

## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

This Ordinance provides Safety & Health guidance to City of Memphis Employees.

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

Human Resources, Office of Workplace Safety & Compliance

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

Yes. This is an update to Ordinance 5081 based on recommendations from the Tennessee Department of Labor Occupational Safety & Health Administration.

**4. State whether this requires a new contract, or amends an existing contract, if applicable.**

Not Applicable

**5. State whether this requires an expenditure of funds/requires a budget amendment.**

Not Applicable

**ORDINANCE NO: 5081  
ORDINANCE TO AMEND CHAPTER 2,  
ARTICLE IX, CODE OF ORDINANCES  
SO AS TO UPDATE THE OCCUUPATIONAL  
SAFETY AND HEALTH PROGRAM SECTIONS**

WHEREAS, in compliance with Public Chapter 561 of the General Assembly of the State of Tennessee for the year 1972, the City of Memphis established the Occupational Safety and Health Program for the employees of the City of Memphis, and

WHEREAS, due to various changes in subsequent years, it has become necessary to amend said Sections 2-376 through 2-394 of the City Code to comply with more recent state requirements.

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, That Chapter 2, Article IX, Code of Ordinances, Section 2-376 through 2-394, be and the same are hereby amended as follows:

**ARTICLE IX. OCCUPATIONAL  
SAFETY AND HEALTH PROGRAM**

**Section 2-376. Title**

This article shall be known as "The Occupational Safety and Health Program" for the employees of the City of Memphis.

**Section 2-377. Created**

There is hereby created and modified a safety and health program for the employees of the City as follows hereinafter.

**Section 2-378. Purpose**

This plan is applicable to all employees, part-time or full-time, seasonal or permanent. The purpose of this plan is to provide guidelines and procedures for implementing the Occupational Safety and Health Program for the employees of the City of Memphis.

Provide a safe and healthful place and condition of employment that includes:

- a. Top Management Commitment and Employee Involvement;
- b. Continually analyze the worksite to identify all hazards and potential hazards;
- c. Develop and maintain methods for preventing or controlling the existing or potential hazards; and Train managers, supervisors, and employees to understand and deal with worksite hazards.

The City of Memphis in electing to update and maintain an effective occupational safety and health program for its employees, shall:

- a. Provide a safe and healthful place and condition of employment.
- b. Acquire and safety equipment, personal protective equipment, engineering controls and /or other devices where reasonably necessary to protect employees.

- c. **Make, keep, preserve and make available to the Commissioner of Labor and Workforce Development, his designated representatives, or persons within the Department of Labor and Workforce Development to whom such responsibilities have been delegated, including the Administrator of Occupational Safety and Health, adequate records of all occupational accidents and illnesses and personal injuries for proper evaluation and necessary corrective action as required.**
- d. **Consult with the Commissioner of Labor and Workforce Development or his designated representative with regard to the adequacy of the form and content of such records.**
- e. **Consult with the Commissioner of Labor and Workforce Development regarding safety and health problems which are considered to be unusual or peculiar and are such that they cannot be resolved under an occupational safety and health standard promulgated by the State.**
- f. **Assist the Commissioner of Labor and Workforce Development with monitoring activities to determine program effectiveness and compliance with the occupational safety and health standards.**
- g. **Make a report to the Commissioner of Labor and Workforce Development as may be required.**
- h. **Provide reasonable opportunity for and encourage the participation of employees in the effectuation of the objectives of this program, including the opportunity to make anonymous complaints concerning conditions or practices which may be injurious to employees' safety and health.**
- i. **Provide for education and training of personnel for the fair and efficient administration of occupational safety and health standards, and provide for education and notification of all employees of the existence of this Program Plan.**

**Section 2-379. Definitions**

For the purposes of this program, the following definitions apply:

- a. **"ACT, TOSHA, or TOSHACT" means the Tennessee Occupational Safety and Health ACT of 1972.**
- b. **"WORKPLACE SAFETY & COMPLIANCE ADMINISTRATOR or "SAFETY ADMINISTRATOR" means the designee who shall plan, develop, and administer the City of Memphis' occupational safety and health program.**
- c. **"APPOINTING AUTHORITY" is the Mayor of the City of Memphis having legally designated powers of appointment, employment, or removal therefrom for a specific department, board, commission, division, or other agency of this employer.**
- d. **"CHIEF ADMINISTRATIVE OFFICER" means the officer immediately in command under the Mayor of the City of Memphis.**
- e. **"CHIEF EXECUTIVE OFFICER" means Mayor of the City of Memphis.**
- f. **"CITY" means the City of Memphis**
- g. **"COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT" means the chief**

executive officer of the Tennessee Department of Labor and Workforce Development. This includes any person appointed, designated, or deputized to perform the duties or to exercise the powers assigned to the Commissioner of Labor and Workforce Development.

- h. "EMPLOYEE" means any person performing services for the City as an employee and listed on the City payroll as an employee, including temporary and permanent employees. This definition shall not include independent contractors, their agents, their servants and their employees.
- i. "EMPLOYER" means the City of Memphis and shall include each administrative department, board, commission, division, or other agency of the City of Memphis.
- j. "ESTABLISHMENT" or "WORKSITE" means a single physical location under the control of the City or where business is conducted, services are rendered, or industrial operations are performed.
- k. "IMMINENT DANGER" means any conditions or practices in any place of Employment which are such that a hazard exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such hazard can be eliminated through normal compliance enforcement procedures.
- l. "INSPECTOR" means the individual(s) designated by the Mayor, Division Directors, Administrator or Safety Coordinator to conduct inspections provided for herein. If no such inspector(s) is designated, inspections shall be conducted by the Safety Coordinator, OSHA Coordinators, or others designated by the appropriate authority.
- m. "PERSON" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any organized group of persons.
- n. "SAFETY COORDINATOR" means the individual(s) appointed or designated by the Workplace Safety & Compliance Administrator to carry out powers, duties, and responsibilities under this program. When the phrase "or designee" appears after the term "ADMINISTRATOR" "or designee" this phrase shall be construed to mean the SAFETY COORDINATOR, unless the context indicates otherwise.
- o. "SERIOUS INJURY or HARM" means that type of harm that would cause permanent or prolonged impairment of the body in that:
  - 1. a part of the body would be permanently removed or rendered functionally useless or substantially reduced in efficiency on or off the job (e.g., leg shattered so severely that mobility would be permanently reduced), or
  - 2. a part of an internal body system would be inhibited in its normal performance or function to such a degree as to shorten life or cause reduction in physical or mental efficiency (e.g., lung impairment causing shortness of breath).
- p. "STANDARD" means an occupational safety and health standard promulgated by the Commissioner of Labor and Workplace Development in accordance with Section VI of the Tennessee Occupational Safety and Health Act of 1972 (T.C.A. § 50-3-201), which requires conditions or the adoption or the use of one or more practices, means, methods, operations, or processes, or the use of equipment or personal protective equipment necessary or appropriate to provide safe and healthful employment and places of employment.

- q. "STATE COMMISSIONER" means Commissioner of Labor and Workforce Development of the State of Tennessee.

**Section 2-380. Coverage**

The provisions of this program shall apply to employees of each administrative department, commission, board, division or other agency of the City of Memphis.

**Section 2-381. Employer's rights and duties**

Rights and duties of the employer shall include, but are not limited to, the following provisions:

- a. Employer shall furnish to each employee a place of employment free from recognized hazards that cause or are likely to cause death or serious injury or harm to employees.
- b. Employer shall comply with occupational safety and health standards and regulations promulgated pursuant to Section VI (6) of the Tennessee Occupational Safety and Health Act of 1972 (T.C.A. § 50-3-201).
- c. Employer shall refrain from any unreasonable restraint on the right of the Commissioner of Labor and Workforce Development to inspect the employer's place(s) of business. Employer shall assist the Commissioner of Labor and Workforce Development in the performance of their monitoring duties by supplying or by making available information, personnel, or aids reasonably necessary to conduct effective monitoring of activities.
- d. Employer is entitled to participate in the development of standards by submission of comments on proposed standards; participation in hearings on proposed standards; or by requesting the development of standards on a given issue under Section 6 of the Tennessee Occupational Safety and Health Act of 1972.
- e. Employer is entitled to request an order granting a variance from an occupational safety and health standard.
- f. Employer is entitled to protection of its legally privileged communication.
- g. Employer shall implement a plan to inspect all installations, departments, bureaus, and offices to ensure the provisions of this program are complied with and carried out.
- h. Employer shall notify and inform any employee who has been or is being exposed in a biologically significant manner to harmful agents or material in excess of the applicable standard. Employer shall ensure corrective action is being taken to mitigate exposure.
- i. Employer shall notify all employees of their rights and duties under this program.

**Section 2-382. Employee's rights and duties**

Rights and duties of employees shall include, but are not limited to, the following provisions:

- a. Each employee shall comply with occupational safety and health standards and all

rules, regulations, and orders issued pursuant to this program which are applicable to his or her own actions and conduct.

- b. Each employee shall be notified by the placement notices upon bulletin boards, or other places of common passage, of any application for a permanent or temporary order granting the employer a variance from any provision of the TOSH Act or any standard or regulation promulgated under the Act.
- c. Each employee shall be given the opportunity to participate in any hearing which concerns an application by the employer for a variance from a standard or regulation promulgated under the Act.
- d. Any employee who may be adversely affected by a standard or variance issued pursuant to the Act or this program may file a petition with the Commissioner of Labor and Workforce Development or the Safety Coordinator.
- e. Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard shall be provided by the employer with information on any significant hazards to which they are or have been exposed, relevant symptoms, and proper conditions for safe use or exposure. Employees shall also be informed of corrective action being taken.
- f. Subject to regulations issued pursuant to this program, any employee or authorized representative of employees shall be given the right to request an inspection and to consult with the Safety Coordinator or Inspector at the time of the physical inspection of the worksite.
- g. Any employee may bring to the attention of the Safety Coordinator any violation or suspected violations of the standards or any other health or safety hazards.
- h. No employee shall be discharged or discriminated against because such employee has filed any complaint or instituted or caused to be instituted any proceeding or inspection under or relating to this program.
- i. Any employee who believes that he or she has been discriminated against or discharged in violation of any of these sections may within (30) days after such violation occurs, file a complaint with the City of Memphis Equal Employment Opportunity Office. Such employee, may also, within thirty (30) days after such violation occurs, file a complaint with the Commissioner of Labor and Workforce Development alleging such discrimination.
- j. Nothing in this section or any other provision of this program shall be deemed to authorize or require any employee to undergo medical examination, immunization, or treatment if the employee objects thereto on religious grounds, except where it is necessary for the protection of the health or safety of others or when a medical examination may be reasonably required for performance of a specific job.
- k. Employees shall report any accident, injury, or illness resulting from their job, however minor it may seem to be, to their supervisor prior to the end of their shift.
- l. If any employee feels that he is assigned to work in conditions which might affect his health, safety, or general welfare at the present time or at any time in the future, the employee should report the condition to a Supervisor, Manager, the Safety Administrator, Safety Coordinator or to TOSHA.

**Section 2-383. Standards authorized**

The standards adopted under this Program Plan are the applicable standards developed and promulgated under Section VI (6) of the Tennessee Occupational Safety and Health Act of 1972. Additional standards may be promulgated by the governing body as deemed necessary for the safety and health of employees. Note: 29 CFR 1910 General Industry Regulations; 29 CFR 1926 Construction Industry Regulations; and the Rules of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, CHAPTER 0800-01-1 through CHAPTER 0800-01-11 are the standards and rules invoked.

