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City Of Memphis

DISASTER PREPAREDNESS AND RECOVERY PLAN (2014)

REQUEST FOR PROPOSAL #13005

Prepared By: City of Memphis Division of Fire Services
Closing Date for Proposals: [May 17, 2013](#)
Proposals Accepted at Attn: Purchasing Agent
RFP #13005 for Disaster Preparedness and Recovery Plan

**125 N. Main Street, Suite 354
Memphis, TN 38103**

SECTION 1: OVERVIEW

1.1 PURPOSE AND BACKGROUND

The City of Memphis, Division of Fire Services is seeking proposals from interested and qualified professional Contactors to prepare a Disaster Preparedness and Recovery Plan for the City of Memphis. The City will select the best Contactor based on the Selection Criteria described in this document. "Contractor" means Consultant who is capable of preparing a Plan requested in this Request for Proposals (RFP).

The Contactor will prepare a comprehensive Disaster Preparedness and Recovery Plan for the City of Memphis to handle catastrophic disasters of various types. The Plan must support the State of Tennessee and Shelby County emergency management and mutual aid plans while linking the City of Memphis/Office of Emergency Management Plan with plans from other agencies within the Memphis Metro Area. The purpose of the Plan is to facilitate the delivery of all types of local response and assistance to the citizens of Memphis to help them deal with the consequences of significant emergencies or disasters. The Plan shall be based on the fundamental assumption a significant emergency or disaster may overwhelm the capability of a local agency of government to carry out the extensive emergency operations and recovery efforts necessary to save lives and protect property. Recovery efforts are defined in Section 1.3, STRUCTURE OF THE PLAN, The Basic Plan. This Plan should address, to the maximum extent possible, all emergency response functions of local government, departments, agencies, and all other public and private organizations during emergencies/disasters.

The selected Contactor must be able to demonstrate experience in city emergency management plans and provide support for training of the plan. Support will be in the form of Train the Trainer classes for a minimum of 15 personnel.

1.2 OBJECTIVE

In preparing this Plan, the Contactor shall explain, defend and justify the various aspects and conclusions of the Plan for senior management, elected officials, regulatory agencies, technical experts, the public and media as directed by Fire Services. The Contactor shall effectively manage the work plan and weekly track progress and update the City of Memphis/Office of Emergency Management throughout the duration of the work. It is the City of Memphis' intent for the Plan to augment and comply with the State of Tennessee and Shelby County Emergency Management Plans.

1.3 STRUCTURE OF THE PLAN

The Plan shall have, but will not be limited to, four basic parts: The Introduction, The Basic Plan, The Attachments and Emergency Support Functions (ESF).

1. Introduction: The Introduction of the Plan will include letters from the Mayor, other City officials, Memphis EMA and a Signature Page recognizing other dignitaries, members of the Emergency Plan Development Team, a Mission Statement, Forward, Preface, Table of Content and Record of Changes.
2. The Basic Plan: Not only will The Basic Plan contain the concepts of operation, which will address emergency activities for Memphis, the Plan will seek to augment, support and comply with The Shelby County Emergency Management Agency's Hazard Mitigation Plan. Definitions, acronyms, authorities and references, which were used to prepare the Plan, shall be provided. Also, the Plan shall include:
 - a description of the emergency management organization and assigned responsibilities,
 - direction and control mechanism utilized in the emergency management process,
 - a description of the City of Memphis Government Principals; and
 - a section describing the Plan maintenance procedures.

The Plan shall consider all aspects of disaster mitigation, preparedness, response and recovery. The Plan will also follow NFPA 1600, Standard on Disaster/Emergency Management and Business Continuity Programs, latest adopted edition. The Recovery efforts portion of the Plan is defined by:

- A. The ways and means by which the City of Memphis effectively organizes and operates during the mitigation phase of a disaster.
 - B. The recording of data, the reporting, and general bookkeeping of financial aid or reimbursement by government or non-government agencies in the event a State of Emergency is declared.
 - C. Assessment of and recommendations regarding Memphis' Continuity of Government strategies.
3. Attachments shall include: Profile of Recognized Hazards, Organizational Chart, Functional Responsibility Matrix, Direction and Control, Maps and Historical Background of Jurisdictions in Memphis, Mutual Aid Agreements, Sample Emergency Ordinances, Emergency Evacuation Plan, and Guidelines for sending Donations to disaster Victims.
 4. Emergency Support Functions (ESF) shall include all categorizations of the responding agencies or organizations. All State agencies and volunteer organizations, that comprise the State Emergency Response Team grouped into 18 Emergency Support Functions to carry out coordination and completion of assigned missions. These functions represent specific response activities that are common to all disasters. Each Emergency Support Function is comprised of one or more primary agency's serving as lead and several other agencies and organizations providing support.

These categories include, but are not limited to these eighteen (18) ESF: ESF (1) Transportation, ESF (2) Communications, ESF (3) Infrastructure, ESF (4) Fire Fighting, ESF (5) Information and Planning, ESF (6) Human Services, ESF (7) Resource Support Logistics, ESF (8) Health and Medical, ESF (9) Urban Search and Rescue, ESF (10) Environmental Response, ESF (11) Food, ESF (12) Energy, ESF (13) Law Enforcement, ESF (14) Donations and Volunteers, ESF (15) Recovery, ESF (16) Animal Services, ESF (17) Business government Partnerships and ESF (18) Partnerships with local neighborhood organizations.

The plan must consider the local Continuity of Operations and Continuation of Government Plan, which includes: conducting a risk and impact analysis, determine essential funding, responsibilities and

procedures; testing, training and the scheduling exercises regarding Continuity of Operations and Continuation of Government Plans; and distribution. Updates and maintenance of the Plan will be considered in a separate proposal.

SECTION 2: SCOPE OF WORK

2.1 DEVELOP WORK PLAN

1. Develop a detailed work plan including tasks and schedule for the Basic Parts of the Plan:
 - a. Introduction
 - b. The Basic Plan
 - c. The Attachments
 - d. Emergency Support Functions

2.2 INVENTORY – REVIEW EXISTING CONDITIONS/PLANS/MAPS/DATA

1. Review the 2010 Emergency Management Plan of Shelby County, Debris Plans, Sheltering Plans, Continuity of Operations Plans, Continuity of Government Plans, maps of Memphis, etc.
2. Review, refine and coordinate the inventory data from all agencies and City departments.
3. Review the guidelines of the NFPA 1600, Standard on Disaster/Emergency Management and Business Continuity Programs, latest adopted edition.
4. Generate other data required to prepare and execute the Plan.
5. Interview Division Directors to obtain data regarding their Division’s responsibility for the Plan.

