AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective the _____ day of May, 2017, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and OPTIV SECURITY INC., a Delaware corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional technology services for comprehensive perimeter and internal penetration test, hereinafter referred to as the "Project"; and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a technology security company and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its Chief Information Officer (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1.   Scope of Services. CONSULTANT shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2.   Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through December 31, 2017, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3.   Compensation.

(a)   CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed Sixty Thousand Dollars ($60,000.00), paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b)   Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not

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be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c)   The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4.   Termination, Remedies and Force Majeure.

(a)   This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b)   Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination as well as pre-approved nonrefundable and/or nontransferable expenses, which CONSULTANT incurred. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(1)   For the purposes of Subsection (b) of Section 4, "pre-approved nonrefundable and/or nontransferable expenses" shall be limited to those expenses which CITY might approve pursuant to Subsection (b)(2) of Section 4. CITY shall not be liable for any nonrefundable and/or nontransferable expenses incurred by CONSULTANT, which CITY has not approved.

(2)   Process for Incurring Nonrefundable/Nontransferable Expenses. Prior to CONSULTANT incurring any nonrefundable and/or nontransferable expenses, CONSULTANT shall request from CITY, written approval to incur such expenses. CONSULTANT shall clearly identify such a request in a writing addressed to the Administrator, bearing the subject line "Request to Incur Nonrefundable/Nontransferable Expenses." The Administrator shall respond in writing within fifteen CITY business days of the request. The Administrator's failure to respond to such a request within fifteen CITY business days shall constitute denial of the request, unless the Administrator provides otherwise in writing.

(c)   In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a

waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d)   Upon any breach of this Agreement by CONSULTANT, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) subject to subsection (g), below, recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e)   CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f)   CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

(g)   In no event shall either party's aggregate liability for all claims exceed three million dollars ($3,000,000).

5.   Confidential Information and Ownership of Documents.

(a)   Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b)   Any and all writings and documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c)   If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 5.

(d)   This Section 5 shall survive expiration or termination of this Agreement.

6.   Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

7.   Indemnification.   To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8.   Insurance.

(a)   Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b)   If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors\sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an

insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c)   The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d)   If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor. CONSULTANT and any subcontractor/sub-consultant shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9.   Conflict of Interest and Non-Solicitation.

(a)   Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b)   CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c)   In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or

similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d)   CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e)   Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(f)   If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g)   This Section 9 shall survive expiration or termination of this Agreement.

10.   Recycling Program. In the event CONSULTANT maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONSULTANT at its sole cost and expense shall:

(i)   Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(ii)   Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(iii)   Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11.   General Terms.

(a)   Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.

(b)   Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this

Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c)   Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12.   Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a)   CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b)   CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c)   CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national

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origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time

designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

17. Compliance With Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. <u>Attorney's Fees</u>. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. <u>Exhibits</u>. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. <u>Precedence of Documents</u>. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. <u>Cumulative Remedies</u>. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. <u>No Third Party Beneficiaries</u>. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. <u>Extent of Agreement</u>. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.

<div align="center">[SIGNATURE PAGE FOLLOWS]</div>

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By:_____
     BRYON HORN
     Chief Information Officer
     Department of Information Services

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By:_____
     Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:_____
     Seth Mehrten
     Deputy City Attorney

OPTIV SECURITY INC.,
a Delaware corporation

By: _____
    B8B3DA8400F7448...

Name: _David Roshak_____

Title: _CFO and SVP, Operations_____
    (if corporation or LLC, Board
    Chair, Pres. or Vice Pres.)

By: _Bill Croutch_____
    D7063D5735014FB...