**Section 2-384. Variances from standards authorized**

The Safety Administrator may apply for a variance as a result of a complaint from an employee or of his knowledge of certain hazards or exposures. The Safety Administrator should definitely believe that a variance is needed before the application for a variance is submitted to the Commissioner of Labor and Workforce Development

The procedure for applying for a variance to the adopted safety and health standards is as follows:

- a. The application for a variance shall be prepared in writing and shall contain:
  1. A specification of the standard or portion thereof from which the variance is sought.
  2. A detailed statement of the reason(s) why the employer is unable to comply with the standard supported by representations by qualified personnel having first-hand knowledge of the facts represented.
  3. A statement of the steps employer has taken and will take (with specific date) to protect employees against the hazard covered by the standard.
  4. A statement of when the employer expects to comply and what steps have or will be taken (with dates specified) to come into compliance with the standard.
  5. A certification that the employer has informed employees, their authorized representative(s), and/or interested parties by giving them a copy of the request, posting a statement summarizing the application (to include the location of a copy available for examination) at the places where employee notices are normally posted and by other appropriate means. The certification shall contain a description of the means actually used to inform employees and that employees have been informed of their right to petition the Commissioner of Labor and Workforce Development for a hearing.
- b. The application for a variance should be sent to the Commissioner of Labor and Workforce Development by registered or certified mail.
- c. The Commissioner of Labor and Workforce Development will review the application for a variance and may deny the request or issue an order granting the variance. An order granting a variance shall be issued only if it has been established that:
  1. The employer
    - i. Is unable to comply with the standard by the effective date

because of unavailability of professional or technical personnel or materials and equipment required or necessary construction or alteration of facilities or technology; or

- ii. Has taken all available steps to safeguard employees against the hazard(s) covered by the standard; or
  - iii. Has an effective Program Plan for coming into compliance with the standard as quickly as possible.
2. The employee is engaged in an experimental Program Plan as described by the TOSHACT.
- d. A variance may be granted for a period of no longer than is required to achieve compliance or one (1) year, whichever is shorter.
  - e. Upon receipt of an application for an order granting a variance, the Commissioner to whom such application is addressed may issue an interim order granting such a variance for the purpose of permitting time for an orderly consideration of such application. No such interim order may be effective for longer than one hundred eighty (180) days.
  - f. The order or interim order granting a variance shall be posted at the worksite and employees notified of such order by the same means used to inform them of the application for said variance.

#### **Section 2-385. Inspections**

It is the intention of the City and responsible officials to have an occupational safety and health program that will insure the welfare of employees. In order to be aware of hazards, periodic inspections must be performed. These inspections will enable the identification of hazards or unsafe conditions or operations that will require correction in order to maintain safe and healthful worksites. Inspections made on a pre-designated basis may not yield the desired results. Inspections will be conducted, therefore, on a random basis at intervals not to exceed thirty (30) calendar days.

#### **Advance Notice of Inspections**

- 1. Generally, advance notice of inspections will not be given, as this precludes the opportunity to make minor or temporary adjustments in an attempt to create misleading impression of conditions in an establishment.
- 2. There may be occasions when advance notice of inspections will be necessary in order to conduct an effective inspection or investigation. When advance notice of inspection is given, employees or their authorized representative(s) will also be given notice of the inspection.

#### **Authorization**

In order to carry out the purposes of this program, the Safety Administrator or the Administrator's designee or authorized representative(s), are authorized:

- 1. To enter without delay and at any reasonable time, any establishment, facility, construction site, plant or any other worksite, area, work place or environment where work is being performed by an employee of the City; and

2. To inspect and investigate during regular working hours and at other reasonable times, within reasonable limits, and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and to interview any supervisor, operator, agent, or employee working therein.
3. If an imminent danger situation is found, alleged, or otherwise brought to the attention of the Safety Administrator or designee during a routine inspection, he/she shall immediately inspect the imminent danger situation in accordance with Section XI of this plan before inspecting the remaining portions of the establishment, facility, or worksite.
4. A management representative and an employee representative shall be given an opportunity to consult with or to accompany the inspector during the physical inspection of any work place for the purpose of aiding such inspection. The right of accompaniment may be denied to any person whose conduct interferes with a full and orderly inspection.
5. The inspection shall be such as to preclude unreasonable disruptions of the operations of the workplace or establishment.
6. Interviews of employees during the course of the inspection may be made when such interviews are essential to the investigation.
7. The Safety Administrator or designee need not personally make an inspection of each and every worksite once every thirty (30) days. He may delegate the responsibility for such inspections to supervisors or other personnel provided:
8. Inspections conducted by supervisors or other personnel should be at least as effective as those made by the Safety Administrator or designee.
9. Records are made of the inspections, discrepancies found and corrective actions taken. This information is forwarded to the Safety Administrator. The Safety Administrator shall maintain records of inspections to include identification of worksite inspected, dates of inspection, description of violations of standards or other unsafe conditions or practices found, and corrective action taken toward abatement. Those inspection records shall be subject to review by the Commissioner of Labor and Workforce Development or his authorized representative.

#### **Section 2-386. Notice of Unsafe or Unhealthy Conditions Hearings**

- a. If upon an inspection or investigation, the Safety Administrator or the Administrator's authorized representative, finds that any work place is not in compliance with any applicable standard, rule, regulation, or order, the Safety Administrator shall, with reasonable promptness, issue to the administrative officer responsible for the workplace a written notice that states:
  - (1) the nature and location of the violation;
  - (2) the standard rule, regulation or order violated;
  - (3) the abatement and correction requirements; and
  - (4) a period of time during which such abatement and correction must be accomplished.

If required by the Safety Administrator or the Safety Administrator's representative, a copy of such notice shall immediately be posted at the location referred to in the notice and remain posted until the alleged violation has been corrected or vacated.

- b. At any time within ten (10) days after receipt of such Notice of Unsafe or Unhealthful Conditions, anyone affected may advise the Safety Administrator of objections to the terms and conditions of the notice. Upon receipt of such objections and after an investigation, the Safety Administrator shall determine whether such notice as written should be affirmed, modified or vacated.

#### **Section 2-387. Penalties**

- a. No civil or criminal penalties shall be issued against any official, employee, or any other person for failure to comply with safety and health standards or any rules or regulations issued pursuant to this Program Plan.
- b. Any employee, regardless of status, who willfully and/or repeatedly violates, or causes to be violated, any safety and health standard, rule, or regulation or any abatement order shall be subject to disciplinary action by the appointing authority. It shall be the duty of the appointing authority to administer discipline by taking action in one of the following ways as appropriate and warranted:
  - 1. Oral reprimand.
  - 2. Written reprimand.
  - 3. Suspension for three (3) or more working days.
  - 4. Termination of employment.
- c. The employee being disciplined under this paragraph shall have all usual rights of appeal regarding any discipline received based on whether the employee is temporary or permanent, and whether the employee is appointed or serves in a Civil Service position.

#### **Section 2-388. Recordkeeping and Reporting**

Details of how reports of occupational accidents, injuries, and illnesses will reach the record-keeper are specified by ACCIDENT REPORTING PROCEDURES, Appendix IV to this plan. The Rule of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, OCCUPATIONAL SAFETY AND HEALTH RECORD-KEEPING AND REPORTING, CHAPTER 0800-01-03, as authorized by T.C.A., Title 50.

#### **Section 2-389. Administration**

- a. The Safety Administrator of Occupational Safety and Health is designated to perform duties or to exercise powers assigned so as to administer this Occupational Safety and Health Program.
  - 1. The Safety Administrator of Occupational Safety and Health may designate person or persons as the Safety Administrator deems necessary to carry out the Safety Administrator's powers, duties, and responsibilities under this program.
  - 2. The Safety Administrator of Occupational Safety and Health may delegate the power to make inspections, provided procedures employed are as effective as those employed by the Safety Administrator.
  - 3. The Safety Administrator of Occupational Safety and Health shall employ measures to coordinate, to the extent possible, activities of all departments to promote efficiency and to minimize any inconveniences under this program.

4. The Safety Administrator of Occupational Safety and Health or designee may request qualified technical personnel from any department or section of government to assist him in making compliance inspections, accident investigations, or as the Safety Administrator may otherwise deem necessary and appropriate in order to carry out his duties under this program.
  5. The Safety Administrator of Occupational Safety and Health or designee shall prepare all required reports to the Commissioner of Labor and Workforce Development required by subsection (g) of Section 1 of this plan.
  6. The Safety Administrator of Occupational Safety and Health shall make or cause to be made periodic and follow-up inspections of all facilities and worksites where employees of this employer are employed. He shall make recommendations to correct any hazards or exposures observed. He shall make or cause to be made any inspections required by complaints submitted by employees or inspections requested by employees.
  7. The Safety Administrator of Occupational Safety and Health shall assist any officials of the employer in the investigation of occupational accidents or illnesses.
  8. The Safety Administrator of Occupational Safety and Health shall maintain or cause to be maintained records required by this plan.
  9. The Safety Administrator of Occupational Safety and Health or designee shall, in the eventuality that there is a fatality or an accident resulting in the hospitalization of three or more employees, insure that the Commissioner of Labor and Workforce Development receives notification of the occurrence within eight (8) hours from the time that the Safety Administrator or designee learned of such occurrence.
- b. The administrative or operational head of each department, division, service center, board, or other agency of the City shall be responsible for the implementation of this occupational safety and health program within their respective areas.
1. The administrative or operational head shall follow the directions of the Safety Administrator on all issues involving occupational safety and health of employees as set forth in this plan.
  2. The administrative or operational head shall comply with all abatement orders issued in accordance with the provisions of this plan or request a review of the order with the Safety Administrator within the abatement period.
  3. The administrative or operational head should make periodic safety surveys of the establishment under his jurisdiction to become aware of hazards or standards violations that may exist and make an attempt to immediately correct such hazards or violations.
  4. The administrative or operational head shall investigate all occupational accidents, injuries, or illnesses reported to him. He shall report such accidents, injuries, or illnesses to the Safety Administrator or designee along with his findings and/or recommendations.

**Section 2-390. Compliance with City or State regulations not to excuse compliance with the other.**

Compliance with any other law, statute, resolution, or executive order, as applicable, which regulates safety and health in employment and places of employment shall not excuse the employer, the employee, or any other person from compliance with the provisions of this program.

Compliance with any provisions of this program or any standard, rule, regulation, or order issued pursuant to this program shall not excuse the employer, the employee, or any other person from compliance with the law, statute, resolution, or executive order, as applicable, regulating and promoting safety and health unless such law, statute, resolution, or executive order, as applicable, is specifically repealed.

**Section 2-391 A      EMPLOYEE COMPLAINT PROCEDURE**

1. If any employee feels that he is assigned to work in conditions which might affect his health, safety, or general welfare at the present time or at any time in the future, he should report the condition to the Safety Administrator of Occupational Safety and Health.
2. The complaint should be in the form of a letter and give details on the condition(s) and how the employee believes it affects or will affect his health, safety, or general welfare. The employee should sign the letter but need not do so if he wishes to remain anonymous (see subsection (h) of Section 1 of this plan).
3. Upon receipt of the complaint letter, the Safety Administrator will evaluate the condition(s) and institute any corrective action, if warranted. Within ten (10) working days following the receipt of the complaint, the Safety Administrator will answer the complaint in writing stating whether or not the complaint is deemed to be valid. If valid, what action has been or will be taken to correct or abate the condition(s), and the designated time period for correction or abatement. Answers to anonymous complaints will be posted upon bulletin boards or other places of common passage where the anonymous complaint may be reasonably expected to be seen by the complainant for a period of three (3) working days.
4. If the complainant finds the reply not satisfactory because it was held to be invalid, the corrective action is felt to be insufficient, or the time period for correction is felt to be too long, he may forward a letter to the Chief Executive Officer or to the City Council explaining the condition(s) cited in his original complaint and why he believes the answer to be inappropriate or insufficient.
5. The Chief Executive Officer or the City Council will evaluate the complaint. If warranted, the Chief Executive officer or City Council will begin to take action to correct or abate the condition(s) through arbitration or administrative sanctions. An answer with a decision concerning the complaint will be sent to the complainant within ten (10) working days following receipt of the complaint or the next regularly scheduled meeting of the City Council whichever is greater.
6. After the above steps have been followed and the complainant is still not satisfied with the results, he may then file a complaint with the Commissioner of Labor and Workforce Development. Any complaint filed with the Commissioner of Labor and Workforce Development shall include copies of all related correspondence with the Safety Administrator and the Chief Executive Officer or the representative of the governing body.
7. Copies of all complaints and answers thereto will be filed by the Safety Administrator who shall make them available to the Commissioner of Labor and Workforce Development or his

designated representative upon request.

**Section 2-391 B., Education and Training**

**a. Safety Administrator and/or Inspector(s):**

1. Arrangements will be made for the Safety Administrator and/or designee Safety Coordinator to attend training seminars, workshops, etc., conducted by the State of Tennessee or other agencies. .
2. Access to reference materials such as 29 CFR 1910 General Industry Regulations; 29 CFR 1926 Construction Industry Regulations; The Rules of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, and other equipment/supplies, deemed necessary for use in conducting compliance inspections, conducting local training, wiring technical reports, and informing officials, supervisors, and employees of the existence of safety and health hazards will be furnished.