2.3 PLAN ANALYSIS

1. Identify problems and opportunities.
2. Describe the organizational requirements to execute the Plan.
3. Highlight the legal and regulatory aspects of the Plan.
4. Assess the existing Shelby County Hazard Mitigation Plan and existing plans, procedures and preparedness documents against federally mandated requirements and nationally accepted best practices.

2.4 RECOMMENDATIONS

1. Provide a summary of recommendations for consideration by the City Administration in general and specific recommendations for individual divisions of city government in line with the operational concepts envisioned. Review the components of the Plan with each Division Director and make recommendations for consideration for each division.
2. Specifically propose strategies and objectives that address both public and private sector recovery planning needs including, but not limited to, infrastructure rebuilding, transportation, communications, emergency housing and rebuilding needs, non-governmental and private stakeholder resources, industrial/commercial rebuilding, etc.
3. Hold a minimum of three (3) public meetings to get input from the community and use the feedback to refine the Plan. The City will work with the Contractor to identify local contacts and segments of the community pursuant to receiving adequate public input.

2.5 FINAL CITY OF MEMPHIS EMERGENCY MANAGEMENT PLAN 2014

1. Prepare the final Plan with one hard copy each for the Mayor, Chief Administrative Officer, Division Directors, Shelby County emergency Management Agency, All Mayors of each municipality, and fifteen additional sets to be distributed by The City of Memphis Division of Fire Services. Also provide **50** copies in a Microsoft Word format and **50** copies in Adobe PDF format. All copies shall be professionally labeled "City of Memphis Disaster Preparedness and Recovery Plan 2014.
2. Make three (3) Plan presentations to the City Council.

SECTION 3: RFP RESPONSE REQUIREMENTS

This section describes the contents of the Contactor's proposal and an outline of how the Contactor should organize the response and proposal. The Contactor's proposal will not be considered responsive unless it fully complies with the requirements in this section.

Specifically, the Contactor shall include each of the sections referenced in the table below. The requirements of each of these Proposal sections are described in more detail in this Section.

Sections and Topics

- Section 3.1 – Cover Letter
- Section 3.2 – Executive Summary
- Section 3.3 – Plan Scope
- Section 3.4 – Pricing Proposal
- Section 3.5 – Project Manager
- Section 3.6 – References
- Section 3.7 – Contactor's Insurance

3.1 COVER LETTER

The Contactor shall include a cover letter acknowledging the Contactor's understanding of the RFP and requirements described in the RFP. The cover letter must be signed and dated by a person authorized to legally bind the Contactor to a contractual relationship with the City of Memphis.

Along with introductory remarks, the letter shall be on company letterhead and shall include attachments of the following:

1. Name of Company, address and principal place of business, telephone number.
2. Name, address and telephone number(s) of the principal officer(s) of the company.
3. Legal status of the company, the year established, and year organized.
4. Federal Employer Tax Identification number.
5. Address of the Contractor's office.

6. Name, address and telephone of the principal in charge and the project manager, who will prepare the Plan. Also, provide their highest education achieved, and the school they attended.
7. Identification of any City employees or former City employees employed or on the firm's governing board as of the date of the proposal. Include their positions and responsibilities within the Contactor's organization. If it is determined by the City of Memphis a conflict of interest exists, the Contactor may be disqualified for further consideration for the award of a contract.

3.2 EXECUTIVE SUMMARY

The Contactor's proposal shall begin with an executive summary providing an overview of the Contactor's experience. The executive summary should include a description of the following:

1. The Contactor must demonstrate relative experience and capabilities in the following:
 - a. General city planning experience, disaster preparedness consulting, disaster recovery planning, mitigation planning and logistics. The Contractor shall list the last three commissioned projects, name of the company for which the work was performed. Provide a contact and the current telephone number of the responsible person in charge.
 - b. Experience in preparing Emergency Management Plans for other municipalities. List those municipalities, a contract person and the current telephone number.
2. Project Team – Provide a description of the proposed project team structure and internal controls to be used during the course of the project. Provide an organizational chart of the company and list the team members supporting the preparation of the Plan, including a list of any subcontractors.
3. Staff Qualifications – Identify staff members, including any subcontractors, who will be assigned to the preparation of the contracted work. Provide Resumes of each staff member assigned including subcontractors. The Contactor must commit a staff member assigned to prepare the Plan for the duration of the project. Any staff substitution will require prior approval by the City of Memphis.
4. Related Information – Please indicate if the Contactor has had a contract terminated for default in the last (5) five years, please describe the incident. Termination for default is defined as notice to stop work due to the Contactor's non-performance or poor performance. Submit the terms for the default including the other parties name, contact and telephone number. The City of Memphis will consider the information received and evaluate the facts. At the City of Memphis sole discretion, reject the proposal.

3.3 PROJECT SCOPE APPROACH

1. Project Approach – Include a 500 word or less, narrative description of the Contactor's proposed approach for preparing the Plan.
2. Proposed Plan – Include all requirements, tasks, services, activities, etc. necessary to accomplish the scope of prepared the Plan as defined in the RFP.
3. Project Schedule – include a proposed schedule indicating when components of the process will be completed and when the plan will be finalized. Include review time by the City for critical milestones.

3.4 COST PROPOSAL

The process for the evaluation of the proposals will include the review of all proposals for compliance with the RFP, Contractor qualifications and the selection of a proposal that best meets the requirements of the RFP. Although important, cost is not the most determinant criteria for selection.

1. The Contactor shall identify all fees and all other costs associated for preparing the Plan. This is to include a detail of staff costs, administrative costs, travel and other subsistence necessary to prepare the Plan. Costs for sub-contractors need to be broken out separately.
2. The Contactor shall include the hourly billing rates of each staff assigned to the project for additional work the City of Memphis may require the Contactor to perform.

3.5 REFERENCES

Provide a list of all projects completed in the last 24 months. Provide (3) three of the last projects you have completed, the date completed, the owner’s contact person and that person’s current telephone number. Failure to provide a current, working telephone of the contact person may result in rejection of the proposal.

SECTION 4: PROPOSAL FORMAT AND SUBMISSION PROCESS

4.1 USE OF INFORMATION

The Contactor may not make any public announcement relating to this RFP or publicize the existence or contents of this RFP without first obtaining written consent of Memphis Fire Services.