Name: _Bill Croutch_____

Title: _SVP & General Counsel Secretary_
    (if corporation or LLC, CFO,
    Treasurer, Secretary or Assistant
    Secretary)   whc

Any Applicable Professional License:
Number: _____
Name: _____
Date of Issuance: _____

Addresses:

CITY:
City of Fresno
Attention: BRYON HORN,
Chief Information Officer
2600 Fresno Street, Room 1059
Fresno, CA 93721
Phone: (559) 621-7101
FAX: (559) 457-1002

CONSULTANT:
OPTIV SECURITY INC.
Attention: _____'
Law Department
1125 "17th" Street, Suite 1700
Denver, CO 80202
Phone: (303) 298-0600
FAX: (303) 298-0868

Attachments:
    1.   Exhibit A - Scope of Services
    2.   Exhibit B - Insurance Requirements
    3.   Exhibit C - Conflict of Interest Disclosure Form

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City of Fresno

Security Assessment

Opportunity Number: 761413

Version Number: 3

SOW Issue Date: May 10, 2017

OPTIV

OPTIV

This Statement of Work (SOW) is governed by the Master Agreement ("Agreement") dated October 24, 2014 between Optiv Security Inc. ("Optiv") (as successor in interest to Accuvant, Inc.), and City of Fresno ("Fresno") and by any additional terms herein. In the event of any conflict in the terms contained within this SOW and the Agreement, the SOW shall control but such control is limited to the scope contemplated herein.

Service Overview

Security Assessment

Fresno has requested an information security assessment focused on identifying information security threats and vulnerabilities and applicable mitigation strategies. The Security Assessment will meet these requirements and help Fresno identify security deficiencies that may exist within its enterprise network.

Service Activities and Approach

Security Assessment

Comprehensive Perimeter and Internal Penetration Test

Optiv's Comprehensive Penetration Test leverages an in-depth methodology that uses commercial and customized tools designed to ensure thorough analysis of the targets and attack surface. Optiv begins with a discovery phase, using proprietary methods and open source tools to establish a comprehensive view of Fresno's network, systems, and applications. Multiple automated scans, paralleled with manual examination, are used to expose potential weaknesses that may exist within the network. Optiv will perform penetration testing on unauthenticated web applications (and using authenticated application roles if defined in the scoping assumptions), looking for weaknesses such as those defined in the OWASP Top 10 Application vulnerability categories that could lead to system compromise or sensitive information disclosure.

If Optiv can obtain a foothold into the network, the knowledge that foothold provides will be used to escalate privileges and compromise additional systems. Using this expanded access, Optiv will seek to locate and exfiltrate sensitive data.

This information is incorporated into Optiv's proprietary and open source correlation and data normalization tools, which are used to ensure all potential areas for access or exploitation are evaluated. This allows Optiv to thoroughly analyze complex attack vectors or multi-faceted weaknesses while ensuring all systems are evaluated. Optiv will then perform validation through a targeted penetration test that focuses on high-risk findings. Exploitation of these findings often yields access to critical systems and sensitive information vital to Fresno operations. Upon completion of testing, the consultants collect assessment findings in a customized report designed to provide detailed, actionable information while eliminating false positives. This information is presented to Fresno in both technical and non-technical formats.

Target Identification Phase

Discovery

Optiv will gather information from a variety of sources to gain knowledge about Fresno's network and other Internet locations where pertinent devices and hosts may reside. This phase focuses on identifying a comprehensive list of live hosts. Optiv uses a variety of tests and data sources to identify live systems that

OPTIV

may otherwise be missed through more basic host identification tests (such as a ping sweep). Identifying more obscure hosts can provide additional areas of concern. These hosts may not be known to Fresno, and may not be tested during routine tests, and may contain additional vulnerabilities due to their inadvertent exclusion from organization policies such as patch management and system hardening. Optiv will:

- Perform general foot printing to determine scope of the environment
- Interrogate DNS servers, public search engines, and other public sources for exposed hosts and IP addresses (Perimeter Only)
- Examine trace route output for in-scope intermediary hosts
- Perform host identification scans, leveraging TCP, UDP, and ICMP protocols to locate live hosts

The live hosts identified during the discovery phase will be used to establish the list of in-scope hosts for all additional phases of the engagement.