**b. A suitable safety and health training program for employees will be established. This program will, at a minimum:**

1. Instruct each employee in the recognition and avoidance of hazards or unsafe conditions and of standards and regulations applicable to the employee's work environment to control or eliminate any hazards, unsafe conditions, or other exposures to occupational illness or injury.
2. Instruct employees who are required to handle or use poisons, acids, caustics, toxicants, flammable liquids, or gases including explosives, and other harmful substances in the proper handling procedures and use of such items and make them aware of the personal protective measures, personal hygiene, etc., which may be required.
3. Instruct employees who may be exposed to environments where harmful plants or animals are present of the hazards of the environment on how to best avoid injury or exposure, and the first aid procedures to be followed in the event of injury or exposure.
4. Instruct all employees of the common deadly hazards and how to avoid them, such as Falls; Equipment Turnover; Electrocution; Struck by/Caught In; Trench Cave In; Heat Stress, Confined Spaces and Drowning.
5. Instruct employees on hazards and dangers of confined or enclosed spaces.
  - i. "Confined or enclosed space" means a space having a limited means of egress and which is subject to the accumulation of toxic or flammable contaminants or has an oxygen deficient atmosphere. Confined or enclosed spaces include, but are not limited to, storage tanks, boilers, ventilation or exhaust ducts, sewers, underground utility accesses, tunnels, pipelines, lift stations and open top spaces more than four feet (4') in depth such as pits, tubs, vaults, and vessels.
  - ii. Employees will be given general instruction on hazards involved, precautions to be taken, and on use of personal protective and

emergency equipment required. They shall also be instructed on all specific standards or regulations that apply to work in dangerous or potentially dangerous areas.

- iii. The immediate supervisor of any employee who must perform work in a confined or enclosed space shall be responsible for instructing employees on danger of hazards which may be present, precautions to be taken, and use of personal protective and emergency equipment, immediately prior to their entry into such an area and shall require use of appropriate personal protective equipment.

#### **Section 2-392. Imminent Danger Procedures**

- a. Any discovery, any allegation, or any report of imminent danger shall be handled in accordance with the following procedures:
  1. The Safety Administrator or Safety Coordinator or their designee shall immediately be informed of the alleged imminent danger situation and he shall immediately ascertain whether there is a reasonable basis for the allegation.
  2. If the alleged imminent danger situation is determined to have merit by the Safety Administrator he shall make or cause to be made an immediate inspection of the alleged imminent danger location.
  3. As soon as it is concluded from such inspection that conditions or practices exist which constitute an imminent danger, the Safety Administrator or Safety Coordinator or Inspector shall attempt to have the danger corrected. All employees at the location shall be informed of the danger and the supervisor or person in charge of the worksite shall be requested to remove employees from the area, if deemed necessary.
  4. The administrative or operational head of the workplace in which the imminent danger exists, or his authorized representative, shall be responsible for determining the manner in which the imminent danger situation will be abated. This shall be done in cooperation with the Safety Administrator or Safety Coordinator and to the mutual satisfaction of all parties involved.
  5. The imminent danger shall be deemed abated if:
    - i. The imminence of the danger has been eliminated by removal of employees from the area of danger.
    - ii. Conditions or practices which resulted in the imminent danger have been eliminated or corrected to the point where an unsafe condition or practice no longer exists.
  6. A written report shall be made by or to the Safety Administrator describing in detail the Imminent danger and its abatement. This report will be maintained by Safety Administrator in accordance with state guidelines and regulations.
- b. Refusal to Abate.

1. Any refusal to abate an imminent danger situation shall be reported to the Safety Administrator and Chief Executive Officer immediately.
2. Safety Administrator and/or Chief Executive Officer shall take whatever action may be necessary to achieve abatement.

#### **ABATEMENT ORDERS AND HEARINGS**

- a. Whenever, as a result of an inspection or investigation, the Safety Administrator or Safety Coordinator(s) finds that a worksite is not in compliance with the standards, rules or regulations pursuant to this plan and is unable to negotiate abatement with the administrative or operational head of the worksite within a reasonable period of time, the Safety Administrator shall:
  1. Issue an abatement order to the head of the worksite.
  2. Post or cause to be posted, a copy of the abatement order at or near each location referred to in the abatement order.
- b. Abatement orders shall contain the following information:
  1. The standard, rule, or regulation which was found to violated.
  2. A description of the nature and location of the violation.
  3. A description of what is required to abate or correct the violation.
  4. A reasonable period of time during which the violation must be abated or corrected.
- c. At any time within ten (10) days after receipt of an abatement order, anyone affected by the order may advise the Safety Administrator in writing of any objections to the terms and conditions of the order. Upon receipt of such objections, the Safety Administrator shall refer the matter to the CAO to conduct an investigation or hearing if necessary with all interested and/or responsible parties in an effort to resolve any objections. Within (5) working days after completion of the investigation or hearing, a decision will be issued that shall be binding on all parties and final.

#### **Section 2-393. Confidentiality of Privileged Information**

All information obtained by or reported to the Safety Administrator or designee pursuant to this plan of operation or the legislation (Ordinance, or Executive Order) enabling this occupational safety and health program which contains or might reveal information which is otherwise privileged shall be considered confidential to the extent allowed by law. In addition to making disclosures as required by law, the City may provide when relevant in any proceeding under this program. This information may also be disclosed to the Commissioner of Labor and Workforce Development or their authorized representatives in carrying out their duties under the Tennessee Occupational Safety and Health Act of 1972.

#### **Section 2-394. Reserved.**

**SECTION 2. BE IT FURTHER ORDAINED**, that the provisions of this Ordinance are hereby severable. If any of said sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

**SECTION 3. BE IT FURTHER ORDAINED**, that this Ordinance shall take effect from and after the date it shall have been passed by the City Council, signed by

from and after the date it shall have been passed by the City Council, signed by the Chairman of the Council, certified and delivered to the office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

## **XVI. DISCRIMINATION INVESTIGATIONS AND SANCTIONS**

Pursuant to the Tennessee Department of Labor and Workforce Development Occupational Safety and Health, DISCRIMINATION AGAINST EMPLOYEES EXERCISING RIGHTS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1972 0800-01-08, as authorized by T.C.A., Title 50., any employee who believes they have been discriminated against or discharged in violation of Tenn. Code Ann § 50-3-409 can file a complaint with the Safety Administrator or the EEO/Labor Relations Office within 30 days, after the alleged discrimination occurred. Also, the agency agrees the employee has a right to file their complaint with the Commissioner of Labor and Workforce Development within the same 30 day period. The Commissioner of Labor and Workforce Development may investigate such complaints, make recommendations, and/or issue a written notification of a violation.

## **XVII. COMPLIANCE WITH OTHER LAWS NOT EXCUSED**

- a. Compliance with any other law, statute, ordinance, or executive order, which regulates safety and health in employment and places of employment, shall not excuse the employer, the employee, or any other person from compliance with the provisions of this Program Plan.
- b. Compliance with any provisions of this Program Plan or any standard, rule, regulation, or order issued pursuant to this Program Plan shall not excuse the employer, the employee, or any other person from compliance with the law, statute, ordinance, or executive order, as applicable, regulating and promoting safety and health unless such law, statute, ordinance, or executive order, as applicable, is specifically repealed.



## Memphis City Council Summary Sheet

### Resolution for the RIVERGATE OVER NONCONNAH CREEK BRIDGE REPAIR ST03104:

1. Project to repair the footings on Rivergate Bridge over Nonconnah Creek.
2. This project is initiated by the Public Works Division in response to the recommendation of the City Engineer after determining that foundation scouring caused by fast moving storm water in Nonconnah Creek requires repair.
3. This project is part of the Storm Water Enterprise fund and is funded as RIVERGATE OVER NONCONNAH CREEK BRIDGE REPAIR ST03104 for the existing storm water infrastructure.
4. A contract with Chris Hill Construction is recommended.

This resolution is for the repair of the Rivergate Bridge over Nonconnah Creek.

**WHEREAS**, the Council of the City of Memphis approved Bridge Repair Storm Water, project number ST03083, as part of the Public Works Fiscal Year 2014 Capital Improvement Budget; and

**WHEREAS**, the City of Memphis took bids on July 12, 2013 to repair the footing on Rivergate Bridge over Nonconnah Creek with the lowest complying bid of two bids being \$426,542.50 submitted by Chris Hill Construction; and

**WHEREAS**, it is necessary to transfer an allocation of \$460,666.00 funded by G.O. Bonds – General (Storm Water) from Bridge Repair Storm Water, project number ST03083 to Rivergate Scour Project, project number ST03104 to repair the footing on Rivergate Bridge over Nonconnah Creek; and

**WHEREAS**, it is necessary to appropriate \$460,666.00 funded by G.O. Bonds – General (Storm Water) in Rivergate Scour Project, project number ST03104 as follows:

<b>Contract Amount</b>	<b>\$426,542.00</b>
<b>Project Contingencies</b>	<b><u>34,124.00</u></b>
<b>Total Amount</b>	<b>\$460,666.00</b>

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis that the Fiscal Year 2014 Capital Improvement Budget be and is hereby amended by transferring an allocation of \$460,666.00 funded by G.O. Bonds – General (Storm Water) from Bridge Repair Storm Water, project number ST03083, to Rivergate Scour Project, project number ST03104 to repair the footing on Rivergate Bridge over Nonconnah Creek.

**BE IT FURTHER RESOLVED**, that there be and is hereby appropriated the sum of \$460,666.00 funded by G.O. Bonds – General (Storm Water) chargeable to the FY 2014 Capital Improvement Budget and credited as follows:

<b>Project Title</b>	<b>Rivergate Scour Project</b>
<b>Project Number</b>	<b>ST03104</b>
<b>Amount</b>	<b>\$460,666.00</b>



## **Memphis City Council Summary Sheet**

### **1. Description of the Item (Resolution, Ordinance, etc.)**

This resolution will amend the FY14 operating budget, transferring heavy equipment maintenance operation from the Solid Waste Management Department to the Drain Maintenance/Heavy Equipment Department. Both of these departments are housed in Public Works.

### **2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

Public Works Division is making this request to improve operational efficiency.

### **3. State whether this is a change to an existing ordinance or resolution, if applicable.**

This will modify the adopted FY14 Operating Budget.

### **4. State whether this requires a new contract, or amends an existing contract, if applicable.**

This will not require any new, or affect any current, contractual obligations.

### **5. State whether this requires an expenditure of funds/requires a budget amendment.**

This will require a budget amendment. Solid Waste Management will transfer funds from its FY14 salaries and benefits line to its materials and supplies line. The Storm Water fund balance will be reduced in the FY14 operating budget and Heavy Equipment's personnel line will be increased. These changes are necessary to account for cost recovery from the Solid Waste Management fund for services received from the Storm Water fund through Heavy Equipment in FY14.

## RESOLUTION

**WHEREAS**, the Council of the City of Memphis approved the Fiscal Year 2014 Operating Budget Appropriation Ordinance 5509 effective July 1, 2013; and

**WHEREAS**, it is necessary to amend the Fiscal Year 2014 Operating Budget by transferring (3) Heavy Equipment Mechanics and (1) Lead Heavy Equipment Mechanic from Solid Waste Management, reducing the authorized complement to 615 to Heavy Equipment, increasing the authorized complement to 62; and

**WHEREAS**, it is necessary to amend the Fiscal Year 2014 Operating Budget by transferring \$192,610.00 from Salaries and Benefits to Materials and Supplies in the Solid Waste Management fund by \$192,610.00;and

**WHEREAS**, it is necessary to amend the Fiscal Year 2014 Operating Budget by reducing the Storm Water fund balance \$297,415.00 and increasing the Heavy Equipment Personnel Budget by \$297,415.00;and

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis that the Fiscal Year 2014 Operating Budget is hereby amended by transferring (3) Heavy Equipment Mechanics and (1) Lead Heavy Equipment Mechanic from Solid Waste Management , reducing the authorized complement to 615 to Heavy Equipment, increasing the authorized complement to 62.

**BE IT FURTHER RESOLVED**, that the Fiscal Year 2014 Operating Budget is hereby amended by transferring \$192,610.00 from Salaries and Benefits to Materials and Supplies in the Solid Waste fund.

**BE IT FURTHER RESOLVED**, that the Fiscal Year 2014 Operating Budget is hereby amended reducing the Storm Water fund balance and increasing the Heavy Equipment Personnel budget by \$297,415.00.