4.2 PRINCIPAL CONTACT AND INFORMATION REQUESTS

The principal point of contact (the “Principal Contact”) for all matters relating to this RFP is:

Mike Williams, AIA
Memphis Fire Services
4341 O.K. Robertson Road
Memphis, TN 38127
Mike.Williams@memphistn.gov

4.3 SCHEDULE FOR SELECTION

The City will proceed as quickly and efficiently as possible to determine the feasibility of the Contactor’s proposals. Therefore, the City requests that all Contactors make a dedicated team available to participate in the proposal preparation to meet the City selection process below.

The City is no way obligated to conduct interviews with finalists, but may require the short list of Contactors to provide an oral presentation. The City reserves the right to modify or update the schedule at any time, without affect to the Contactor’s Fee or expenses. No compensation will be given by the City for time or subsistence for these presentations.

<u>Milestone</u>	<u>Date</u>
Publish RFP	March 14, 2013
Contactors’ Questions Submission	March 28, 2013
City Response to Questions	April 18, 2013
Proposal Submission Date	May 17, 2013
Shortlist Finalists	June 14, 2013
Shortlist Presentations	July 05, 2013
Selection of Contractor	July 19, 2013
Final Negotiations	July 25, 2013

This timetable is for the information of submitting entities. Project restraints may cause these dates to change. **In no event shall the deadline for submission of the proposal be changed except by written modification by the City of Memphis Purchasing Department.**

4.4 SUBMISSION OR PROPOSALS

Proposals shall be submitted on hard copy. The Contactor shall submit eight (8) proposals. The proposals may be mailed or hand delivered, but must be received no later than 2:00 p.m. Central Time in Memphis, TN on Friday, May 17, 2013. The proposal is to be sent to:

**City of Memphis Purchasing Agent
City Hall
125 N. Main Street, Room 354
Memphis, TN 38103**

The envelope must be clearly marked “City of Memphis Disaster Preparedness and Recovery Plan”.

4.5 PROPOSAL GUARANTEE

Proposals must be guaranteed for one hundred twenty days (120) days from the date of submission.

4.6 REJECTION OF PROPOSALS

The City of Memphis reserves the right to reject any and all proposals received without penalty to the City. The City further reserves the right to waive minor administrative irregularities in the proposals received. The City reserves the right to award any proposal submitted without further discussion. The City further reserves the right to contact a Contactor for clarification of its proposal and to negotiate with the successful Contactor, including the terms of the proposal. Negotiations may include some or the Contactor’s entire proposal. The proposal and final negotiations will become part of the agreement.

4.7 MOST FAVORABLE TERMS

The Contactor is expected to execute the attached City of Memphis Professional Services Agreement. Requested changes by the Contactor, will slow the City approval process but will have no effect on the Contactor's Fee. The Selection Schedule will not change without the consent of the City of Memphis.

4.8 COST TO PROPOSE

The City of Memphis will not be liable for any costs incurred by the Contactor in preparation of a proposal submitted in response to this RFP.

4.9 NO OBLIGATION BY CITY

Issuance of this RFP does not obligate the City of Memphis to contract in whole or part for the services specified in this document.

4.10 COMMITMENT OF FUNDS

The Mayor of the City of Memphis is the only individual who may legally commit the City to expenditures of funds for a contract resulting from this RFP.

4.11 CONTACTOR'S INSURANCE COVERAGE

The Contactor shall, at his own expense, obtain insurance coverage that shall be maintained in full force and effect during the term of the agreement. The Contactor shall provide evidence in the form of a Certificate of Insurance prior to an agreement resulting from this RFP process.

The Company shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. The Company shall require all subcontractors to carry insurance as outlined below, in case they are not protected by the policies carried by the Company. The Company is required to provide copies of the insurance policies upon request. The Company shall furnish the Risk Manager a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the state of Tennessee.

If any of the Insurance Requirements are non-renewed at the expiration dates, payment to the company may be withheld until those requirements have been met, or at the option of the City. The City may pay the renewal premiums and withhold such payments from any monies due the Company.

The Company shall indemnify, defend, save and hold harmless the City, its officers, employees, and agents, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this

Agreement by Company, its employees, subcontractors, or agents, or any negligent act or omission of Company, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, and this indemnification shall survive the expiration or earlier termination of this Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of the City, its officers, employees and agents.

Company shall provide notice to the City within three (3) business days following receipt of any notice of cancellation or material change in Company’s insurance policy from Company’s insurer. Such notice shall be provided to City by registered mail, to the following addresses:

City of Memphis
Attn: Risk Management
2714 Union Extended, Suite 200
Memphis, TN 38112

City of Memphis
Attn: Purchasing Agent
125 North Main, Room 354
Memphis, TN 38103

Each certificate or policy shall require and state in writing the following clauses:

The Certificate of Insurance shall state the following: “The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies.” The additional insured endorsements shall be attached to the Certificate of Insurance and the Certificate of Insurance shall also state: “The additional insured endorsement is attached to the Certificate of Insurance.”

WORKERS COMPENSATION:

The Company shall maintain in force Workers’ Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all subcontractors to do likewise with MINIMUM LIMITS OF:

Employer’s Liability	\$100,000	Each Accident
	\$500,000	Disease-Policy Limit
	\$100,000	Disease-Each Employee

AUTOMOBILE LIABILITY:

Covering owned, non-owned, and hired vehicles with MINIMUM LIMITS OF:

\$1,000,000 Each Occurrence – Combined Single Limits

COMMERCIAL GENERAL LIABILITY:

Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor’s Liability, and Broad Form Property Damage Liability coverage with MINIMUM LIMITS OF:

\$1,000,000	General Aggregate
\$1,000,000	Products-Completed Operations
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence (Bodily Injury & Property Damage)
\$ 50,000	Fire Damage any One Fire

\$ 5,000 Medical Expense any One Person

ERRORS & OMISSIONS/PROFESSIONAL LIABILITY:

The Company shall maintain such coverage for at least three (3) years from the termination or expiration of this agreement with MINIMUM LIMITS OF:

\$2,000,000 Each Occurrence / Aggregate

PROPERTY INSURANCE:

The Company shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors to do likewise.

