:

- (a) General Liability Coverage - General Liability policy with a minimum limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (b) Workers' Compensation Coverage – Workers' Compensation policy with the following minimum limits:
 - (1) Workers' Compensation statutory limits;
 - (2) Employer's Liability:
 - a. Bodily Injury by Accident - \$100,000.00
 - b. Bodily Injury by Disease - \$500,000.00 policy limit
 - c. Bodily Injury by Disease - \$100,000.00 each employee.

CONSULTANT shall complete the Workers' Compensation Insurance Affidavit of the City of Dalton to determine if any exemption to Workers' Compensation Insurance is applicable.

- (c) Auto Liability Coverage – Auto Liability policy with a minimum of \$1,000,000.00 limit per occurrence for bodily injury and property damage, if motor vehicle is used in performance of scope of services. Comprehensive form covering all owned, non-owned, and hired vehicles.
- (d) Property Coverage or Builder's Risk Coverage - Property Coverage or Builder's Risk policy with a minimum equal to or greater than the existing building value for renovations, equal to or greater than the total cost of construction per contract for new construction, and equal to or greater than the existing building value being renovated plus the total cost of new construction per contract for mixed renovation and new construction.

14. ASSIGNMENT: CONTRACTOR may not assign all or any portion of the Agreement without the prior written permission of CITY.

15. SUBCONTRACTORS: The CONTRACTOR shall provide written notice to CITY of CONTRACTOR'S intent to use a subcontractor for any portion of the project. CITY shall be entitled to reject any subcontractor it deems not qualified to complete the project. Any subcontractor approved for work on the project shall abide by any and all terms of this Agreement.

16. **NON-WAIVER OF DEFAULT:** The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Agreement shall not be construed to be a waiver thereof, not affect the validity of any part of this Agreement or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of the Agreement shall be held to be a waiver of any other default and breach.

17. **NOTICES:** Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced in writing and delivered in person or mailed by certified mail, return receipt requested, postage prepaid to the party who is to receive such notice.

Such notice to CITY shall be mailed to: City of Dalton
ATTN: Information Technology Director
300 W. Waugh ST
Dalton, GA 30720

Such notice to CONTRACTOR shall be mailed to: BION Security LLC.,
710 Dacula RD. Suite 4A
Dacula, GA 30019

When so mailed, the notice shall be deemed to have been given as of third (3rd) day after the date it was mailed. The addresses may be changed by giving written notice thereof to the other party.

18. **CONTRACT DOCUMENTS:** The Agreement shall include the CONTRACTOR'S bid or proposal, WORK ORDER SIGNATURE DOCUMENT, detailed SCOPE OF WORK, and other documents supplied by the CONTRACTOR. The terms of this Agreement shall supersede any terms in the above-referenced documents in direct conflict with the terms of this Agreement.

Additionally, the Contract Documents and all drawings, plans, specifications and other related construction or service related documents shall be the sole Subject property of the CITY. The CONTRACTOR shall be permitted to retain copies thereof for its records and for its future professional services.

Additionally, CITY shall be authorized to rely upon all documents, whether in hard copy or electronic format, provided by CONTRACTOR. Any changes to the material terms of any document shall be clearly identified and noted to CITY.

19. **VENDOR:** CONTRACTOR shall register and remain active as a Vendor of the CITY by completing the City of Dalton Vendor Packet and fully comply with any and all requirements of said Vendor.

20. **TERMINATION OF CONTRACT:** In the event that CONTRACTOR defaults or neglects to perform work on the project in accordance with the terms of this Agreement, CITY may terminate this Agreement by providing written notice of termination. Prior to termination of this Agreement, CITY shall provide written notice to CONTRACTOR of any default and provide CONTRACTOR ten (10) days to correct said default or deficiency.

21. **WARRANTY:** CONTRACTOR shall provide to CITY a general warranty for labor and materials and guarantees that the work on the project it performs shall be free from any defects in workmanship and materials for a period for a period of two (2) years from the date of completion in addition to any additional warranty provided in Section 4 –CONTRACTOR’S SCOPE OF WORK. Within ten days of completion of the terms of the Agreement, CONTRACTOR shall provide to CITY all original warranty documents from any third party.

22. **MISCELLANEOUS PROVISIONS:**

(a) **Governing Law; Venue.** This Agreement is being executed and delivered in the State of Georgia and shall be construed and enforced in accordance with the laws of that state. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive any and all objections or defenses thereto.

(b) **Successors and Assigns.** This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. CONTRACTOR shall not assign its rights or obligations under this Agreement without the prior written consent of the CITY.

(c) **Severability of Invalid Provisions.** If any provision of this Agreement shall be deemed invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

(d) **Complete Agreement; Amendments.** This Agreement constitutes the entire agreement between the parties hereto; it supersedes all previous understandings and agreements between the parties, if any, and no oral or implied representation or understanding shall vary its terms, and it may not be amended except by written instrument executed by both parties hereto.

(e) **Remedies Cumulative.** All rights, powers, and privileges conferred hereunder upon the parties hereto shall be cumulative, but not restrictive to those given by law.

(f) **Time is of the Essence.** Time is of the essence of this Agreement in each and all of its provisions.

(g) **Attorney Fees.** In the event the CITY must enforce the terms of this Agreement by filing a civil action against CONTRACTOR, then CONTRACTOR shall pay an amount equal to fifteen percent (15%) of the contract sum as attorney fees.

(h) Confidentiality. All information and documentation regarding the project and the CONSULTANT's services shall be maintained in confidence and shall not be disclosed to any third party by CONSULTANT, without CITY's written authorization, except as may be required by the Georgia Open Records Act. CONSULTANT shall promptly notify CITY of any third-party request for said information or documentation prior to any disclosure. CITY agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by CONSULTANT pertaining to this Agreement shall be considered confidential and proprietary, and shall not be disclosed to any third party, except as may be required by the Georgia Open Records Act.

Signatures Next Page

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CONTRACTOR:

CONTRACTOR:

By: _____

Title: _____

Date: _____

CITY:

CITY OF DALTON, GEORGIA

By: _____

MAYOR

Date: _____

Attest: _____
CITY CLERK