**Memphis City Council  
Summary Sheet  
Cypress Creek Pumping Station Electrical Rehab**

1. This is a construction project to completely upgrade the electrical components at the Cypress Creek Pump Station.
2. This item is being submitted by Public Works (Environmental Engineering)
3. This item does not change an existing ordinance or resolution.
4. This item does require a new contract.
5. This item requires an expenditure of funds.
6. The MWBE Goal for this project was 8% MBE and 2% WBE.

This is a resolution is to appropriate construction funds to completely upgrade the electrical components at the Cypress Creek Pump Station.

**WHEREAS**, the Council of the City of Memphis approved Major Drainage Rehab/Replace, project number ST03006, as part of the Public Works Fiscal Year 2014 Capital Improvement Budget; and

**WHEREAS**, bids were taken on August 23, 2013 to upgrade the electrical components at the Cypress Creek Pump Station with the lowest complying bid of three bids being \$2,687,136.00 submitted by Tri-State Armature & Electrical Works, Inc; and

**WHEREAS**, it is necessary to transfer an allocation of \$2,955,850.00 funded by G O Bonds – General (Storm Water) from Major Drainage Rehab/Replace, project number ST03006, Cypress Creek Pump Station Electrical Rehab, project number ST03160; and

**WHEREAS**, it is necessary to appropriate \$2,955,850.00 funded by G O Bonds – General (Storm Water) in Cypress Creek Pump Station Electrical Rehab, project number ST03160 as follows:

<b>Contract Amount</b>	<b>2,687,136.00</b>
<b>Project Contingencies</b>	<b>\$ <u>268,714.00</u></b>
<b>Total Amount</b>	<b>\$ 2,955,850.00</b>

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis that the Fiscal Year 2014 Capital Improvement Budget be and is hereby amended by transferring an allocation of \$2,955,850.00 funded by G O Bonds – General (Storm Water) from Major Drainage Rehab/Replace, project number ST03006, to Cypress Creek Pump Station Electrical Rehab, project number ST03160.

**BE IT FURTHER RESOLVED**, that there be and is hereby appropriated the sum of \$2,955,850.00 funded by G O Bonds – General (Storm Water) chargeable to the FY 2014 Capital Improvement Budget and credited as follows:

<b>Project Title</b>	<b>Cypress Creek Pump Station Electrical Rehab</b>
<b>Project Number</b>	<b>ST03160</b>
<b>Total Amount</b>	<b>\$2,955,850.00</b>



## **Memphis City Council Summary Sheet Instructions**

1. Resolution appropriates the sum of \$300,000.00 in Other Project Cost to continue the implementation of the Urban Art Plan, CIP Project Number EN01003 funded by G. O. Bonds.
2. Division of Engineering
3. There is not a change to an existing ordinance or resolution.
4. Resolution does not require a new or amended contract.
5. This resolution requires an appropriation of \$300,000.00 in CIP funds funded by G. O. Bonds chargeable to FY 2014 Capital Improvement Budget.

**RESOLUTION**

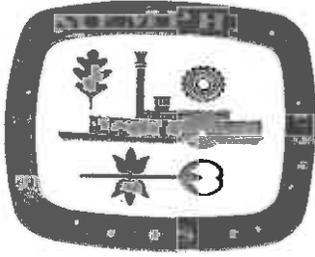
WHEREAS, the Council of the City of Memphis did include Urban Art, CIP Number EN01003 as part of the FY 2014 Capital Improvement Budget; and

WHEREAS, it is necessary to appropriate funds in the amount of \$300,000.00 in Other Cost funded by G. O. Bonds General, in other project costs to continue the implementation of the Urban Art Plan.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that there be and is hereby appropriated the sum of \$300,000.00 in Other Cost funded by G. O. Bonds General, chargeable to FY 2014 Capital Improvement Budget with said appropriation being credited as follows:

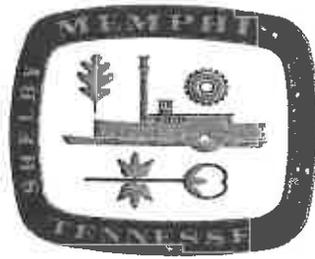
<b>Project Title:</b>	<b>Urban Art</b>	<b>\$300,000.00</b>
<b>Project Number:</b>	<b>EN01003</b>	<b>G. O. Bonds</b>

**Housing and Community Development  
Cleaborn Pointe at Heritage Landing/Heritage Trails Project-Summary Sheet**



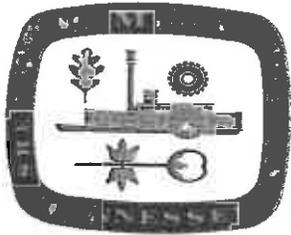
**Memphis City Council Summary Sheet**

1. Item is a resolution appropriating the sum of \$3,000,000.00 in GO Bonds chargeable to the FY2014 Capital Improvement Budget to the Cleaborn Pointe at Heritage Landing/Heritage Trails Project.
2. The initiating party is the Division of Housing and Community Development and Memphis Housing Authority.
3. The resolution is not a change to existing ordinance or resolution.
4. A new contract will be required.
5. An expenditure of funds will be required.



## **Memphis City Council Summary Sheet**

- 1. Resolution for the fiscal year of 2014 to approve the City of Memphis - Division of Housing and Community Development's leases and / or sub-leases of Memphis City property that may be subject to City of Memphis Ordinance 2-291 relating to Real Property.**
- 2. Division of Housing & Community Development**
- 3. Not Applicable**
- 4. This requires a new contract (a new Lease Agreement).**
- 5. This does not require an expenditure of funds or a budget amendment.**



*Resolution for the fiscal year of 2014 to approve the City of Memphis - Division of Housing and Community Development's leases and / or sub-leases of Memphis City property that may be subject to City of Memphis Ordinance 2-291 relating to Real Property.*

## RESOLUTION

**WHEREAS**, City of Memphis Ordinance 2-291 relating to Real Property provides language and processes for the disposition of City of Memphis properties through sale, exchange or transfer; and

**WHEREAS**, it is clear and concise per said language that City of Memphis Ordinance 2-291 relates to the disposition of real property belonging to the City of Memphis; and

**WHEREAS**, for the purposes of Ordinance 2-291 relating to Real Property any lease or license agreement two (2) years or more shall be considered a conveyance and shall be submitted to City Council for approval; and

**WHEREAS**, for the purposes of Ordinance 2-291 any extensions or renewals bringing the total term to two (2) years or more shall be included as a conveyance; and

**WHEREAS**, in the context of leases, a new lease that is merely a reexecution of the old lease, and does not confer any greater obligations or rights than those in the old lease, said transaction is a renewal of the old lease; and

**WHEREAS**, the Division of Housing and Community Development of the City of Memphis leases and / or sub-leases City of Memphis property that may be subject to City of Memphis Ordinance 2-291 relating to Real Property; and

**WHEREAS**, the Division of Housing and Community Development of the City of Memphis shall submit its leases and / or sub-leases to the City Council of Memphis City for approval; and

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE, that:**

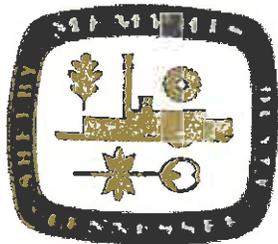
1. The Lease Agreements between the City of Memphis and the Lessees listed on **Exhibit A** are hereby approved at the rates specified on **Exhibit A**.

2. The term of the Lease Agreements between the City of Memphis and the Lessees listed on **Exhibit A** shall be as specified on **Exhibit A**.

3. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

4. **BE IT FURTHER RESOLVED**, that for the fiscal year of 2014, the City Mayor is hereby authorized to execute all documents necessary to lease and / or sub-lease the properties listed on **Exhibit A** to the Lessees listed on **Exhibit A** for the term therein specified.





## City Council Item Routing Sheet

Ordinance

Resolution

Grant Acceptance

Budget Amendment

Commendation

Other: [Click here to enter text.](#)

**Item Description:** creates a program to leverage the fees paid for "inner city economic development" by applicants equal to 5% of personal property taxes abated under PILOT Agreements to spur economic development in distressed neighborhoods by improving the quality of inner city commercial corridors and neighborhood serving businesses. Fees paid to date total \$508K. This Resolution transfers this money to EDGE and allows future fees paid to remain with EDGE to be used as prescribed by the program.

**Recommended Council Action:** Approve the Resolution

**Describe previous action taken by any other entity (i.e. board, commission, task force, council committee, etc.) and date of any action taken:** The program was developed by the City of Memphis, the Mayor's Innovation Delivery Team, EDGE (who will manage the program) and community organizations.

**Does this item require city expenditure? NO**

**Amount** Transfer of \$508,389.21 of PILOT fees to EDGE

**\$Click here to enter text. Revenue to be received**

**Source and Amount of Funds**

\$ **Operating Budget**

**\$Click here to enter text. CIP Project #Click here to enter text.**

**\$508,389.21 PILOT fees collected Federal/State/Other**

### Approvals

Director \_\_\_\_\_ Date \_\_\_\_\_

Director \_\_\_\_\_ Date \_\_\_\_\_

Budget Manager \_\_\_\_\_ Date \_\_\_\_\_

Finance Director \_\_\_\_\_ Date \_\_\_\_\_

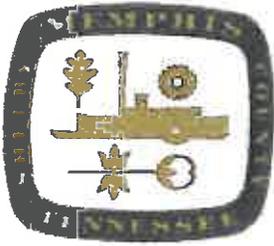
City Attorney \_\_\_\_\_ Date \_\_\_\_\_

**Chief Administrative Officer**

\_\_\_\_\_ Date \_\_\_\_\_

**Council Committee Chair**

\_\_\_\_\_ Date \_\_\_\_\_



## Memphis City Council Summary Sheet

### 1. Description of the Item (Resolution, Ordinance, etc.)

Since 2009 the PILOT rules require that for all personal property subject to a PILOT agreement, the applicant shall pay a fee of 5% to the City of Memphis (up to \$50,000) of the taxes otherwise due which are restricted to be used for "inner city economic development." When the fee was established no guidance was given on how the fees can be used.

This Resolution allows these fees to be leveraged and used for their intended purpose, to spur economic development in distressed neighborhoods by improving the quality of inner city commercial corridors and neighborhood serving businesses. Fees paid to date total \$508K. This Resolution transfers this money to EDGE and allows future fees paid to remain with EDGE to be used as prescribed by the program.

### 2. Initiating Party (e.g. Public Works, at request of City Council, etc.)

Program developed by Mayor's Office, Innovation Delivery Team, EDGE, and community partners

### 3. State whether this is a change to an existing ordinance or resolution, if applicable.

N/A

### 4. State whether this requires a new contract, or amends an existing contract, if applicable.

N/A

### 5. State whether this requires an expenditure of funds/requires a budget amendment.

There is no expenditure of city funds. This Resolution transfers the accumulated fees to EDGE, allows EDGE to retain future fees paid, and presents the program to allow these funds to be used to fulfill the intent of aiding inner city economic development.

## RESOLUTION

**WHEREAS**, in 2009, a comprehensive review of the Industrial Development Board of Memphis and Shelby County's Payment-In-Lieu-of-Tax (PILOT) Program was performed; among the adopted recommendations was that for all personal property subject to a PILOT agreement, the applicant shall pay a fee of 5% to the City of Memphis (up to \$50,000) of the taxes otherwise due; the revenue from these fees is to be "used to facilitate and strengthen inner city economic recovery;" and

**WHEREAS**, to date \$508,389.21 has accrued from payment of these Personal Property PILOT Fees for the purpose of inner city economic development though no companion program was presented to govern the use of these funds; and

**WHEREAS**, the Industrial Development Board of Memphis and Shelby County was absorbed into the Economic Development Growth Engine (EDGE) Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, and the accrued funds need to be transferred to the successor entity; and

**WHEREAS**, EDGE shall be authorized to hold and distribute these funds pursuant to a program developed to ensure that these funds are put to the highest and best use and have the greatest impact on distressed, high visibility commercial corridors within the City of Memphis; and

**WHEREAS**, there is a need for investment to spur economic development in distressed neighborhoods by improving the quality of core city commercial corridors and neighborhood serving businesses within the City of Memphis; and

**WHEREAS**, The Mayor's Innovation Delivery Team has identified three focus areas within the core City of Memphis to refine and test new approaches to neighborhood economic development, specifically relating to growing neighborhood serving businesses.

**NOW, THEREFORE BE IT RESOLVED**, that the funds that have accrued to date in the amount of \$508,389.21 for the purpose of inner city economic development from payment of Personal Property PILOT Fees be transferred and appropriated to EDGE to be administered consistent with the Inner City Economic Development Program (attached).