SECTION 5: EVALUATION AND CONTRACT AWARD

5.1 EVALUATION OF PROPOSAL

Responsive proposals will be evaluated in accordance with the requirements stated in this RFP. The evaluation of proposals will be accomplished by an evaluation team, which will be designated by the City of Memphis.

5.2 EVALUATION CRITERIA

The following criteria will be used to evaluate and score the proposals:

1. Qualifications and Experience of the firm and key personnel	25
2. Past work preparing Emergency Management Plans	30
3. References from other agencies or owners	15
4. Fee and expenses	20
5. Contractor's overall response to the RFP	<u>10</u>
Highest possible average score of the Evaluation Team	100

5.3 ORAL PRESENTATION MAY BE REQUIRED

The City of Memphis, at its discretion, may elect to select the top scoring finalists from the written evaluation for an oral presentation and final determination of contract award. Should the City elect to hold oral presentations, a date will be scheduled with the top-scoring firms. Scores for an oral presentation will be averaged from the Evaluation Team and combined with the score from the written proposal to determine the successful Contactor.

REQUEST FOR PROPOSAL TERMS

The City of Memphis seeks responses from qualified firms who have the expertise to provide a **DISASTER PREPAREDNESS AND RECOVERY PLAN** in accordance with this RFP document. This is a Request for Proposals that may be modified by the City during the selection process.

THE CITY OF MEMPHIS ENCOURAGES THE PARTICIPATION OF SMALL AND MINORITY BUSINESSES IN THE PURCHASING PROCESS.

The City of Memphis is an Equal Opportunity Employer and does not discriminate on the basis of race, color, national origin, sex, religion, age or handicap status in employment or in the provision of services.

This procurement may be subject to the requirements of Ordinance No. 5114 which establishes a local preference for local businesses located within the City of Memphis. A copy of your Memphis and Shelby County Tennessee Business Tax Receipt must accompany the bid for consideration of this ordinance.

The contract may be subject to the requirements of Ordinance No. 5185, as amended, which establishes a minimum wage for employees of businesses receiving a service or service-related contract from the City of Memphis.

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the intent to award announcement at the following address: City of Memphis Purchasing Agent; 125 North Main, Room 354; Memphis, Tennessee 38103. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

Only responses submitted on this form(s) with no changes, additions or deletions to the terms and conditions will be considered. Bids containing terms and conditions other than those contained herein may be considered nonconforming.

No objections with regard to the application, meaning, or interpretation of the specifications will be considered after the opening of the subject responses. If there are questions or concerns regarding any part of plans, terms, specifications or other proposed documents, a written request for interpretation thereof may be submitted to the City Purchasing Agent prior to the deadline date. The organization submitting the request shall be responsible for the prompt delivery of the request. Any interpretation in response to the written request will be made only by addendum duly issued by the City. The City of Memphis will not be

responsible for any other explanation or interpretation of the proposed documents. By submission of its proposal, a vendor shall be deemed to have understood fully the contents and meaning of the RFP.

All responses must be signed by an authorized representative of your organization. Unsigned responses will be considered nonconforming.

Any contract resulting from the proposals received in response to this solicitation shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee without regard to conflicts of laws principles.

By order of the Mayor of the City of Memphis, Tennessee.

A C WHARTON, JR., MAYOR

Eric S. Mayse, City Purchasing Agent

Published in the Daily News: March 19, 20, 2013

INSTRUCTIONS TO PROPOSERS

Proposers shall submit their responses in a sealed envelope **INDICATING ON THE OUTSIDE: THE COMPANY NAME and THE REQUEST FOR QUALIFICATION NUMBER.**

Responses submitted and accepted by the City become the property of the City of Memphis and will not be returned. The City has the right to reject any or all responses.

Respondents must comply with all applicable licensing requirements. Pursuant to the City of Memphis Charter, Article 71, Section 777 et seq., it is unlawful to operate a business within the limits of the city of Memphis without possessing a Memphis and Shelby County business license, excepting non-profit organizations that qualify as tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. Upon award notification and prior to the City entering into a contract with the vendor, the successful vendor, whose principal business address is located within the limits of the city of Memphis, will be required to submit, along with the required insurance and other required documentation, a copy of (1) the tax-exempt ruling or determination letter from the Internal Revenue Services; or (2) its current Memphis and Shelby County Business Tax Receipt/License.

Issuance of this RFP does not obligate the City to contract, in whole or in part, for services specified herein. The City of Memphis reserves the right to cancel this solicitation, in whole or in part, or to reject, in whole or in part, any and all proposals. Cancellation of this RFP or any subsequent award will be posted on the City's website: www.memphis.gov under the section titled "Government News".

The City of Memphis reserves the right to cancel this solicitation or to reject, in whole or in part, any and all responses. Any firm receiving a mailed solicitation on the above subject and not bidding will be electronically removed from the City's mailing list used for the above-referenced subject after 3 consecutive non-responses or no bids.

For additional information concerning this solicitation, please contact: Mike Williams at Mike.Williams@memphistn.gov

This solicitation shall be in accordance with the City of Memphis' Purchasing Policies and Procedures, which may be amended from time to time.

All materials submitted pursuant to this RFP shall become the property of the City of Memphis.

To the extent permitted by law, all proposals submitted in response to this RFP shall be kept confidential until the proposals have been evaluated and the intent to award is announced. Until the intent to award is announced, no information regarding any proposal will be released to anyone, except members of the Evaluation Committee who are responsible for evaluating the proposals and other appropriate City staff. All information provided by the Vendor in response to this RFP will be considered by the Evaluation Committee in evaluating the proposal and making an award recommendation to the City.

The Mayor of the City of Memphis is the only individual who can legally sign contracts on behalf of the City. Costs chargeable to the proposed contract shall not be incurred before receipt of a fully executed contract.

EXHIBIT A – PROPOSED CONTRACT

**CITY OF MEMPHIS
DIVISION OF HOUSING AND COMMUNITY DEVELOPMENT
AGREEMENT
FOR
TECHNICAL SERVICES
WITH**

This AGREEMENT entered into on this ____ day of _____, _____, by and between the City of Memphis acting through its Division of Housing and Community Development (“HCD” or “City”), with principal offices located at 701 North Main Street, Memphis, TN 38107 and with principal offices located at _____, Memphis, TN (“hereinafter referred to as “” or “Contractor”).

ARTICLE I.

