

CLEVELAND PUBLIC LIBRARY

Board Meeting

February 17, 2011

RESOLUTION TO AMEND CONTRACT FOR TENABLE PROTECTIVE SERVICES

- WHEREAS, The Library contracted with Tenable Protective Services on May 9, 2005 to supply security services for a one-year period with the possibility for two one-year renewals, and
- WHEREAS, This Contract expired on May 8, 2008, and
- WHEREAS, Since the expiration of the Contract Tenable Protective Services has continued to provide the Library with security services and the Library has continued to compensate Tenable Protective Services for said services, and
- WHEREAS, The parties' continued course of dealing is evidence of the parties' intention to extend the term of the Contract, and
- WHEREAS, This intention was never reflected in a formal writing and the parties now desire to memorialize the terms and conditions of the continued contractual relationship between the parties, therefore now be it
- RESOLVED, The Cleveland Public Library Board of Trustees authorizes the Library Director to approve an addendum to the Tenable Protective Services contract that extends coverage from May 9, 2008 through the present and that shall continue until cancelled by either party.

ADDENDUM TO CONTRACT FOR SECURITY SERVICES

This Addendum to Contract for Security Services ("Addendum") is made and entered into this _____ day of _____ 2011 ("Addendum Date") between TENABLE PROTECTIVE SERVICES, INC., an Ohio Corporation (hereinafter "Tenable") and the BOARD OF TRUSTEES OF THE CLEVELAND PUBLIC LIBRARY (hereinafter "Client").

WHEREAS, the parties entered into a Contract for Security Services ("Contract") on May 9, 2005 which expired on May 8, 2008.

WHEREAS, since the expiration of the Contract, Tenable has continued to provide the Client security services and the Client has continued to compensate Tenable for said services through the present date;

WHEREAS, the parties' continued course of dealing is evidence of the parties' intention to extend the term of the Contract.

WHEREAS, this intention was never reflected in a formal writing and the parties now desire to memorialize the terms and conditions of the continued contractual relationship between the parties;

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained, the Client and Tenable hereby agree as follows:

I. SERVICES:

(A) Tenable agrees to provide Client with law enforcement personnel, equipment and security services in accordance with the specifications, protocols, and requirements contained in the Client's Request for Proposal dated October 2004 ("RFP"), and generally consisting of the following:

- Unarmed Uniformed Security Officers (as needed)
- Law Enforcement Officers (as needed)
- T-Shirt / Peer Security
- Supervision
- Consulting Services
- Mobile Patrol Services

(B) Tenable agrees to employ competent and qualified personnel and further agrees to cause such personnel to conform to all rules and regulations established by the Client. Client hereby acknowledges that security acts as a deterrent and is not an

absolute in preventing loss and injury. Tenable is not responsible for any property damage, injury, loss, or like occurrence that is caused by a third-party, provided said third-party is not acting under Tenable's or Tenable's personnel's direction or control, and further provided said property damage, injury or loss is not caused by Tenable's negligence or the negligence of Tenable's personnel. Tenable offers no warranties regarding performance.

2. LOCATION:

Tenable agrees to provide the above-referenced services for those locations specified by the Client.

3. SCHEDULING:

Client shall determine the number of personnel and hours of duty required. Client shall advise Tenable of the required number of personnel and hours of duty no later than seventy-two (72) hours prior to the date of the requested service. It is contemplated that a regular schedule will be developed by the Client and for the locations selected by the Client. Tenable shall determine the specific personnel to service the Client's account. If Client deems an officer is unacceptably performing his/her duties, a written request of removal must be submitted to Tenable via facsimile, e-mail or standard mail, whereupon Tenable shall immediately remove the officer and assign a new officer acceptable to Client to service Client's account.

4. COMPENSATION:

- (A) Tenable shall be paid for unarmed security officer services provided after May 28, 2007 at \$13.33 per hour, and for dispatcher services provided after January 28, 2008 at \$14.48 per hour.
- (B) In the event that the Client requests additional security services with less than twenty-four (24) hours prior notice, then such additional services shall be deemed "emergency service" and shall be charged at one and one-half (1 ½) times the above listed rate.
- (C) The Client agrees to pay Tenable the rate of time and one half (1 ½) for man hours worked on the following legal holidays: Christmas Day, New Year's Day, Memorial

Day, Fourth of July, Labor Day, Easter Day and Thanksgiving Day, from 00:00 hours to 24:00 hours.