**BE IT FURTHER RESOLVED**, that EDGE is authorized to retain future Personal Property PILOT Fees to be paid into a fund for the sole purpose of awarding grants and loans for the purpose of inner city economic development. EDGE shall have authority approve grants and forgivable loans consistent with the Inner City Economic Development Program.

**BE IT FURTHER RESOLVED**, EDGE will report on the status of the fund and all grants and forgivable loans, to Memphis City Council, on a quarterly basis.

## Attachment A

### **Economic Development Growth Engine for Memphis and Shelby County Inner City Economic Development (ICED) Program Overview**

The EDGE Inner City Economic Development program (ICED) is designed to spur economic development in distressed neighborhoods by improving the quality of inner city commercial corridors and neighborhood serving businesses. This program will be developed in two phases.

#### **Phase 1: Program Testing and Refinement**

Working with The Mayor's Innovation Delivery Team (MIDT), EDGE will allocate an initial \$175,000 from the ICED fund to test and refine the types of investments that could occur within the ICED program. These test investments will be made in the South Memphis and Binghampton focus areas the boundaries of which are identified in Attachment B. This allocation will be leveraged with a contribution of \$50,000 from the MIDT for a total of \$225,000. The program will test low-cost strategies with the potential for high-return on investment, improvements to businesses ranging from corner stores, restaurants, general merchandise, and other neighborhood serving businesses. Program testing will be completed no later than October 2014 and unused funds reallocated to the general ICED program. The program budget will be allocated as follows:

<b>Core City Retail Enhancement - Neighborhood Retail Strategy/MEMShop</b>	
Business Façade and Interiors Improvement (Forgivable Loan)	\$125,000
Streetscape Improvements & Street Furniture	\$50,000
Improved Signage	\$20,000
Business Marketing Support	\$10,000
Business Mentorship/Consulting Work	\$20,000
<b>TOTAL</b>	<b>\$225,000</b>

- » A minimum of eight businesses will be assisted.
- » Applicants for the Business Façade and Interiors Improvement Forgivable Loan are eligible to borrow up to \$25,000 (contingent on funds) but must provide a dollar for dollar cash match of the funds borrowed.
- » To be eligible for the program applicants must submit a sealed engineering report stating that the applicant's building is structurally sound.
- » Improvement loans to businesses are forgivable at rate of 20% per year from the close of the loan.
- » An architect retained by EDGE/MIDT shall prepare plans for improvements performed under this program.
- » The applicant, working with the approved architect must submit bids to EDGE staff, select a contractor, and obtain necessary permits.
- » Upon receipt of a commitment letter from EDGE/MIDT, construction may begin.
- » Applicant shall submit draw requests as work continues. Prior to disbursing any funds, the draw request will be reviewed to ensure the work is in compliance with the plans and letter of commitment.
- » Businesses receiving forgivable loans will also receive up to 24 hours of business development consulting services and retail trends assistance.

Results of the test enhancement strategies will be tracked and those with the highest return on investment will be recommended for inclusion in the full ICED program.

## **Phase 2: Full Program Launch**

The EDGE Inner City Economic Development program (ICED) is designed to spur economic development in distressed neighborhoods by improving the quality of inner city commercial corridors and neighborhood serving businesses. Applications are available on a first come first served basis and are subject to availability of program funds. Clusters of buildings will be given preference, so as to maximize the program's impact. Please see the full application packet for complete instructions.

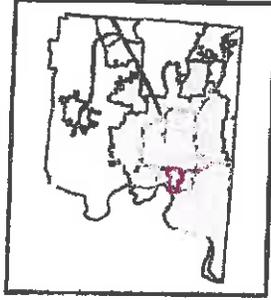
1. ICED funds may be used for purposes including but not limited to business façade and interior improvements, streetscape improvements, technical assistance from program affiliated architects and engineers, building improvements or renovations for new or expanding small businesses, and business mentorship/consulting work.
2. The majority of exterior work must be done on a street facing front or side of an existing building (e.g.: storefronts, gutters and downspouts, cornices, signs, graphics, exterior lighting, canopies, awnings, and masonry cleaning). Landscape improvements and outdoor patios are eligible as long as they are tied to a building façade improvement. The cost of permits is an eligible expense for the matching grant.
3. Façade improvement funds cannot be used to correct property damaged by collision, acts of nature or occurrences covered by insurance.
4. All work must comply with city, state and federal regulations and codes. Participants will be responsible for obtaining necessary regulatory approvals, including those of the Landmarks Commission where applicable, Construction Code Enforcement building permits and any other necessary permits.
5. Eligible applicants include both property owners and business lessees with a minimum of a five-year lease, and written authorization of the property owner.
6. Applications for loans or grants of ICED funds shall be reviewed by EDGE staff who shall make a recommendation of approval or rejection to the EDGE Board or its designated Committee, who shall make the award decision. The decision of EDGE on an application shall be final.
7. Submissions will be scored according to a matrix which awards additional point for applications made by a cluster of businesses, business association(s) or applications consistent with a neighborhood plan within a highly visible commercial corridor or area. Neighborhood buy in is key to the success of ICED Program projects. Neighborhood Association and Community Development Corporations should be engaged in the planning process and points will be awarded for forming such partnerships.
8. Applicants must utilize an architect employed by EDGE to prepare plans for improvements made pursuant to this program.
9. Once the loan is approved, applicant shall submit bids, select a contractor licensed by the State of Tennessee, and obtain necessary permits. Applicants are required to target at least 20 percent of the total project cost to certified Minority and Women Business Enterprises (MWBES). Exceeding the 20 percent MWBE target will positively impact an applicant's score. All contracts will be between the applicant and the contractor.

10. Upon receipt of a commitment letter from EDGE, construction may begin.
11. Applicant shall submit draw requests as work continues. Prior to disbursing any funds, the draw request will be reviewed to ensure the work is in compliance with the plans and letter of commitment.
12. Improvement loans to businesses are forgivable at a rate of 20% per year from the close of the loan.
13. The owner will maintain the building and all new façade improvements to the building for a five-year period. During this period any proposed changes to the façade including tenant signage on the building or windows will need to be approved by EDGE.
14. Businesses receiving forgivable loans will also receive up to 24 hours of business development consulting services and retail trends assistance.