RECITALS

WHEREAS, the City of Memphis seeks to maximize the utilization and the economic/fiscal benefits that could result from selected additional future development of **DEVELOPMENT SITE**; and

WHEREAS, in order to determine, prioritize and quantify the economic/fiscal benefits that could result from the aforementioned development, the City of Memphis must first obtain **TECHNICAL SERVICES**; and

WHEREAS, the City of Memphis desires to retain the services of to assist in **DEVELOPMENT PROJECT**; and

WHEREAS, the City of Memphis desires to retain the services of to assist in **TECHNICAL SERVICES**; and

WHEREAS, _____ is duly experienced in providing said services.

NOW THEREFORE, in consideration of the foregoing recitals and underlying premises, which all parties agree to be good and valuable consideration, the parties agree as follows:

ARTICLE II.

TERMS OF AGREEMENT GENERALLY

A. Eligibility of Entity and Activities

The City of Memphis has determined that the planning activities stated herein are eligible DISASTER RECOVERY GRANT planning activities according to 24 CFR 570.205.

B. Amount of Funding

The City shall authorize disbursement of in Disaster Recovery Grant funds to Contractor to provide services as stated in this Agreement.

C. Term of Contract

The term of this Agreement shall begin, and shall terminate on ,. Eligible costs incurred during the term of contract, but prior to its execution, shall be eligible for reimbursement.

D. Revision Agreement

The parties hereby agree that each will from time to time, execute, acknowledge, and deliver or cause to be executed, acknowledged, and delivered such further instruments or reports as may be reasonably required for meeting applicable laws and regulations, carrying out the terms of this Agreement, and facilitating the performance thereof.

ARTICLE III.

PROJECT DESCRIPTION

will work directly with the City to provide services in support of the project throughout each of the tasks of work described below.

ARTICLE IV.

SCOPE OF SERVICES

Pursuant to this Agreement, Contractor will provide the following:

[PROJECT DESCRIPTION]

ARTICLE V.

TERMS OF DISBURSEMENT

A. Funds provided to Contractor

As consideration for the services provided by Contractor under this agreement, the City agrees to provide Contractor with compensation in the amount of _____ for services for the development project. The City agrees to disburse said funds upon receipt of invoice(s) from Contractor. Contractor shall attach to its invoice(s) copies of any other information or documentation which the City may reasonably require.

B. Monitoring

Contractor agrees to prepare and submit progress reports to HCD on a monthly basis through the term of contract concluding with a "Final Report" covering the activity for the entire contract period. The reports shall describe in a narrative form Contractor's progress during the preceding month in the provision of its programs. Contractor will include the City Contract Number on all invoice requests, reports, and correspondence. Deadlines for monthly reports are on or before the 15th day of a month and the final report on receipt of final invoice.

C. Source of Funds provided to the Project

These funds shall be awarded with Disaster Recovery Grant funds and disbursed through the Division of Housing and Community Development. This Division shall be responsible for making the appropriate allocation and disbursement of said funds.

ARTICLE VI.

INSURANCE REQUIREMENTS FOR CONSULTANTS

The Company shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. The Company shall require all subcontractors to carry insurance as outlined below, in case they are not protected by the policies carried by the Company. The Company is required to provide copies of the insurance policies upon request. The Company shall furnish the Risk Manager a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the state of Tennessee.

If any of the Insurance Requirements are non-renewed at the expiration dates, payment to the company may be withheld until those requirements have been met, or at the option of the City. The City may pay the renewal premiums and withhold such payments from any monies due the Company.

The Company shall indemnify, defend, save and hold harmless the City, its officers, employees, and agents, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by Company, its employees, subcontractors, or agents, or any negligent act or omission of Company, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, and this indemnification shall survive the expiration or earlier termination of this Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of the City, its officers, employees and agents.

Company shall provide notice to the City within three (3) business days following receipt of any notice of cancellation or material change in Company’s insurance policy from Company’s insurer. Such notice shall be provided to City by registered mail, to the following addresses:

City of Memphis
Attn: Risk Management
2714 Union Extended, Suite 200
Memphis, TN 38112

City of Memphis
Attn: Purchasing Agent
125 North Main, Room 354
Memphis, TN 38103

Each certificate or policy shall require and state in writing the following clauses:

The Certificate of Insurance shall state the following: “The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies.” The additional insured endorsements shall be attached to the Certificate of Insurance and the Certificate of Insurance shall also state: “The additional insured endorsement is attached to the Certificate of Insurance.”

WORKERS COMPENSATION:

The Company shall maintain in force Workers’ Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all subcontractors to do likewise with MINIMUM LIMITS OF:

Employer’s Liability	\$100,000	Each Accident
	\$500,000	Disease-Policy Limit
	\$100,000	Disease-Each Employee

AUTOMOBILE LIABILITY:

Covering owned, non-owned, and hired vehicles with MINIMUM LIMITS OF:

\$1,000,000 Each Occurrence – Combined Single Limits

COMMERCIAL GENERAL LIABILITY:

Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor’s Liability, and Broad Form Property Damage Liability coverage with MINIMUM LIMITS OF:

\$1,000,000	General Aggregate
\$1,000,000	Products-Completed Operations
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence (Bodily Injury & Property Damage)
\$ 50,000	Fire Damage any One Fire
\$ 5,000	Medical Expense any One Person

ERRORS & OMISSIONS/PROFESSIONAL LIABILITY:

The Company shall maintain such coverage for at least three (3) years from the termination or expiration of this agreement with MINIMUM LIMITS OF:

\$2,000,000 Each Occurrence / Aggregate

PROPERTY INSURANCE:

The Company shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors to do likewise.

ARTICLE VII.

TECHNICAL ASSISTANCE, MONITORING/EVALUATION & AUDIT

Through the following activities, the City shall provide technical assistance to educate Contractor regarding the requirements of this contract and shall monitor Contractor's compliance with the terms of this contract, evaluating their performance, identifying strengths and weaknesses in their administrative systems and program, and suggesting steps that will strengthen the program.

- A. **Provide on-site technical assistance visit to Contractor.** The City shall make an initial on-site technical assistance visit to Contractor within 30 days of the execution date of this contract, to review Contractor's administrative systems (purchasing, financial/accounting, record keeping, etc.) and program plans/activities and to give direction for ensuring Contractor's compliance with City requirements. At other times, the City shall provide technical assistance at Contractor's request and schedule periodic monitoring visits with Contractor as necessary to ensure proper administration of the program.
- B. **Review and evaluate monthly reports.** The City shall document receipt of monthly reports and shall review reports as one means of determining Contractor's progress in completing

scheduled tasks set forth in Section II. The City shall verify information contained in monthly reports.