Profiling

During the Profiling Phase, Optiv will perform a comprehensive analysis of the exposed attack surface of all in-scope hosts identified in the discovery phase and will establish detailed profiles, identifying software and configuration information that could be leveraged in an attack. This includes identifying:

- Device operating systems
- Exposed ports, running services, and specific software versions installed using comprehensive port and service scans
- Accessible files or configuration information
- Unencrypted network management protocols
- Supported encryption algorithms and authentication mechanisms for SSL and IPSec enabled protocols
- Locally exposed broadcast and multicast traffic, their underlying protocols, and notable configuration settings (Internal Network Only)
- Virtual host URLs that could expose additional content
- Exposed web applications and their underlying programming languages that may have known systemic weaknesses
- Accessible web management consoles (Tomcat, JBoss, GlassFish, WebLogic, etc.)
- Backend or directly exposed database software and versions
- Limited publicly exposed information that could be used for manual risk validation
- Configuration issues that may not directly expose a vulnerability within the context of the environment, but could be leveraged in multi-faceted attacks

These system profiles are then normalized and placed into a centralized database and workflow tool. This allows for a more efficient examination of all identified hosts and services, while enabling the tester to thoroughly examine Fresno's exposed attack surface, identifying blended, multi-faceted vulnerabilities.

Vulnerability Identification Phase

During this phase, Optiv will perform manual and automated testing to identify potential vulnerabilities within Fresno's network. Manual examination is performed using the host profiles that were developed during the profiling phase. This manual testing evaluates the exposed attack surface, identifying findings that cannot be discovered using automated tools.

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Detailed vulnerability scans are also performed against prioritized target groups using a unique combination of commercial, open-source, and proprietary tools. The automated and manual testing data is correlated to reduce false positives. The objective of this phase is to identify potential security findings that affect Fresno's overall security posture. This includes the following activities:

- Testing the local network for weak client configuration or sensitive information being transmitted insecurely (Internal Network Only)

- Scanning hosts for known network vulnerabilities

- Using automated and manual penetration testing techniques designed to test for exploitable unauthenticated and authenticated application security issues, such as the published OWASP Top 10 application vulnerability categories

- Manually reviewing hosts, services, and applications for vulnerabilities not revealed by automated tools

- Evaluating profiling and identified vulnerabilities to identify potential attack vectors by combining issues and performing blended attacks

- Analyzing publicly exposed data or data obtained due to identified vulnerabilities for sensitive information

- Correlating results and reduce false-positive findings

- Classifying targets based on vulnerability type and underlying root cause

Optiv uses the information gathered during this phase to update the previously established system profiles with any identified vulnerabilities. Leveraging this additional data in the centralized host profile ensures that systems are thoroughly tested using the information collected from all available sources.

Attack Scenario Phase

Optiv will review the identified vulnerabilities and misconfigurations to determine their impact on Fresno's overall security posture. This validation is performed through targeted penetration testing that focuses on high-risk findings. Exploitation of these findings often yields access to critical systems and sensitive information vital to Fresno operations. The objective of this phase is to provide the organization with a clear understanding of the risks associated with the identified findings via the following methods:

- Using automated and manual tools to exploit vulnerabilities

- Using exploited hosts to gain additional knowledge of the target network

- Identifying sensitive information or additional post-exploitation weaknesses that are exposed as a result of a risk validation scenario

- Analyzing the compromised systems, looking for exposed credentials or sensitive information that can be used in the next phase to increase access throughout the environment

- Using any new information and access, return to the Discovery Phase and re-evaluate in-scope systems that were not previously available from the original network vantage point

Optiv will review the obtained access and credentials and will look for paths where using that information can lead to achieving the test goals and access to the specified sensitive information and resources. Pivoting techniques can include:

- Targeting privileged users on the network in an attempt to hijack their escalated access

- Targeting authorized access channels with rights into the sensitive hosts and information (such as backup access, system and network management systems, etc.)