# Neighborhood Economic Vitality

Focus Area:  
South Memphis

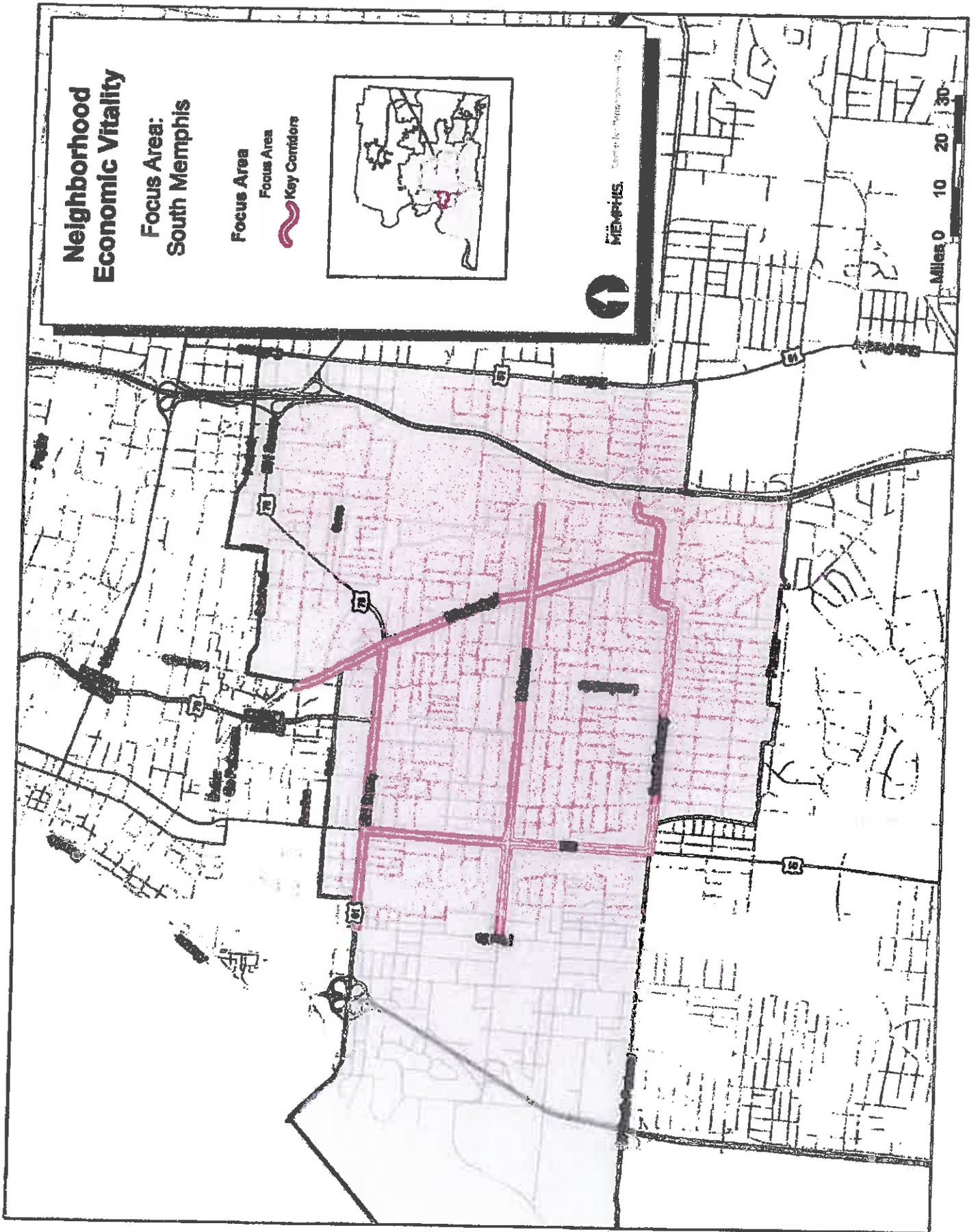
Focus Area  
Focus Area  
Key Corridors



MEMPHIS

Source: City of Memphis, 2010

Miles 0 10 20 30

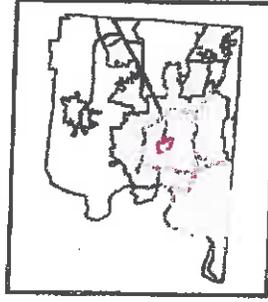


# Neighborhood Economic Vitality

Focus Area:  
Binghampton

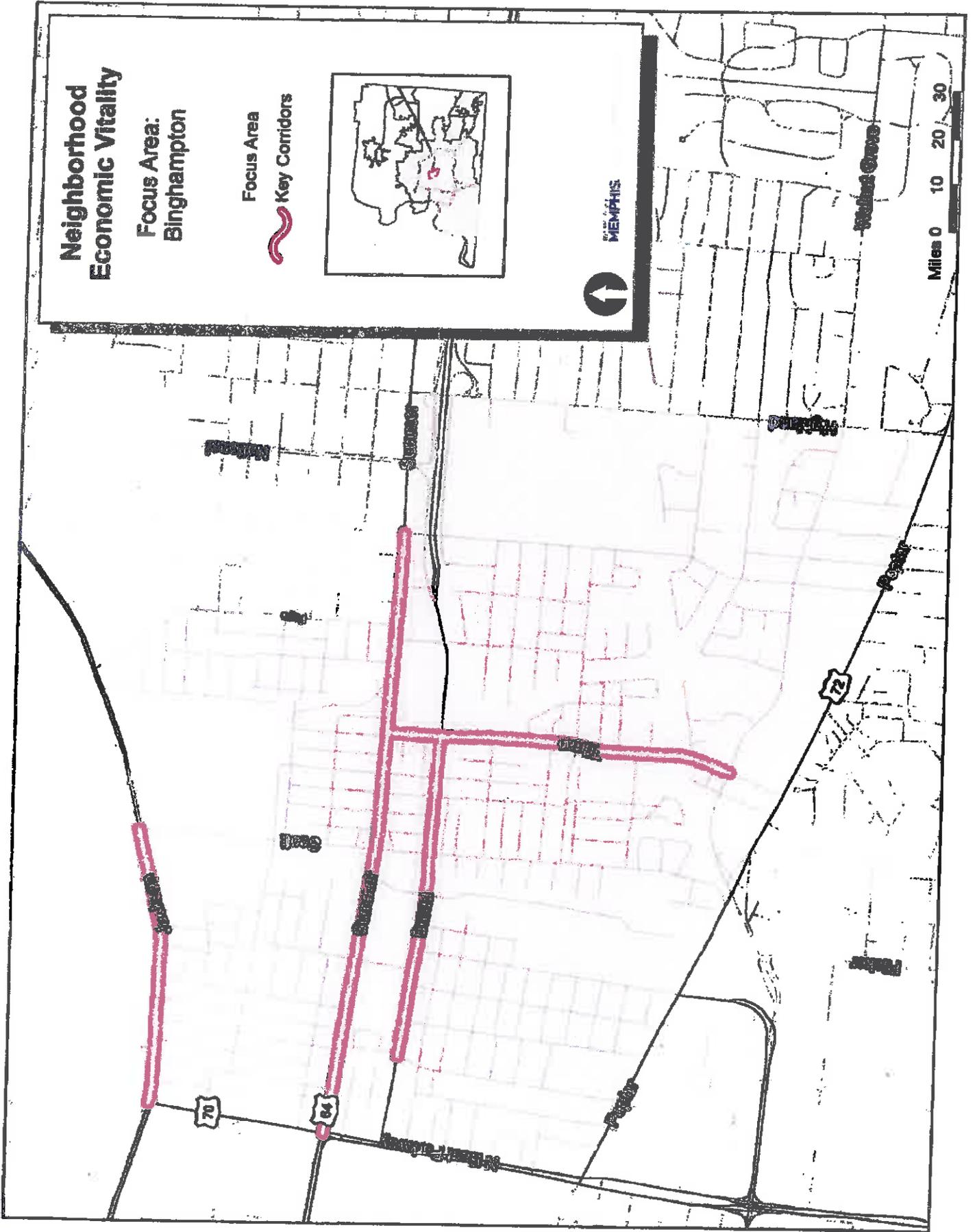
Focus Area

Key Corridors



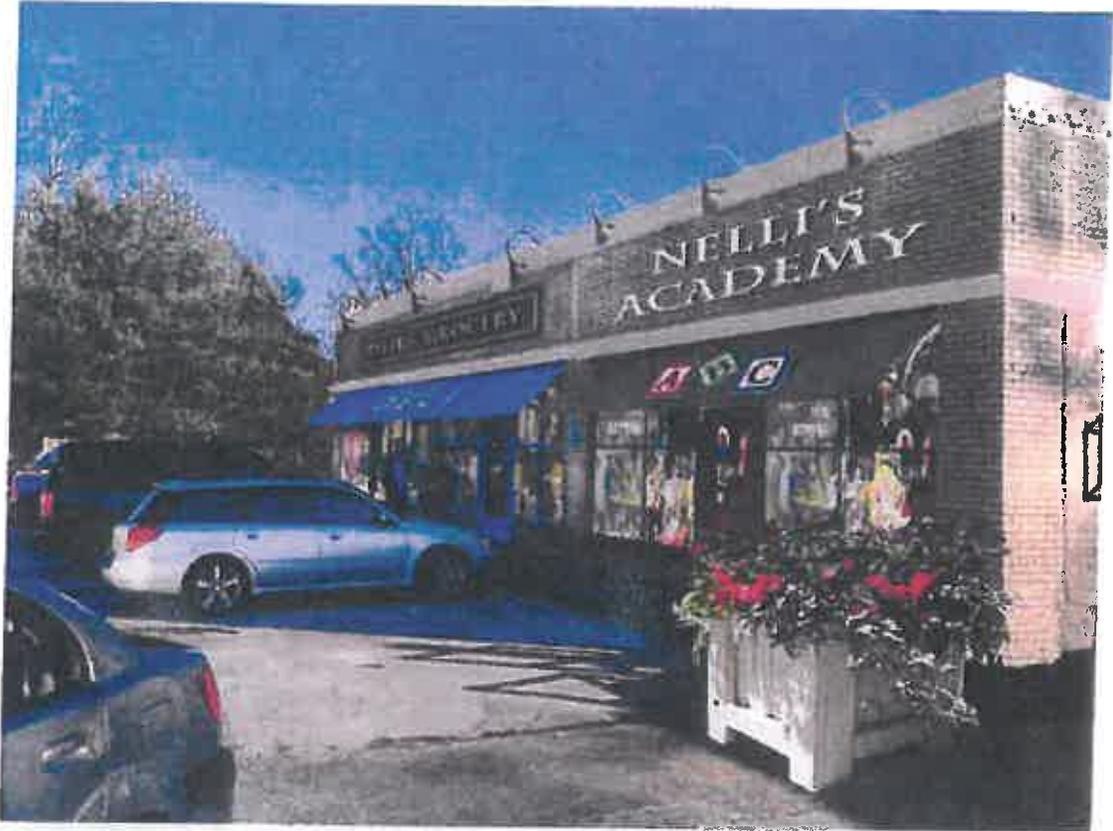
BY THE CITY OF  
MEMPHIS

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**Tyler's Grocery Concept Sketch**  
Memphis Mayor's Innovation Delivery Team  
Gibbs Planning Group April 5, 2013

*Proposed*



*Existing*

## Memphis City Council Resolution

WHEREAS, the Memphis City Council approved the creation of the Industrial Development Board in 1977 in order to promote economic development within the City of Memphis; and

WHEREAS, the Industrial Development Board was given the power to grant a Payment-In-Lieu-of-Tax (PILOT) to companies as incentive for them to locate within the boundaries of the City of Memphis and Shelby County; and

WHEREAS, this power was given to the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, TN (EDGE) in 2011 as part of a new strategy to help streamline economic development activity within Shelby County; and

WHEREAS, a PILOT is contract between EDGE and the company that currently allows for a maximum City property tax abatement of 90 percent over 15 years, and a maximum County property tax abatement of 75 percent over 15 years, in exchange for new and retained jobs, new capital investment, a commitment to hire certified MWBE and LOSB firms, a commitment to hire local residents through the Workforce Investment Network, and other benefits as identified by an evaluation matrix and a benefit-to-cost ratio; and

WHEREAS, since its creation EDGE has approved 20 PILOTs whose collective projected impact includes 6,784 new and retained jobs, \$1.1 billion in new capital investment, \$485 million of direct/indirect local taxes, and \$205 million in MWBE and LOSB contracts; and

WHEREAS, the City of Memphis desires to continue this progress but at the same time increase the financial return of PILOT projects to the City and to equalize the City and County maximum abatement levels.

NOW, THEREFORE, BE IT RESOLVED that the maximum property tax abatement for PILOTs granted by EDGE shall be 75 percent over a maximum of 15 years.

BE IT FURTHER RESOLVED that in extraordinary cases the EDGE Board may request a waiver of this provision from City Council for specific projects, wherein such waiver would allow the EDGE Board to approve a PILOT property tax abatement that averages 90 percent over the term of the abatement.

BE IT FURTHER RESOLVED that this change will only affect PILOT applications that come before the EDGE Board beginning January 1, 2014.

Harold Collins  
Council Member

**HANDY PARK LEASE AGREEMENT**

**THE CITY OF MEMPHIS, A TENNESSEE MUNICIPAL CORPORATION  
AND HANDY PARK, LLC, A FOR PROFIT TENNESSEE LIMITED LIABILITY  
COMPANY**

**THIS LEASE AGREEMENT ("Lease")**, dated effective as of the \_\_\_ day of July, 2013 is entered into by and between the CITY OF MEMPHIS, a municipal corporation organized and existing under the laws of the State of Tennessee ("Landlord") and HANDY PARK, LLC, a Tennessee for profit limited liability company ("Tenant").

**WITNESSETH:**

**WHEREAS**, Landlord is the owner of that certain real property and improvements known as Handy Park ("Handy Park" or the "Premises"), which is located in the City of Memphis and which is more particularly on Exhibit A attached hereto and incorporated herein by reference; and

**WHEREAS**, on July 16, 1999, Landlord entered into that certain Lease (the "Performa Lease") with Performa Entertainment, L.L.C., a Tennessee limited liability company ("Performa"),

**WHEREAS**, Landlord and Performa by mutual agreement have agreed to terminate the Performa Lease pursuant to the Settlement Agreement And Mutual Release, as approved by the Bankruptcy Court; and

**WHEREAS**, the parties hereto desire to enter into this Lease, subject to the terms set forth herein,

**NOW, THEREFORE**, for and in consideration of the Premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree that:

**SUBJECT TO THE TERMS OF THE UNITED STATES BANKRUPTCY COURT ORDER**, entered under Case No. :10-26100, dated March 8, 2013; and, further subject to conditions precedent that the City receives a full and complete and absolute release from Wells Fargo Bank N.A., successor by merger to Wachovia Bank, National Association, as to all matters set forth in the Wells Fargo Claim #19, filed in the afore-referenced Bankruptcy Case; and,

subject to the Settlement becoming fully effective as to the City, with the Release of the City and John Elkington from the Wells Fargo claims; and subject to full termination of the Handy Park Lease by John Elkington and Performa, the Parties hereto agree as follows:

1. **LEASE.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises commonly known as Handy Park at Beale Street, Memphis, Shelby County, Tennessee, together with all improvements, fixtures, and appurtenances belonging to or pertaining to the Premises along with ingress and egress to all adjacent highways, roads, streets, and lanes, either public or private (collectively the "Premises").

2. **TERM.**

A. Initial Term. This Lease shall be for an initial term of five (5) years, with an option to renew for three successive five year terms, but each renewal subject to City Council approval at the renewal dates, and approval by the City evidenced by signature of its Mayor, commencing on the date of execution by both parties hereto and terminating on the date five (5) years following each initiation date, unless otherwise extended by City Council approval and the City, (the "Term"), unless sooner terminated either by mutual written agreement or by declaration of material default by Tenant and failure to cure within the prescribed timeframe. Notwithstanding, the foregoing, Tenant shall have the right to occupy the Premises upon the full execution of this Lease provided all obligations to Wells Fargo are fully satisfied with issuance of a full and unconditional Release to the City; and occupancy is further subject to approved by City Council, subject to all terms and conditions contained herein. In no event shall this Lease extend beyond July 15, 2019 unless otherwise approved in advance in written agreement by the Parties hereto.

It is agreed between the Parties that Tenant shall pay to Wells Fargo Bank such funds necessary to procure a complete Release for the City as set forth above. Such payment shall be determined on or prior to the initiation of this Lease, and in the event of cancellation of this Lease, or non-renewal by the City or its City Council prior to the expiration of twenty (20)

years from the initiation date, then a pro-rata amount of such payment actually made by Tenant to Wells Fargo shall be reimbursed to Tenant by the City, subject to the City's receiving a 1/20<sup>th</sup> credit against any repayment for each year of Tenant possession of the Park under this Lease, with the maximum cap in establishing the amortization not to exceed \$600,000.00.

- B. Holding Over. If, after the expiration of this Lease, Tenant remains in possession of the premises, and occupies the property without a written agreement for an extension, the Tenant shall be deemed to be a Tenant from month to month and the monthly rental shall be equal to 150% of the monthly rental provided for below, and the City shall have all rights to enforce removal of Tenant, including collection of all costs and expenses, including attorney fees deemed reasonable by the Court.
- C. Early Termination. Notwithstanding the foregoing, the City shall have the absolute right at any time, with or without cause, and at its sole discretion, without penalty, to terminate this Lease during the initial 5 year term, or during any option period, upon 180 days written notice to Tenant. In the event of such termination, the City's sole obligation to Tenant shall be that of paying to Tenant a Termination Payment. The Termination Payment shall be made to Tenant within 45 days following termination and surrender of the property back to the City. The maximum cap of early termination, i.e., the "Termination Payment" shall be: (1) the pro rate share of the actual sum paid by Tenant to Wells Fargo Bank under the Bankruptcy Settlement Agreement, not to exceed \$600,000.00, amortized over a 20 year term, such that the Termination Payment portion related to the Wells Fargo payoff is reduced 5% per year for each year of possession of the Park by Tenant under the Lease, commencing with the year 2013; and, (2) the pro rata share of the actual sum of pre-approved additional improvements made by Tenant to the Park, not to exceed \$250,000.00 unless approved in advance in written form by the City. Such "Additional Improvements" share shall be pro-rated over a 20 year term and shall be reduced 5% per year for each year of possession of the Park by Tenant following the actual Additional Improvements expenditure by Tenant. The Parties shall determine in written form, and in advance of any expenditure, what

expenses and "Additional Improvements" are authorized for purposes of any Termination Payment.