- C. **Make on-site monitoring visits.** A representative of the City shall make on-site monitoring visits to meet with the appropriate program staff, to review Contractor's progress in completing tasks outlined in this agreement, to review Contractor's records and administrative systems to ensure compliance with Federal and local requirements, to verify information in the monthly reports, and to observe firsthand the operation of the program and the condition of the facility.
- D. **Prepare monitoring letters.** The City representative who makes the on-site monitoring visit shall also prepare a monitoring letter to the executive director of the program within 30 calendar days of the monitoring visit. The monitoring letter shall identify staff involved in the visit, highlight any findings and/or concerns which are likely to result in negative consequences if not corrected. It may also summarize the major conclusions, both positive and negative, with specific details and steps necessary to resolve issues as noted.
- E. **Resolve identified findings, concerns, and problems.** The City representative shall follow-up resolution of findings, concerns, and problems identified in the monitoring visit and letter. In the event Contractor does not resolve said issues in a timely manner, the City may withhold payments until the issues are resolved satisfactorily.
- F. **Review audit of program funds.** In the event that an audit is required in compliance with OMB Circular A-133, a representative of the City shall review Contractor's annual audit to ensure that the audit has been performed in compliance with applicable regulations. Additionally, said representative shall ensure that appropriate corrective action is taken within three months of receipt of an audit report in instances where noncompliance with Federal law and regulations are noted.
- G. **Review compliance with Section 504 of the Rehabilitation Act of 1973 and Americans with Disabilities Act as appropriate.** A representative of the City will inspect the facility and, if necessary, assist Contractor in designing a plan to bring the site into compliance with Federal regulations.
- H. **City of Memphis Audit Requirement.** The City reserves the right to audit the records of Contractor. Contractor shall make and keep, as the same accrue, full and complete records and books of accounts of revenue, income, costs, and expenses that specifically relate to performance under this contract. Records and books of accounts, together with any or all other memoranda pertaining thereto that may be kept, maintained, or possessed by Contractor, shall be open to examination during regular business hours by the City or its representatives for the purposes of inspecting, auditing, verifying, or copying the same or making extracts therefrom. Contractor shall make and keep said records and books of accounts for a period of five (5) years after the completion of the contract obligations or the final payment under the contract, whichever shall occur later.

ARTICLE VIII.

OTHER FEDERAL AND LOCAL REQUIREMENTS

Contractor will administer the program in compliance with all applicable Federal, State, and local regulations governing the DISASTER RECOVERY GRANT funds and other relevant aspects of the project. These requirements include the following, as well as those mentioned heretofore in this agreement:

A. **Non-discrimination Clause of the City of Memphis.**

1. Local Requirement. The City of Memphis is an equal employment opportunity employer, and shall not unlawfully discriminate against applicants or employees because of race, color, religion, sex, national origin, age, or disability. The City of Memphis' prohibition against discrimination applies to employment or hiring decisions, compensation, discipline, promotions, training, and all other terms and conditions of employment. The City of Memphis does not limit, segregate, or classify employees or applicants for employment in any way which will deprive, or tend to deprive, any individual of employment opportunities or otherwise affect an individual's status as an employee because of the individual's race, color, religion, sex, national origin, age, or disability. By signing this contract, all entities or persons contracting with the City of Memphis agree to abide by and to take affirmative action when necessary to ensure compliance with the nondiscrimination clause set out above. By signing this contract, all entities or persons contracting with the City of Memphis agree to show proof of non-discrimination upon request and to post in conspicuous places, available to all employees and applicants, notices of non-discrimination. In the event of noncompliance with this nondiscrimination clause or with all provisions of Executive Orders 11141 (age), 11246, 11375 (women), 12086 (Viet Nam Veterans), 110478 (federal employees), 11625 (minority business), 11701 (veterans), Title 41-Chapter 60 (handicapped and specifically the handicapped affirmative action clause in Section 60-741.6-9 of the OFCCP Rules) and any and all other federal laws prohibiting discrimination, this contract may be canceled, terminated, or suspended, in whole, or in part, by the City of Memphis. Contractor shall also exert every effort to comply with the MBE/WBE subcontracting goals when applicable.

B. **Employment/Program Participation.**

1. Nondiscrimination. Contractor, in compliance with the requirements of Title VI of the Civil Rights Act of 1964 (42 USC 2000d et. seq.), and Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8) agrees that no person shall, on the grounds of race, color, national origin or handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in this program funded with a Disaster Recovery Grant.
2. Nondiscrimination, Title VII. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will exert every effort to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national

origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination, rates of pay, or other forms of apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth the provisions of this nondiscrimination clause.

3. Age and Handicap Nondiscrimination. Contractor agrees, in the administration of this program, to prohibit discrimination on the basis of age under the Age Discrimination Act of 1975 (42 USC 6101 et. seq.) and discrimination against an otherwise qualified individual on the basis of handicap as provided in Section 504 of the Rehabilitation Act of 1973 (29 USC 794). This shall include ensuring, as financially feasible, that the facilities where services are provided are accessible to handicapped individuals, and/or making special accommodations to provide services to the handicapped if the facilities are not accessible. A City representative shall inspect said facilities and evaluate accessibility.
4. Training/Employment of Lower Income Persons. Contractor, in compliance with Section 3 of the Housing and Urban Development Act of 1968, agrees, to the greatest extent feasible, to provide opportunities for training and employment of lower income persons residing within the City of Memphis and to award contracts for any work in connection with this contract to eligible business concerns which are located in, or owned in substantial part, by persons residing within the Memphis city limits.
5. Hiring minorities and women. Contractor agrees to make efforts to use minority and women's business enterprises in connection with activities funded under this part in compliance with the requirements of Executive Orders 11625, 12432 and 12138.
6. Equal Employment Opportunity. Contractor agrees to comply with Executive Order 11246 "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented by regulations at 41 CFR 60.