- Searching exposed network shares using the compromised host access for additional information

- Exploiting overly permissive access rights, password reuse, and domain trusts

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- Using any new information and access, return to the target identification access as necessary to find additional ways to get closer to the goal
- Accessing and exfiltrating the sensitive information (goal)

The Attack Scenario phase will validate the risk exposure of identified attack vectors. Optiv will perform normal penetration testing activities during unrestricted testing windows, unless otherwise specified in the scoping considerations. High-risk attack scenarios always will be scheduled with Fresno, even when limited testing windows are not otherwise specified.

> Optiv's technical process uses non-destructive testing techniques (i.e., no files or data are intended to be modified or changed). Under no circumstances are Denial-of-Service (DoS) attacks used; but if DoS vulnerabilities are identified, they will be documented and recommendations will be made to correct them.
>
> Prior to beginning the Risk Validation phase, Optiv will notify Fresno of any tests that are recommended that may present an increased risk of service impact. This notification will present the outage risk as well as an explanation of what the test could accomplish if successful.
>
> However, penetration testing always poses an inherent risk where the targeted vulnerable service may become unavailable. Optiv takes every precaution to limit these risks. All automated tools are run in "safe mode" and through Optiv's extensive experience running these assessments; Optiv has developed testing methodology around the primary goal of maintaining network availability. Throughout testing, Optiv actively monitors all systems and applications.

Post-Assessment Retest

Optiv will provide a retest of the in-scope network(s). The post-assessment retesting scope will include the specific high-risk findings identified in the attack scenario phase that led to initial unauthorized access.

Any changes in the IP addresses tested, or the retesting of lower-severity findings, will require a Change Order and will incur additional labor or license fees.

- Provide remediation follow-up on High vulnerabilities identified
- Update existing findings matrix with retest results

Wireless Network Security Assessment

Passive Discovery Phase

Optiv will gather information to determine the presence and makeup of the existing, approved wireless local area networks. Consultants will identify wireless networks and clients, and will perform the following:

- Discovery of SSIDs in use within the network
- Identify Fresno's access points in use for wireless network access

Rogue Wireless Detection Phase

Optiv will review all other wireless network traffic visible within Fresno's facility to identify potentially unauthorized wireless usage.

- Identify SSID probes coming from wireless clients
- Identify ADHOC networks within the client's facility
- Identify unknown or undocumented SSID's
- Analyze other broadcast traffic from wireless clients

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Traffic Analysis and Wireless Profiling Phase

Optiv will analyze the encryption, authentication, and other security controls of the in-scope, authorized wireless security networks and identify any potential deficiencies.

- Evaluate the cryptographic strength of the encryption algorithms in use
- Review the authentication mechanisms in use
- Identify any additional security controls in place

Attack Scenario Phase

Optiv will perform automated and manual vulnerability testing to identify weaknesses in the wireless network infrastructure. This includes all radios in use for the wireless network, including client devices and access points, and will include the following:

- Establish custom tests to evaluate the strengths of specific encryption and authentication settings in place
- Test the strength of filters in use to restrict access from the wireless network
- Analyze the traffic of wireless clients and test the strength of client wireless security controls
- Perform penetration testing, developing attack vectors based on identified wireless network security safeguards. Sample attack vectors include:
  - Weak encryption (WEP/WPA)
  - Weak authentication (Microsoft Active Directory/LEAP/PEAP)
  - Man-in-the-Middle attacks
  - Client configuration attacks (probing clients, authentication challenge, excessive broadcast information)
  - Guest network weaknesses (captive portal bypass, improper segmentation, etc.)