3. RENT.

A. Base Rent. During the Term, Tenant agrees to pay to Landlord, on a quarterly basis, and without set-off, the sum of one and one-half percent (1.5%) of gross revenues on revenues from \$0 to \$1,000,000.00 in gross revenues, and two percent on all gross revenues above \$1,000,000.00, payable monthly on or before the twentieth (20<sup>th</sup>) day of each month for the preceding month; provided that Tenant shall receive a credit in the amount of Ten Thousand Dollars (\$10,000.00) for legal fees, which shall be deducted from the Base Rent otherwise payable hereunder. For purposes hereof, "gross revenues" shall mean all proceeds to Tenant from any and all sources related to Handy Park, including all admission ticket sales at ticketed events held at the Premises, rental income from any sublease of the Premises and concession (retail, food and beverage) sales at the Premises, sponsorship fees, advertising fees, and any and all gross revenues generated from the name "Handy Park" and utilization of the premises.

B. Late Fee. All rental payments not paid within five days of each due date shall be deemed delinquent and shall be bear interest at the rate of five percent (5.0%) per annum until paid. Additionally, if rent is delinquent for three (3) successive months, then at Landlord's sole election, it may deem Tenant in material default of this Lease and Landlord shall have the right to terminate the Lease pursuant to Section 18 hereof.

4. USE OF PREMISES. The Premises shall be used by Tenant for the operation of a public multi-purpose amphitheater under a private lease for private management and operation for concerts, performances, shows, events and other programming, which use shall include ticket sales, concession sales, and other ancillary uses normally and customarily associated with the operation of a recreation facility at a municipal facility. Tenant shall have the exclusive right to sell food and beverages and control the use thereof on the Premises, to maintain an appropriate atmosphere at the Premises, and to establish rules of conduct for the Premises. The Tenant shall work in good faith with the City to allow the Park area to remain open and available for public use to the extent practical for the benefit of the public. Tenant agrees that failure to maintain an

appropriate atmosphere at the Park, or failure to comply with present or future laws as adopted, including statutes, ordinances, orders, permits, rules and regulations of the City, County and State, or rules and regulations established by any present or future Management of Beale Street, shall constitute a material default in the Lease. Tenant shall not engage in any use, activities or efforts that are incompatible, inconsistent or unapproved by the City, or its management, agent or designee, including but not limited to existing or future Entertainment District Management. At all times Tenant shall cooperate and exert good faith in all dealings with the City and any Management of the district.

#### 5. CONDITION OF PREMISES.

A. Landlord makes no warranties as to the condition or suitability of the buildings, personal property and each fixture and appurtenance thereto including, but not limited to, the heating, air conditioning, electrical, plumbing, sanitary sewage and other equipment. Tenant is to inspect the premises and determine at its sole election whether the buildings, personal property, fixtures or appurtenances are in acceptable condition and execution; and, delivery of this Lease and occupancy of the premises by Tenant shall be conclusive evidence of Tenant's acceptance of the premises in the "As Is" condition.

Tenant reserves the right to inspect (including without limitation the right to make environmental tests and assessments), approve and accept the Premises prior to execution and delivery of this Lease. Tenant shall advise Landlord of all items of needed repair and/or correction regarding the condition of the Premises, and Landlord shall have the right to reject making any improvements whatsoever or negotiate with Tenant on any needed improvements as a pre-requisite to either party being bound by this Lease. If the parties cannot reach agreement within 45 days of Tenant's original notice to Landlord, then such automatically and without further notice or declaration shall be deemed a rejection of this Lease by Landlord and all agreements and rights of one unto the other shall terminate and shall be extinguished in full, and in which event neither party shall have any further obligation to the other party.

B. In the event that there are any permits, licenses, approvals, permissions, or other governmental authorizations (collectively the "Authorizations") required for Tenant's use of

the Premises, acceptance of the Premises and of this Lease is hereby made conditional upon receipt of all such authorizations required for Tenant's use. In the event that Tenant is unable to obtain all such Authorizations within a reasonable time, or that zoning restrictions, governmental ordinances and existence of condemnation proceedings are not as warranted, Tenant shall have the option to terminate this Lease by prompt written notice to Landlord, which notice shall be given within 10 days of Tenant determination that it is unable to procure any required licenses or permits or necessary approvals for use.

In the event Tenant fails to take possession and open the premises for operations prior to the sixty (60) days from the initial term set forth above, the Landlord, in addition to any and all remedies provided herein, has the right to immediately cancel and terminate this Lease.

C. By occupying the premises, Tenant shall be deemed to have accepted the same and to have acknowledged that the premises are acceptable "As Is."

6. TENANT'S MAINTENANCE. Tenant shall, at its sole and exclusive expense, maintain the buildings and other improvements located on the Premises in the same condition as when received, ordinary wear and tear, natural deterioration and casualty damage excepted. Tenant shall be required to maintain in good working order all fixtures, appurtenances, equipment or any other items at the Premises unless a written agreement with Landlord removing an item or items is agreed upon by the parties in written document.

Tenant agrees to avoid waste, and to maintain the Premises in a clean and orderly condition, including the removal of trash and debris and suitable for use by the general public. During concerts and other special events, Tenant shall hire appropriate security force to maintain order during such events; at all other times, Tenant shall maintain or cause to be maintained a private security force which shall patrol and secure the Premises.

7. LANDLORD'S MAINTENANCE. Landlord shall, at its expense, maintain, upgrade and replace, as reasonably necessary, the public streets surrounding the Premises and all public sidewalks, gutters and curbs and curb cuts in good repair. Tenant shall give Landlord notice of material defects or the

need for repairs and/or replacements and Landlord shall promptly repair, replace or otherwise cure such defects. In the event that Landlord fails to make the necessary repairs and/or replacements within a reasonable period of time, or such repairs and/or replacements must be made on an emergency basis in order for Tenant to operate its business or protect its property, Tenant shall have the option, subject to reasonable written notice to Landlord, and a reasonable time to cure by Landlord, to make such repairs and/or replacements and deduct the reasonable and direct cost thereof from the rent provided all work orders shall be submitted to Landlord in advance of it incurring any obligations or Tenant set off rights.

**8. COMPLIANCE WITH LAWS.**

A. Landlord shall promptly execute and comply with all present and future laws, statutes, ordinances, orders, codes, permits, rules and regulations of all federal, state, and local governments, departments, commissions, agencies and boards ("Laws") regarding the Premises and any and all environmental compliance required in connection with the Premises. Landlord's obligation shall include performing or arranging for the performance of any and all inspections, tests, audits, or monitoring required for compliance with any Law up to the delivery date of possession of the premises. Landlord further warrants that up to the delivery date of possession of the Premises, the Premises are in compliance with all Laws and that there are no pending condemnation proceedings which will affect Tenant's reasonable use and enjoyment of the Premises.

B. Tenant shall comply with all present and future laws, statutes, ordinances, orders, codes, permits, rules and regulations of all federal, state, and local governments, departments, commissions, agencies and boards ("Laws") regarding its use and occupancy of the Premises and any and all environmental compliance required in connection with the use and occupancy of the Premises. Tenant's obligation shall include performing or arranging for the performance of any and all inspections, tests, audits, or monitoring required for compliance with any Law.

**9. ALTERATIONS AND IMPROVEMENTS.** At the commencement of the Term, Tenant may make such alterations, additions and improvements deemed desirable by Tenant to better adapt the Premises for the Tenant's use. However, prior to any alterations

or additions or improvements which cost in excess of Fifteen Thousand Dollars (\$15,000.00), all work is to be approved in advance by the Landlord, which approval will not be unreasonably withheld or delayed.

All other material alterations, additions or improvements which cost in excess of Fifteen Thousand Dollars (\$15,000.00) shall be made only with the consent of the Landlord, which consent shall not be unreasonably withheld or delayed. Such alterations, additions or improvements and all equipment, trade fixtures and furniture shall be and remain the property of the Tenant, and Tenant may elect to remove them at any time during the term of this Lease or any extensions thereof. In the event that Tenant does not remove such alterations, additions or improvements at the final expiration of the Lease, they shall become the property of the Landlord. At the expiration of the Lease, Tenant shall deliver the Premises to the Landlord in as good order and condition as at the commencement of the term of this Lease, ordinary wear and tear, natural deterioration and casualty damage excepted. Any damage caused by the removal of Tenant's alterations, additions, improvements or trade fixtures at the expiration of the Lease term shall be repaired at Tenant's expense.

Tenant shall indemnify and hold harmless the Landlord and protect it and the Premises from any and all liens, encumbrances, claims and causes of action and shall promptly remove or place an appropriate bond to remove any liens or claims affecting the Premises. Tenant shall have no authority, expressed or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind the interests of Landlord in the Premises.

10. **ASSIGNMENT AND SUBLETTING.** Tenant may assign or sublet this Lease or its rights under this Lease or any part hereof only with the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed; however, Tenant acknowledges and agrees that any assignment shall be subject to prior City Council approval. Tenant may, however, without such consent, (i) assign or sublet this Lease to a limited liability company, corporation or other entity with which it may merge or consolidate, to Tenant's parent or any subsidiary of Tenant or any limited liability company, corporation or other entity under common control with Tenant, provided that in any such case

Tenant shall remain primarily liable for all Tenant obligations hereunder, or (ii) assign this Lease to a purchaser of substantially all of Tenant's assets, provided the assignee has substantial assets and credit worthiness. In the event of an assignment, Tenant shall remain liable for the payment of all rent required to be paid and for the performance of all terms, covenants and conditions to be performed by Tenant. The parties acknowledge and agree that agreements for use of any part or all of the Premises for periods of less than one year shall be deemed a license, not a sublease, and shall not require the consent of Landlord. Tenant acknowledges that it shall provide the City with a full list of all principals and investors in any entity under this Lease, and Tenant shall certify on an annual basis that no changes have been made, or in the event of change, it shall notify in writing the City through its City Real Estate Director.

#### 11. INSURANCE.

A. Tenant shall, at Tenant's cost and expense, maintain a policy of commercial general liability and property damage insurance for the Premises, in the amount of \$2,000,000.00 general aggregate, with minimums of (i) \$1,000,000.00 for each occurrence, (ii) \$1,000,000.00 for products and completed operations, (iii) \$1,000,000.00 for personal and advertising injury, (iv) \$100,000.00 for fire legal liability for any one fire, (v) \$5,000.00 for medical expense payments, any one person, and (vi) at events where liquor will be served, \$1,000,000.00 for liquor liability coverage per occurrence. Such insurance shall be placed with a company or companies qualified to do business in the state where the Premises are located. In any event, Tenant may provide such coverage under any blanket policy of Tenant or its parent corporation. The Tenant shall provide a certificate of insurance as an attachment hereto, Exhibit "B," evidencing the required coverage, and such certificate shall provide that the policy may not be cancelled or amended in any material respect without thirty (30) days prior written notice to Landlord

B. Tenant shall provide and maintain, at its sole cost and expense, a policy or policies of insurance covering loss or damage to the Premises on an "All Risk" basis including earthquake and flood coverage, if appropriate, in the amount of the full replacement value of the Premises and all other improvements now or at any time hereafter constituting a part of

the Premises. Tenant shall provide a certificate of insurance evidencing the required coverage, and such certificate shall provide that the policy may not be cancelled or amended in any material respect without thirty (30) days prior written notice to Tenant.

C. Tenant will provide workers' compensation coverage in accordance with the statutory requirements of the State of Tennessee and shall require all subcontractors to do likewise.

D. Certificates of Insurance shall name the City of Memphis as Landlord as an additional insured, where applicable, and Certificates shall be pre-approved by the City's Risk Management, and Certificates will be mailed to:

City of Memphis  
Attn: Risk Management  
100 N. Main Street, Suite 2348  
Memphis, TN 38103

E. Tenant and Landlord each waives, for itself and its insurers, all rights of recovery against the other for loss of or damage to property including, without limitation, loss or damage arising out of the negligence of the other party, to the extent that such loss or damage is insured or is required to be insured under the terms of this Lease. The parties shall notify their respective insurance carriers of the foregoing mutual waiver of subrogation.