C. Administrative Requirements.

1. Conflict of Interest. Contractor, in compliance with Conflict of Interest requirements in OMB Circular No. A-110, (implemented at 24 CFR part 84, "Uniform Administration Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations") and in 24 CFR Part 84.42, agrees to maintain a written code of standards of conduct governing the performance of its employees engaged in the administration of this contract. No employee, officer or agent of Contractor shall participate in the selection, award or administration of a contract supported by Disaster Recovery Grant Program funds if a conflict of interest, real or apparent, would be involved. Such a conflict of interest would arise when the employee, officer or agent, any member of his immediate family, his or her partner, or an organization which employs or is about to employ any of the above has a financial or other interest in the firm selected for award. Contractor's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, subcontractors, or

parties to sub-agreements. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions or other disciplinary actions for violations of such standards by Contractor's officers, employees or agents or by contractors or their agents. Establishment of and adherence to a written code of standards will be examined on the occasion of the first monitoring visit which will take place during the second quarter of.

2. Standards for Financial Management Systems. Contractor agrees to comply with OMB Circular A-110, (implemented at 24 CFR part 84.21) regarding standards for financial management systems. Contractor's financial management system shall provide for the following:
 - a. Accurate, current and complete disclosure of the financial results of this activity.
 - b. Records that identify adequately the source and application of funds for this activity. These records shall contain information pertaining to awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
 - c. Effective control over and accountability for all funds, property and other assets. Contractor shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
 - d. Procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of cost principles found in OMB Circular A-122.
 - e. Accounting records that are supported by source documentation.
 - f. Examinations in the form of audits or internal audits by qualified individuals.
 - g. Comparison of outlays with budget amounts for each award.
3. Procurement Standards. Contractor agrees to comply with OMB Circular A-110, (implemented at 24 CFR 84.40 through 84.48) with regard to the procurement of supplies, equipment and services purchased with DISASTER RECOVERY GRANT funds. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Contractor should be alert to organizational conflicts of interest or non-competitive procurement practices since these will be monitored by the City. Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the product or service to be acquired. Some form of price or cost analysis shall be made in connection with every procurement action. This may be accomplished in various ways, including but not limited to, price quotations for comparable goods from various sources.
4. Standards for Record Retention. In compliance with OMB Circular A-110, implemented at 24 CFR 84.53 and 24 CFR 570.502 (b)(3)(ix) regarding retention and custodial requirements for records, Contractor shall maintain financial records, supporting documents, statistical

records, and all other records pertinent to this agreement for a period of four years, with the following qualifications: If any litigation, claim, or audit is started before the expiration of the 4 year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. Records for nonexpendable property acquired with DISASTER RECOVERY GRANT funds shall be retained for four years after its final disposition. Unless otherwise stated, the retention period starts on the date when the project is mentioned for the final time in the City's Annual Performance Report to HUD which is submitted on September 30 of each year. Contractor shall make all records for this project available to the City, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives for the purpose of making audit, examination, excerpts, and transcriptions.

D. **Program Income.** If applicable, Contractor agrees to comply with the following requirements related to program income.

1. Program income includes gross income from the use or rental of real property constructed by Contractor with DISASTER RECOVERY GRANT funds, less costs incidental to generation of the income. Additionally, program income includes the proceeds from the disposition by sale or long-term lease of real property improved with DISASTER RECOVERY GRANT funds.
2. Contractor agrees that any program income generated by an activity that is only partially assisted with DISASTER RECOVERY GRANT funds shall be prorated to reflect the percentage of activity attributable to DISASTER RECOVERY GRANT funding.
3. In the event that Contractor charges rent for any of the space renovated through this contract, Contractor shall return to the City the gross income less costs incidental to generation of the income. Costs incidental to the generation of the income include the following: utilities, maintenance and repairs, insurance, taxes and any other expenses incurred by Contractor related to operating said addition. Contractor shall maintain records of the gross income as well as the incidental costs and program income for review by the City. It has been determined by the City that these may be retained by Contractor to cover operational costs; however, any program income resulting shall be reported to the City with the annual reports on October 31, though.
4. Program income generated from rent collected for space that has been improved with DISASTER RECOVERY GRANT funds shall be calculated as follows:
 - a. Determine the amount of rent that has been collected for space including the new space constructed with DISASTER RECOVERY GRANT funds.
 - b. Determine the expenses of the building incurred by Contractor that are required to generate the rent.

- c. Subtract the operating expenses from the rent collected.
 - d. Prorate the amount of program income to be returned to the City.
5. In the event that Contractor fails to use the facility to benefit low and moderate income persons during the five (5) year use period or disposes of the facility which has been improved with DISASTER RECOVERY GRANT funds prior to February 28, , it shall pay to the City an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of non- DISASTER RECOVERY GRANT funds for acquisition of, or improvement of the property by March 31, following said disposition.
6. Program income requirements do not apply to this project after the completion of the five (5) year use period.
- E. **Equipment Management.** If applicable, Contractor agrees to comply with all regulations as they appear in OMB Circular A-110 implemented at 24 CFR Part 84.34 with regard to management of equipment purchased with Federal funds.
- F. **Assignability/Transfer.** Contractor agrees that it shall not assign or transfer any benefits under this agreement without the advanced written permission of the City.
- G. **Disclosure of Lobbying.** No Federal appropriated funds may be paid by or on behalf of Contractor to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If funds other than Federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with a DISASTER RECOVERY GRANT Disaster Recovery Grant Program contract, grant, loan or cooperative agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction. Contractor shall require that the language of this paragraph be included in the award documents of all subordinate agreements at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- H. **Drug Free Workplace.** Contractor agrees that it will maintain a drug free workplace in accordance with the requirements of 24 CFR 21, Subpart F and shall administer a policy for drug and alcohol free facilities.
- I. **Independent Contractor.** Nothing in this Contract shall be deemed to represent that Contractor or any of Contractor's employees or agents, are the agents, representatives or employees of the City of Memphis. Contractor shall be an independent contractor and shall have responsibility for and control over the details and means for performing its business. Anything

in this Contract which may appear to give the City of Memphis the right to direct Contractor as to the details of the performance of its business, or to exercise a measure of control over Contractor, is for the purpose of compliance with HUD regulations and other local, state and federal regulations, and shall mean that Contractor shall follow the desires of the City of Memphis only as to the intended results of the scope of this contract.