War Driving Phase

Optiv will analyze client name short's wireless signal strength to measure wireless signal propagation in order to identify how far beyond a facility an attack scenario can be performed. Physically map locations using GPS by driving around the facility

- Physically map locations using GPS by driving around the facility
- Evaluate signal dispersion beyond the facility

OPTIV

Documentation Deliverables

Optiv will provide Fresno with the following deliverable documents ("Deliverables") in electronic format.

Security Assessment

Security Assessment Report

The report will describe the work performed; show the criticality rating of the discovered vulnerabilities; and will provide remediation steps and additional recommendations to improve security. Included in this report are the following sections:

Executive Summary

This section of the report will provide **Fresno** with a summarization of the engagement findings and recommendations in a non-technical format. This will also discuss Fresno's strengths, and any mitigating factors with regards to the identified risks based on the information available.

Findings and Recommendations

This section of the report will provide Fresno with a consolidated list of findings, root cause analysis, and clear action steps to mature the current security posture.

Vulnerability Matrix

This will provide Fresno with a matrix containing vulnerabilities found, implications, severity or risk level, and specific recommendations for remediation.

Attack Scenarios

The attack scenarios section of the report will be used to demonstrate the steps taken to perform both exploitation and post-exploitation, including lateral and vertical movement throughout the network and sensitive information compromise. This narrative will detail the impact from point of entry to overall compromise relative to all executed attacks. As new vulnerabilities are identified during post-exploitation, "inline callouts" will be provided to highlight these additional areas of concern.

Deliverable Acceptance

Deliverables defined in this SOW are subject to inspection and acceptance by the designated Fresno Point of Contact (POC). There will be one (1) round of Deliverable review. Fresno is responsible for providing the draft Deliverable(s) to the appropriate stakeholders, obtaining feedback, and consolidating that feedback into a single view for Optiv within five (5) business days of receiving the draft. If Fresno does not accept or reject the draft within this period, the Deliverable(s) shall be considered acceptable by Fresno and a final version will be provided. If the draft is rejected, Optiv will update the draft (based on Fresno's feedback, as appropriate) within a mutually agreeable timeframe. Optiv will then provide the updated, finalized Deliverable to Fresno.

OPTIV

Service Scope

Scoping Considerations

Specific details relating to the scope are listed below. Scoping details were provided by Fresno through documents and/or interviews; and some assumptions may have been made based upon industry best practices. Significant variance from this information may result in a Change Order.

Security Assessment Scope

Activity	Details

Perimeter Comprehensive Penetration Test	• Comprehensive testing of the defined attack surface with the goal of penetrating the perimeter network
	• In-scope attack surface
	    o Up to 256 IP addresses (Class C) for live host discovery
	    o Up to 256 hosts for penetration testing
	• Testing windows: 24x7
	• Post-assessment retest of high vulnerabilities up to 30 days following original test initial report delivery. The original report will be updated to include retest results

Internal Comprehensive Penetration Test	• Comprehensive testing of the defined attack surface with the goal of accessing sensitive and critical data
	• In-scope attack surface:
	    o Up to 65,536 IP addresses (Class B) for live host discovery
	    o Up to 256 hosts for penetration testing
	• Remote, internal testing
	• Testing windows: 24x7
	• Post-assessment retest of high vulnerabilities up to 60 days following original test initial report delivery. The original report will be updated to include retest results

Wireless Security Assessment	• Up to five (5) unique SSIDs for testing • Up to four (4) physical buildings for review • Up to five (5) total floors to be walked during the assessment • Assumes testing to be completed on consecutive days • Assumes all physical buildings to be tested within one (1) hour driving distance of each other

OPTIV

Project Scoping Assumptions

- Optiv assumes that all project phases will be conducted from the geographical location(s) or number of location(s) specified herein.

- Any special conditions not stipulated within this SOW, such as late evening/early morning hour (Monday through Friday 5:00 PM to 8:00 AM and weekends) or holiday hour requirements, or any other special testing windows not stated during the initial scoping, may result in additional fees and may require a Change Order. Limited penetration testing windows of less than 8 hours in length are not recommended, as they can limit the testing techniques and tools that can be run.