## 12. INDEMNIFICATION.

A. Notwithstanding Tenant's obligation to provide and maintain insurance, Tenant shall defend, indemnify and hold harmless Landlord, and its, directors, officers, employees, agents, successors, assigns and affiliates from and against all claim, damages, costs, expenses, liabilities, actions, suits, fines and penalties (including, without limitation reasonable attorneys fees and expenses) of any kind or nature whatsoever, suffered or incurred by any of such indemnified parties, based upon or arising out of any claim for personal injury (including death), suffered by any person (including employees of Tenant) and loss of or damage to any property (including loss of use thereof), in either case proximately caused by or arising out of Tenant's use or occupancy of the Premises including, without limitation (i) acts or omissions of Tenant or its agents or

employees or (ii) the breach of any covenant, representation or warranty of Tenant contained in this Lease. Nothing in this indemnity shall require Tenant to indemnify Landlord from and against claims, damages, costs, expenses, liabilities, actions, suits, fines and penalties to the extent the same are proximately caused by or arise out of the acts or omission of Landlord, its agents, employees or contractors.

B. Tenant reserves all rights it has under civil law to seek a recovery from Landlord of all claims, damages, costs and expenses, liabilities, suits and legal costs incurred by Tenant, proximately caused by or arising out of the following: (i) acts or omissions of Landlord, or its agents, employees or contractors or (ii) the breach of any covenant, representation or warranty of Landlord contained in this Lease.

### 13. DAMAGE AND DESTRUCTION.

A. Tenant shall be responsible for its carrying all Business Interruption Insurance and any and all Liability coverage, and there shall not be a rent abatement under this Lease. However, if Tenant sustains substantial damages and elects to cancel this Lease, then upon 30 day's advance written notice, this Lease may be terminated in total by Tenant and each party thereafter shall have no obligations of one unto the other except for any repair or replacement obligations of Tenant which obligations shall survive termination hereof.

B. In the event that the Premises shall be totally destroyed or shall be damaged as be totally untenable, either party may elect, within thirty (30) days of the date of such destruction or damage, to terminate this Lease as of such date of destruction or damage. In the event neither party elects to terminate this Lease, Tenant shall, to the extent of insurance proceeds available, promptly restore the Premises to substantially the same condition in which they existed prior to such destruction or damage. The rent shall not abate during the period of restoration and Tenant shall provide evidence of insurance to cover any interruption due to damage or destruction.

### 14. CONDEMNATION.

A. Leasehold Award. If the whole or part of the Premises shall be taken or condemned by any competent authority for any

public use or purpose during the term of this Lease, or any extension or renewal, or if such authority shall take title to the Premises in lieu of condemnation, Tenant reserves the right to claim and prosecute its claim in all appropriate courts and agencies for an award or damages for the taking, based upon its leasehold interest and ownership of leasehold improvements, interruption of business, moving expenses and other damages available under applicable law, without impairing any rights of Landlord for the taking of or injury to the reversion.

B. Partial Taking. In the event that a part of the Premises shall be taken or condemned or title be transferred in lieu of condemnation which, in the reasonable judgment of Tenant, is sufficient to render the remaining portion unsuitable for its continued use or occupancy, or in the event that a partial taking shall result in cutting off direct access from the Premises to any adjacent public street, highway or road, then and in any such event, Tenant may at any time either prior to or within a period of sixty (60) days after the date when possession of the Premises shall be required by the condemning authority, elect to terminate this Lease. In the event that Tenant fails to exercise its option to terminate this Lease, then this Lease will continue in effect with respect to the portion of the Premises not taken except that the rent and other charges for which Tenant is responsible hereunder shall be equitably reduced. If the taking results in the loss of a portion of any structure the Landlord will with all due diligence and at its own cost and expense, repair and restore the Premises or what may remain to a condition suitable to Tenant's needs, and until the completion of such work, the obligation of Tenant to pay rent and other charges for which Tenant is responsible hereunder shall abate.

15. QUIET ENJOYMENT. Landlord represents and warrants that it is the owner of the Premises in fee simple and that it has the full right to execute and perform this Lease and to grant the demised estate and no joinder or approval of another person is required. No liens, restrictions, or encumbrances prevent the Tenant's use of the Premises. Tenant, upon payment of the rent and performance of the terms required to be performed by it, shall peacefully and quietly have, hold and enjoy the Premises during the full term of this Lease and any extensions or renewals.

16. PROPERTY TAXES. The parties acknowledge that the Premises are owned by the City of Memphis, and as such, there currently

are no real estate taxes payable on the Premises; however, in the event Leasehold or property taxes are assessed on the Premises and improvements, the Tenant may take a dollar for dollar credit against its rent for such taxes actually paid.

17. **UTILITIES**. Landlord represents and warrants that the Premises are served by appropriate electric, water, gas, septic tank and/or sewer service; and, Tenant's acceptance of possession is conclusive evidence of its satisfaction of this representation and acceptance of the Premises "As Is."

18. **DEFAULT BY TENANT**. If Tenant fails to pay any installment of rent when due, and such failure continues for a period of ten (10) days after Tenant's receipt of written notice from Landlord, or if Tenant fails to perform any obligation hereunder and such failure continues for a period of thirty (30) days after receipt of written notice from the Landlord specifying the nature of the default and demand for performance, then and in any such event, and as often as any such event shall occur, Landlord may (a) declare the term ended and enter into the demised Premises or any portion thereof, either with or without process of law, and expel Tenant or any person occupying the Premises, and so repossess and enjoy the Premises as in Landlord's former estate; or (b) relet the Premises applying the rent from the new Tenant to this Lease, and Tenant shall be responsible for no more than the balance that may be due, should a balance exist. Notwithstanding the foregoing, if any default shall occur other than in the payment of money, which cannot with due diligence be cured within a period of thirty (30) days from and after the receipt of notice as required above, and Tenant prior to the expiration of thirty (30) days from and after the receipt of notice as required, promptly and expeditiously commences to eliminate the cause of the default, then the Landlord shall not have the right to declare the Tenant in default on account of said cause. Landlord shall mitigate its damages in the event of any such default by Tenant.

19. **DEFAULT BY LANDLORD**. In the event Landlord fails to perform any of its obligations hereunder, Landlord shall be entitled to a reasonable period of time after notice from Tenant to cure such default not to exceed thirty (30) days unless the default, by its nature cannot be cured in fewer than thirty (30) days and Landlord, during such thirty (30) day period, commences to cure and diligently pursues such cure to completion. In the event Landlord does not cure its default within the time allowed

hereby, Tenant may, at its option, cure Landlord's default and deduct the reasonable and actual cost thereof from the rent and other sums due Landlord hereunder. In the event Landlord's default materially affects Tenant's use and enjoyment of the leased premises, Tenant may, without prejudice to any other remedy available at law or equity, terminate this Lease upon written notice to Landlord, which shall be Tenant's sole and exclusive remedy unless otherwise agreed upon in written form.

## 20. ENVIRONMENTAL MATTERS.

A. Landlord warrants and represents that any use, storage, treatment, or transportation of regulated, hazardous or toxic substances, materials, or wastes, or any other contaminants (collectively "Hazardous Substances"), in, on, under, from or affecting the Premises before the commencement date of this Lease has been in compliance with all applicable federal, state and local laws, regulations and ordinances. Landlord further warrants and represents that no release, leak, discharge, spill, disposal, or emission of Hazardous Substances has occurred in, on, under or from the Premises and that the Premises are free of Hazardous Substances as of the date hereof.

B. Landlord agrees that Tenant retains all rights of contribution and claims for recovery against Landlord, either by suit in a civil court, or otherwise, to pursue its rights of recovery for any and all claims, damages, fines, judgments, penalties, costs, causes of action, liabilities, losses or expenses (including, without limitation, any and all sums paid for settlement of claims and attorneys', consultants' and experts' fees) (collectively "Liabilities"), whether arising during the Initial Term or thereafter, and resulting from or arising in connection with the presence (or suspected presence), disposal, release (or threatened release), of any Hazardous Substance in, on, under, from or affecting the Premises, unless caused by the acts or omissions of Tenant, its agents, employees or contractors. Without limiting the generality of the foregoing, Landlord's obligations shall apply to any and all Liabilities resulting from or arising out of (i) any investigation (governmental or otherwise) of the Premises, any cleanup, removal or restoration of the Premises required by any governmental agency, and any personal injury (including wrongful death) or property damage (real or personal) and (ii) any Hazardous Substance which flows, diffuses, migrates, or percolates into, onto or under the Premises.

C. Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless the Landlord from any and all claims, damages, fines, judgments, penalties, costs, causes of action, liabilities, losses or expenses (including, without limitation, any and all sums paid for settlement of claims and attorneys', consultants' and experts' fees) (collectively "Liabilities"), whether arising during the Term or thereafter, and resulting from or arising in connection with the presence (or suspected presence), disposal, release (or threatened release), of any Hazardous Substance in, on, under, from or affecting the Premises, which is caused by the acts or omissions of Tenant, its agents, employees or contractors. Without limiting the generality of the foregoing, Tenant's indemnity shall apply to any and all Liabilities resulting from or arising out of any investigation (governmental or otherwise) of the Premises, any cleanup, removal or restoration of the Premises required by any governmental agency, and any personal injury (including wrongful death) or property damage (real or personal).

D. Prior to the commencement of the Term, Landlord shall provide Tenant with copies of all environmental reports, documents, information and data in its possession pertaining and relevant to the Premises.

21. **RECORDS.** Tenant, during the term of this Lease and for a minimum of three years thereafter shall maintain appropriate and accurate records and accounts of all revenues, contracts and receivables of any and all kinds related to Handy Park. Such records and accounts shall be maintained as confidential and proprietary of Tenant; however, they shall be open to inspection and audit by Landlord or its professional advisor(s) upon five days' notice of such request for inspection. If the records are substantially inaccurate or not in compliance with cash basis accounting consistently applied, and in the event it becomes necessary for a re-examination of records because of corrections, then all reasonable costs and expenses of Landlord shall be borne by Tenant.

22. **PUBLIC USAGE.** Tenant shall maintain the premises available for access and usage by the general public during the term of this Lease, except when prevented by force majeure or except during special events or concerts where an admission is charged. A default in this provision shall be deemed a material

default of this Lease.

23. NOTICES. All notices required or permitted by this Lease shall be in writing, signed by the party serving notice, sent to the party at the address shown at the end hereof or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Such notices shall be either deposited, postage prepaid, in the registered or certified United States mail, return receipt requested, or sent prepaid via air courier service and shall be deemed given when actually received at the address shown on the postal or air courier receipt, Notices not given in the manner or within the time limits set for in this Lease shall be of no effect and may be disregarded by the party to whom they are directed.

24. ENTIRE AGREEMENT. This Lease, including the Exhibits, constitutes the entire agreement between the parties and will supersede all previous negotiations and commitments, whether written or oral. No waivers, alterations, or modifications of this Lease or any agreements in connection with it shall be valid unless in writing and duly executed by both Landlord and Tenant.

25. SAVINGS CLAUSE. The form of this Lease is intended for general use in the United States of America and in the event that any of the terms and provisions, are in violation of or prohibited by any law, statute or ordinance of the state or city where it is used, such term or provision shall be of no force and effect to the extent of such violation or prohibition without invalidating the terms and provisions of this Lease.

26. ACCEPTANCE OF LEASE. If this Lease is not executed by Landlord and returned to Tenant within \_\_\_\_\_ ( ) days of the date executed by Tenant, then, at Tenant's option, Tenant's offer to lease will be deemed revoked and withdrawn.

27. ATTORNEY'S FEES. Each party retains all lawful rights it may have for a prevailing party to seek recovery of its costs if either party is required to resort to legal action to enforce its rights under this Lease, including the right to seek recovery of its costs of such legal action, including, without limitation, reasonable attorney's fees.

28. SUCCESSORS AND ASSIGNS. All covenants, promises, conditions, representations and agreements herein contained shall be binding

upon, apply and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

29. GOVERNING LAW. This Lease shall be governed by the laws of the State of Tennessee and County of Shelby.

30. COUNTERPARTS; EXECUTION. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Lease may be executed by facsimile or email or other electronic signatures. However, this Lease shall not be binding upon Landlord, or approved by it, until it has met necessary approvals of City Council and has been signed by the City Mayor and filed with the City of Memphis records.

[Counterpart signature page(s) follow]

[Counterpart Signature Page to Lease Agreement between the City  
of Memphis and Handy Park, LLC]

IN WITNESS WHEREOF, the parties have caused is Lease to be  
executed by their duly authorized representatives.

LANDLORD:

TENANT:

CITY OF MEMPHIS

HANDY PARK, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address for Notices:

Address for Notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT A

Description of Premises

4853-0584-2197, v. 1