- J. **City Recognition.** Contractor shall ensure recognition of the role of the City in providing the services funded through this agreement by means that include but are not limited to the following: Contractor agrees that all printed material associated with the services provided through this agreement shall include the phrases, "The City of Memphis, Division of Housing and Community Development is a partner in this program". Additionally, publicity regarding this program shall acknowledge the role of the City in funding the services provided.
- K. **Contractor Suspension/Debarment.** Contractor agrees that no DISASTER RECOVERY GRANT assistance shall be used directly or indirectly to employ, award contracts to, or otherwise engage the services of or fund any contractor listed on the General Service Administration's list of parties Excluded from Federal Procurement or Non-procurement Programs under the provisions of 24 CFR Part 24 Subpart C.
- L. **Extend Contract.** Upon receipt of written request from Contractor, the City may approve extension of the term of this contract. Contractor must submit the written request 60 days before the end of the current contract. The City reserves the right to approve or disapprove said request based upon performance of Contractor and other related factors.
- M. **Reversion of Assets.** Upon the expiration of this agreement, Contractor shall transfer to the City any DISASTER RECOVERY GRANT funds on hand at the time of expiration and any accounts receivable attributable to the use of DISASTER RECOVERY GRANT funds.
- N. **General Compliance with Laws.** Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall obtain and maintain, at its own expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. Such permits and licenses shall be made available to the City, upon request. Contractor is assumed to be familiar with and shall comply with all applicable federal, state, and local laws, ordinances, and regulations in performing any of its obligations under this Agreement, including but not limited to the City of Memphis Living Wage Ordinance, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA), and the Americans with Disabilities Act (ADA). Contractor shall promptly notify the City of any conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. In the event Contractor fails to comply with any and all local, state and federal laws, rules, or regulations, this agreement may be canceled, terminated or suspended in whole or in part by the City.

- O. **Employment of Illegal Immigrants.** Contractor hereby certifies that it will comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. Contractor shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event Contractor fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this agreement may be canceled, terminated or suspended in whole or in part by the City, and Contractor may be prohibited from contracting to supply goods and/or services to the City for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with the City.
- P. **Jurisdiction.** This contract shall be governed, construed, and enforced according to the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation, and enforcement of this contract shall be instituted and litigated in the courts of the State of Tennessee located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this contract submit to the jurisdiction of the courts of the State of Tennessee, located in Shelby County, Tennessee.
- Q. **Notices.** All notices or demands hereunder shall be given in writing and shall be deemed to have been sufficiently given for all purposes when presented personally or sent by registered or certified mail to any party hereto at the address set forth below or at such other address as either party shall subsequently designate in writing:

If to : **(Contractor)**

Memphis, TN

If to the HCD: **Robert Lipscomb, Director HCD**
City of Memphis
701 North Main Street
Memphis, TN 38107

With a copy to: **Marcus D. Ward, Senior Assistant City Attorney**
City of Memphis
701 North Main Street
Memphis, TN 38107

With a copy to: **Debbie Singleton, Compliance Administrator HCD**
City of Memphis
701 North Main Street
Memphis, TN 38107

- R. **Survival.** The parties hereto acknowledge that provisions that require or contemplate performance or observance after expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and continue in full force and effect.

ARTICLE IX.

DEFAULT, REMEDIES, AND TERMINATION

- A. **Events of Default.** In the event that Contractor shall fail to substantially perform its obligations under this agreement or any other agreement related hereto, and shall have failed to cure the same within thirty (30) days unless the event is caused by either an act or omission by the City, then an event of default (“Event of Default”) shall have occurred under this agreement. When an action constituting an event of default shall occur, the City shall notify Contractor in writing and advise them of the default, as well as the time period within which Contractor shall have to cure same. An event of default shall not have occurred if the failure to substantially perform cannot be cured within said cure period and such party has commenced to cure within said period and therefore diligently pursues such cure. Each of the following events, upon failure to cure within the aforesaid curative periods, shall constitute an event of default hereunder:
1. Any failure or omission on the part of Contractor to comply with the material terms and conditions of this Agreement;
 2. Misrepresentation or omission by Contractor of any material fact or facts related to this Agreement which materially and adversely affects the rights or obligations of the parties hereto;
 3. The filing of any petition under any bankruptcy, moratorium, reorganization or insolvency act, Federal or State, by or against Contractor which, if against same, is not dismissed within ninety (90) days of such filing;
 4. The filing of an application for the appointment of a receiver, or the making of a general assignment for the benefit of creditors of Contractor, however expressed or indicated; and/or
 5. The failure of Contractor to pay or discharge any judgment or judgments against it for the payment of money (not covered by insurance) which singularly or in the aggregate exceeds One Million Dollars (\$1,000,000) and such judgment or judgments be not satisfied, or an appeal taken therefrom or enforcement stayed, or any levy thereon not be removed within thirty (30) days from issue.
- B. **Remedies Cumulative.** All remedies of the parties provided for herein are cumulative and shall be in addition to all other rights and remedies provided by law. The exercise of any right or remedy by either party hereunder shall not in any way constitute a cure or waiver of default hereunder or invalidate any act done pursuant to any Event of Default hereunder or prejudice a

party hereto in the exercise of any of its rights hereunder, unless in the exercise of said rights the party realizes all amounts owed to it under this Agreement.

- C. **Right to Contest.** Notwithstanding anything to the contrary herein contained, Contractor shall have the right to contest, in good faith, any claim, demand, levy or assessment, the assertion of which would constitute any Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner not prejudicial to the rights of the City. Upon demand by the City, Contractor shall make suitable provision by deposit of funds or by bond or other assurance satisfactory to the City for the possibility that any such contest will be unsuccessful. Such provision shall be made within five (5) days after receipt of demand by the City therefore.
- D. **Termination.** This contract may be terminated by the City in accordance with 24 CFR 85.43 in whole, or from time-to-time, in part, whenever Contractor (subrecipient, contractor, consultant) shall default in the performance of activities specified in this contract and/or its attachments and fails to cure such default within a period of fifteen (30) days, or such longer period as the City shall determine provided that the City shall serve notice of default, in writing, upon Contractor. This agreement may also be terminated for convenience in accordance with 24 CFR 85.44. **In the event this contract is terminated by the City, Contractor shall immediately, upon demand from the City, reimburse the full amount of the funds received by Contractor plus all costs and attorney's fees incurred by the City. However, the City, in its discretion, may reimburse Contractor for services provided under the contract through the date of termination.**

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IN WITNESS WHEREOF, the City of Memphis and have each duly executed, or caused to be duly executed, this Agreement as of the date first written above.

CITY OF MEMPHIS

A C Wharton, Jr. Mayor

Robert Lipscomb, Director HCD

Herman Morris, Jr., City Attorney

Marcus D. Ward, Senior Assistant City Attorney

ATTEST

Deputy Comptroller