- Optiv assumes that the final deliverable report will be consistent with the items identified in the Deliverables section and/or the scope table within this SOW, and will be created on Optiv's standard report template.

Security Assessment Scoping Assumptions

- Manual validation of identified vulnerabilities is a commercially reasonable-effort activity and is intended to reduce, not completely eliminate, false-positive findings. Such validation will be limited to correlation of data; additional risk validation efforts will require additional effort and cost and can be performed upon mutual execution of a Change Order. Manual validation activities typically include software version checks and review of installed patches and service packs.

- Because the intent of a comprehensive penetration test is to evaluate the services' susceptibility to exploitation (vs. the active protection systems' ability to prevent attacks), interference with the penetration test should be avoided. This penetration testing style is non-evasive. Fresno will add Optiv IP addresses to any IPS or WAF that are actively blocking attacks prior to the start of the test.

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Professional Considerations

Scheduling

Following SOW signature, Optiv's POC will contact Fresno to set project start dates based on then-current scheduling factors for both parties.

Rescheduling or Cancellation

Two (2) weeks' written notice in advance of the project start date is required for cancelling or rescheduling any services. If cancellation or rescheduling occurs with less than two (2) weeks advance notice of the scheduled start date, nonrefundable and/or nontransferable travel and expenses will be paid by Fresno at actual cost, as well as any frictional costs incurred with rescheduling consultants.

Project Change Control

In the event that either party requires changes to the scope originally identified herein, a mutually agreed-upon Change Order will be created. Optiv will provide a Change Order for Fresno to review and sign before additional work is performed or additional fees are invoiced to Fresno.

The Change Order will specifically address any variance from the original SOW and the associated costs. A brief explanation of the requirements for the changes will also be included.

Project Management

Project Management Overview

Optiv will conduct status meetings, which may include updates on project status and issues identified and addressed (such as schedule, deliverables, project quality, and team interaction). In addition, Optiv will provide immediate notification of any issues requiring Fresno's attention. Optiv expects that any issues identified will be resolved promptly to avoid impact to the project timelines.

Optiv Project Management Activities

- Optiv's Project Management Activities include:
  - Single POC throughout service(s) engagement
  - Project initiation and kickoff meeting (on-site or remote)
  - Project plan and Work Breakdown Structure development and dissemination
  - Issue and risk identification, quantification, and mitigation
  - Full ownership of project budget, schedule, Deliverables, and change management
  - Detailed project reporting with full visibility into scope, budget, and schedule adherence, including weekly status reports outlining project status, issues noted, and issues addressed as they relate to schedule, Deliverables, project quality, and team interaction (as applicable)
  - Timely and regular project audits and milestone management
  - Project meetings and key stakeholder communication (on-site or remote)
  - Project close-out and final Deliverable Acceptance

OPTIV

Optiv Responsibilities

The following list details Optiv's responsibilities for this project:

- Optiv consultants consider all Fresno information and documentation as sensitive and confidential and will handle appropriately.

- Optiv shall have responsibility only for consultants employed or subcontracted by Optiv for performance of these services.

Fresno Responsibilities

The following list details Fresno's responsibilities for this project:

- Fresno will designate one (1) employee to serve as a primary POC for the project. The POC will be responsible for scheduling Fresno resources for required meetings, interviews, and other needs deemed necessary to complete the project work as scoped. The POC will participate in weekly status meetings and will serve as the first point of escalation for any project-related requests or issues.

- Fresno is responsible for notifying impacted personnel of the testing as needed, and said testing will be conducted with the expressed authority of management (with full right, power, and authority to consent to services described within this SOW).

- It is Fresno's responsibility to perform backups of data on all devices connected to Fresno's IP addresses and/or domain names prior to invoking the use of the services described within this SOW. Fresno further assumes the risk for all damages, losses, and expenses resulting from its failure to perform such backups.