- (D) Other services will be provided upon request of the Client at the rates set forth on pages 14-15 and 19 of the Proposal.

5. PAYMENT:

Client agrees to pay Tenable within thirty (30) days upon receipt of all invoices. Invoices paid within 10 days of receipt shall be reduced by 2%. Accounts more than sixty (60) days past due may result in immediate cancellation of services, effective upon receipt of notice by Client.

6. TERM:

The term of this Addendum shall cover the period commencing on May 9, 2008 through the present, and shall continue until cancelled by either party. Either party may cancel this Addendum for any reason upon providing the other party thirty (30) days written notice delivered to the address in the manner specified in Section 20. The Client may cancel this Addendum immediately in the event Tenable breaches Sections I (B), 3, or Section 10 of this Addendum, effective upon receipt of written notice as specified in Section 20. In the event of cancellation by either party, Tenable shall be paid for services rendered in accordance with this Addendum up to the date of cancellation.

7. COMPLIANCE WITH STATE LAW:

Tenable represents and warrants that it is duly licensed by the Ohio Department of Homeland Security, Division of Licensing and that all security personnel provided hereunder shall be registered with, the Division of Licensing prior to placement with the Client. Non-registered security personnel and registered security personnel shall not carry weapons of any kind while performing duties hereunder.

8. INDEPENDENT CONTRACTOR:

Tenable is an independent contractor and assumes all the duties and responsibilities for pay and benefits of all the personnel placed with Client by Tenable in connection with this Addendum. This shall include, without limitation, maintaining Workers' Compensation coverage, and

providing benefits as described in the Proposal. At no time shall Tenable personnel be considered employees of the Client.

9. INSURANCE:

Tenable shall procure and maintain liability and property damage insurance coverage as specifically described on pages 3-4 of the Client's Request for Proposal (Exhibit "B") in connection with the services to be provided hereunder, in the minimum amount of \$1,000,000 per person, and will include Client as an additional insured on all policies. Tenable shall provide the Client with a certification of insurance verifying coverage at the time of execution of this Addendum and throughout the Term of this Addendum upon request of the Client.

10. INDEMNITY:

Tenable agrees that except for damage or injury directly caused by the negligence of the Client, Tenable shall indemnify and hold harmless the Client, its officers, employees, and agents from and against any and all liability, injuries, damages, claims, demands, costs, judgments, fees, reasonable attorneys' fees, or losses arising directly out of the performance or failure to perform hereunder by Tenable, its employees, and agents, or independent contractors and third parties under the direction or control of Tenable. Tenable further agrees to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action against the Client, its officers, employees, and agents, directly arising out of this Addendum and to bear all other costs and expenses related thereto. Without limiting the foregoing, Tenable agrees to indemnify, defend, and hold the Client, its officers, employees, and agents harmless from any and all liabilities, injuries, damages, claims, demands, costs, judgments, fees, reasonable attorneys' fees, or losses that arise from the actions of its employee : to the extent that its employee was not acting pursuant to the Client's policies or instructions, in connection with the incident which took place on January 22, 2011 at the Carnegie West Branch of the Library. This provision shall survive the termination of this Addendum.

11. NON-SOLICITATION OF TENABLE EMPLOYEES:

Tenable agrees that during the term of this Addendum, and for the period of one (1) year thereafter, Client shall not directly or indirectly employ or solicit for employment, any Tenable employees who provided services for the Client hereunder.

12. EQUAL OPPORTUNITY

Tenable agrees that in the hiring of employees for the performance of work under this Addendum, it shall not discriminate against any person by reason of race, creed, color, sex, age, physical disability, or national origin, and shall not, or shall any person on Tenable's behalf, in any manner discriminate against or intimidate any employee hired for the performance of work under this Addendum on account of race, creed, color, sex, age, physical disability, or national origin. This Addendum may be cancelled or terminated by the Client, and all moneys due or to become due hereunder shall be forfeited, for any violation by Tenable of this equal opportunity provision, so long as said violation is lawfully proved in either state or federal court. Tenable shall notify Client in the event a probable cause finding is issued by an appropriate government agency regarding employees' performance under this Addendum.

13. ADDITIONAL SERVICE:

In the event that a Tenable employee is called to testify in the prosecution of alleged criminal violations committed on Client's property, Client shall pay the regular hourly rate for those hours spent in court with a separate detailed invoice for such time, provided that the Tenable employee is not a subject of the criminal prosecution.