- Fresno will provide access to applicable proprietary information, applications, and systems necessary to the success of this project.

- Fresno will execute all client data gathering activities in an efficient manner, and data will be promptly submitted to Optiv consultants within a commercially reasonable response time. Any delays incurred in acquiring this information may result in the need for a Change Order and rescheduling of the project, at the discretion of Optiv.

- Fresno will provide the necessary staff availability to complete identified tasks and/or to participate in interviews. Fresno's inability to provide this staff may affect the completion of tasks and/or Deliverables.

- Fresno will provide access to any necessary facility and/or remote access to complete the project.

Penetration Study, Assessment, and Similar Services

Fresno authorizes Optiv to perform a penetration study, network vulnerability assessment, and other similar testing and/or services ("Tests" or "Testing") on the systems identified by Fresno (collectively, "Systems"). Optiv is not responsible for adverse consequences resulting from inaccurate information regarding the Systems furnished by Fresno. Fresno will provide any required security access permissions and will notify impacted Fresno personnel of the Testing. Testing poses an inherent risk, and the Systems may become unavailable or otherwise affected. It is Fresno's responsibility to perform backups of all data and Systems. Fresno assumes all risk for, and releases and holds Optiv harmless from, any damages or losses relating to the Testing authorized by Fresno ("Adverse Consequences"). Adverse Consequences could include, among others, data and Systems downtime, degradation, or loss. Fresno does not release Optiv from Adverse Consequences arising from Optiv's actions or omissions that are found to be (i) knowingly outside the scope of the SOW, or (ii) malicious, illegal, or otherwise involving gross negligence.

OPTIV

Pricing, Payment, and Expenses

Fixed-Price Services

The service(s) detailed in the table below shall be performed on a fixed-price basis using CMAS contract Optiv IT Consulting 3-16-70-2428AJ for price basis.

Description of Service	Price
IT Security Consultant 236 hrs. at $170.85/hr	$40,320.60
Project Management 35 hrs. at $186.37/hr	$6,522.95
Tools	$2,450
Security Assessment	$49,293.55

Invoicing Terms

* Invoice 50% with signature of SOW, and remaining 50% upon project completion.

Optiv reserves the right to invalidate and/or revisit the pricing quoted in this SOW if the SOW is not signed and returned in its entirety within 30 days of SOW Issue Date. If SOW signature occurs between 31 and 90 days of SOW Issue Date, Optiv reserves the right to issue a Change Order for mutual execution to address any differences in environment/scoping. Any SOW not signed and returned in its entirety within 90 days of SOW Issue Date are automatically invalid and will require a re-issue of the proposed contract.

Additional Payment Terms

* All pricing is in U.S. Dollars (USD).
* Payment of undisputed amounts shall be made by Fresno within thirty (30) days after Fresno's receipt of Optiv's invoice. Fresno will provide written notification of any disputed invoice within five (5) days of receipt. Disputed amounts shall be paid within ten (10) days of resolution.
* Termination of this SOW for any reason does not release either party from any liability, which, at the time of termination, has already accrued to the other party.

Expenses

* Travel and expenses are not included in the price and will be invoiced monthly as incurred.
* Travel expenses will not exceed $3,700 without prior written approval:
  o Price assumes minimum seven (7) day advance purchase.
  o Assumes one (1) consultant for one (1) week on-site.
* Meals and Incidentals (M&I) are calculated as a daily rate and adhere the GSA website: www.gsa.gov/perdiem
* Travel: Any flight segment exceeding eight (8) hours will be booked at Business Class.

OPTIV

Authorization/Signatures

IN WITNESS WHEREOF, this SOW is agreed to and executed by duly authorized representatives of each party, and shall be binding as of the date of last signature below ("SOW Effective Date").