14. ENTIRETY:

This Addendum and the Exhibits incorporated herein, contain the entire Addendum and understanding between the parties hereto and supersedes any prior or contemporaneous written or oral agreements, representations and warranties between them representing the subject matter hereof. The following documents are hereby incorporated into the Addendum by reference as if fully rewritten herein:

- a) Client's Prequalification Questionnaire ("Exhibit A");
- b) Client's Request for Proposal dated October 2004 ("RFP" and "Exhibit B");
- c) Tenable's Proposal dated October 12, 2004 ("Proposal" and "Exhibit C").

Should a conflict arise amongst any provisions of this Addendum and the provisions of the Exhibits, the documents shall control in the following order:

- 1) This Addendum;

- 2) The RFP (except as specifically noted in this Addendum);
- 3) the Proposal;
- 4) the Prequalification Questionnaire.

This Addendum shall control in the event of a conflict between the Addendum and Contract.

15. MODIFICATION:

This Addendum may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Addendum shall be binding unless it is in writing and signed by all parties.

16. ASSIGNMENT:

Neither party shall voluntarily or by operation of law assign, hypothecate, give, transfer, Mortgage, sublet, license or otherwise transfer or encumber all or part of its rights, duties or other interests in this Addendum or the proceeds thereof (Collectively, "Assignment"), without the other party's prior written consent. Any attempt to make an Assignment in violation of this provision shall be a material default under this Addendum and any Assignment in violation of this provision shall be null and void. The assignment by either party shall not relieve the assigning party of its obligations under this Addendum.

17. SEVERABILITY:

If any term, provision, covenant or condition of this Addendum, or the application thereof shall be held to be invalid, unenforceable or void, the remainder of this Addendum and such term, provision, covenant or condition as applied shall remain in full force and effect.

18. WAIVER:

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Addendum shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waivers of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

19. AMBIGUITIES:

Each party and its counsel have participated fully in the review and revision of this Addendum. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Addendum. The language in this Addendum shall be interpreted as to its fair meaning and not strictly for or against any party.

20. NOTICE:

Any notice required or allowed by any party will be done so in writing. Notice may be delivered in person, by facsimile with written proof of transmission, or through certified mail. Notices shall be sent to the following addresses:

Client: Director
Cleveland Public Library
325 Superior Avenue
Cleveland, Ohio 44114
Facsimile No. 216-623-7015

Tenable: Tenable Protective Services, Inc.
2423 Payne Avenue
Cleveland, Ohio 44114
Facsimile No. 216-361-8690

21. JURISDICTION:

All parties agree that any legal actions arising out of this Addendum under color of state law will be conducted in Common Pleas Court of Cuyahoga County. Any actions arising out of federal law will be held in United States District Court, Northern District of Ohio.

22. FORCE MAJEURE:

No party shall be liable for any failure to perform its obligations in connection with any action described in this Addendum, if such failure results from any act of God, riot, war, civil unrest, flood earthquake, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

23. DISPUTES:

Parties agree to make good faith attempts to resolve disputes arising from this Addendum prior to filing any claim against the other party.

24. HEADINGS:

The headings in this Addendum are included for convenience only and shall neither affect the construction or interpretation of any provision in this Addendum nor affect any of the rights or obligations of the parties of this Addendum.

25. AUTHORITY:

Each person signing this Addendum represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Addendum. Each party represents and warrants to the other that the execution and delivery of the Addendum and the performance of such party's obligations hereunder have been duly authorized and that the Addendum is a valid and legal Addendum binding on such party and enforceable in accordance with its terms.

26. REPORTS:

Tenable shall provide monthly reports to the Client describing its performance of those Key Performance Indicators listed in the RFP page 9, in the Section entitled "Key Performance Indicators". Notwithstanding any language in the aforementioned provision of the RFP to the contrary, Tenable shall not be subject to penalties and shall not be entitled to financial rewards with regard to its performance of the Key Performance Indicators.

27. RECORDS:

Tenable shall make available to the Client upon request, all records, documents, and information in its possession or control relating to this Addendum.

IN WITNESS WHEREOF, the parties have duly executed this Addendum on the day and year first above written.

TENABLE PROTECTIVE SERVICES

By: _____
Name / Title

Date: _____

**BOARD OF TRUSTEES
OF THE CLEVELAND PUBLIC LIBRARY**

By: _____
Felton Thomas, Director

Date: _____