Authorized Signature – City of Fresno	Authorized Signature – Optiv Security Inc.
	Amanda Cooper
Name Printed	Name Printed
	Senior Director, SOW Development
Title	Title
Date	Date

Opportunity #: 761413-3

OPTIV

Appendix: Key Points of Contact

Optiv Sales Contacts

Kristi Fields
Client Manager
916.847.5554
kristi.fields@optiv.com

Damon Le Roy
Solutions Architect
408.806.3434
damon.leroy@optiv.com

Brett Harrington
Client Solutions Architect

Sandi Parker
SOW Development Manager
sandi.parker@optiv.com

Fresno Contacts

Project Lead – Lead resource that the Optiv PMO will make initial contact with to discuss project details and scheduling.

Technical Lead – Lead resource that the Optiv consultant(s) will be interacting with through the course of the project for technical information.

Billing Contact – Lead resource that will receive all project-related Optiv invoices.

Project Lead
Byron Horn
Chief Information Officer
559.621.7119
byron.horn@fresno.gov

Technical Lead
Frank Vawter
Computer Services Division Manager

frankd.vawter@fresno.gov

Billing Contact
Accounts Payable
2600 Fresno Street
Fresno, CA 93721
john.souza@fresno.gov

SCHEDULE OF FEES AND EXPENSES

[See attached SCOPE OF SERVICES (Exhibit A), Pricing, Payment and Expenses]

Exhibit B

INSURANCE REQUIREMENTS

Consultant Service Agreement between City of Fresno ("CITY")

and Optiv Security Inc. ("CONSULTANT")

<u>Security Penetration Test</u>
PROJECT TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

MINIMUM LIMITS OF INSURANCE

CONSULTANT, or any party the CONSULTANT subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**

   (i) $1,000,000 per occurrence for bodily injury and property damage;
   (ii) $1,000,000 per occurrence for personal and advertising injury;
   (iii) $2,000,000 aggregate for products and completed operations; and,

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(iv) $2,000,000 general aggregate applying separately to the work performed under the Agreement.

2.   **COMMERCIAL AUTOMOBILE LIABILITY**:

$1,000,000 per accident for bodily injury and property damage.

3.   **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4.   **EMPLOYER'S LIABILITY**:

(i) $1,000,000 each accident for bodily injury;
(ii) $1,000,000 disease each employee; and,
(iii) $1,000,000 disease policy limit.

5.   **TECHNOLOGY PROFESSIONAL LIABILITY** insurance with limits of not less than:

(i) $5,000,000 per claim/occurrence; and,
(ii) $10,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event CONSULTANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

(i)   The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or

(ii)   CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

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OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The _General Liability and Automobile Liability insurance policies_ are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.

3. For any claims relating to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The _Workers' Compensation insurance policy_ is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the _Technology Liability insurance policy_ is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.

4. A copy of the claims reporting requirements must be submitted to CITY for review.

5.   These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONSULTANT is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these polices will be twice the above stated limits.

The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If CONSULTANT subcontracts any or all of the services to be performed under this Agreement, CONSULTANT shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no side agreement is required, CONSULTANT shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and CONSULTANT shall ensure that CITY, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with CONSULTANT, and CITY, prior to commencement of any work by the subcontractor.

VERIFICATION OF COVERAGE

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONSULTANT shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

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Exhibit C

DISCLOSURE OF CONFLICT OF INTEREST

<u>Security Penetration Test</u>
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	☐	☒
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	☐	☒
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	☒	☐
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	☐	☒
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	☐	☒
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	☐	☒
* If the answer to any question is yes, please explain in full below.			

<u>Explanation</u>: Optiv has hundreds of clients. There is every reason to believe one or more of our clients are engaged in business activities with the City.

DocuSigned by:

Bill Croutch

Signature

5/10/2017 | 3:00:42 PM MDT

Date

Bill Croutch

(name)

Optiv Security Inc.

(company)

(address)

(city state zip)