



**CITY OF MEMPHIS**

**REQUEST FOR PROPOSAL**

**#28463**

**ASSESSMENT OF FAIR HOUSING  
FOR  
MEMPHIS AND SHELBY COUNTY, TENNESSEE**

**Date Issued: July 25, 2017**

**Proposal Submission Deadline: August 25, 2017**

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## 1. OVERVIEW

The City of Memphis, Shelby County Government, and Memphis Housing Authority are Equal Opportunity, Affirmative Action Employers, seeking to retain the services of one or more consultant firms to conduct an Assessment of Fair Housing for Memphis and Shelby County. The City of Memphis, Shelby County, and the Memphis Housing Authority are issuing this Request for Proposals (RFP) to solicit written proposals, on a competitive basis, from consultants or consultant teams who are interested in providing such services. Based on an evaluation of responses to this RFP, a consultant will be selected and the proposal will be the basis for negotiation of a contract agreement with the City of Memphis for the requested services.

### 1.1 GENERAL CONDITIONS

The following data is intended to form the basis for submission of proposals to provide an Assessment of Fair Housing. This material contains general conditions for the procurement process, the scope of service requested, contract requirements, instructions for submissions of proposals, and submission forms that must be included in the proposal. The RFP should be read in its entirety before preparing the proposal. All materials submitted pursuant to this RFP shall become the property of the City of Memphis.

To the extent permitted by law, all documents pertaining to this Request for Proposals shall be kept confidential, to the extent necessary for review, until the proposal evaluation is complete. No information about any submission of proposals shall be released until the process is complete, except to the members of the Evaluation Committee established by the City and other appropriate designated City staff. All information provided shall be considered by the Evaluation Committee in making a recommendation to enter into an agreement with the selected consultant.

Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFP shall be made **in writing and be in the hands of the Purchasing Agent by the close of the business day on Friday, August 4, 2017**. Questions must be submitted by email to [Eric.Mayse@memphistn.gov](mailto:Eric.Mayse@memphistn.gov). Subject line must read "Questions – Assessment of Fair Housing." The City of Memphis is not responsible for oral interpretations given by any City employee, representative, or others. The issuance of written addenda is the only official method whereby interpretation, clarification, or additional information can be given. Any questions or concerns not submitted by the stated time and date will be deemed waived.

If any addenda are issued to this Request for Proposals, the Purchasing Division will post them to the City's website at <http://www.memphistn.gov/Business.aspx/RFPsRFQs.aspx>. Submitting organizations are strongly encouraged to view this website often to see if addenda are posted. Failure of any proposer to receive such addendum or interpretation shall not relieve such Proposer from any obligation under his proposal as submitted. All addenda so issued shall become part of the Contract Documents.

The City of Memphis reserves the right to (a) accept or reject any and/or all submissions of proposals; (b) to waive irregularities, informalities, and technicalities; and (c) to accept any alternative submission of proposals presented which, in its opinion, would best serve the interests of the City. The City shall be the sole judge of the proposals, and the resulting negotiated agreement that is in its best interest, and its decision shall be final. The City also reserves the right to make such investigation as it deems necessary to determine the ability of any submitting entity to perform the work or service requested. Information the City deems necessary to make this determination shall be provided by the submitting entity. Such information may include, but is not limited to, current financial statements by an independent CPA, verification of availability of equipment and personnel, and past performance records.

## 1.2 OBJECTIVE

U.S. Department of Housing and Urban Development (HUD ) has published a rule requiring recipients of funding under the Community Development Block Grant (CDBG), HOME Investment Partnerships Program (HOME), Emergency Solutions Grant (ESG), and Housing Opportunities for Persons with AIDS (HOPWA) and other funding HUD funding sources to submit to HUD an Affirmatively Furthering Fair Housing (AFFH) certification which requires Entitlement communities and Public Housing Authorities to undertake an Assessment of Fair Housing (AFH). In order to complete the AFH, the City of Memphis' Division of Housing and Community Development (HCD), the Shelby County Department of Housing (SCDH), and the Memphis Housing Authority (MHA) are seeking a qualified consultant(s) to prepare a single "Assessment of Fair Housing" on behalf of these recipients of funds from the U.S. Department of HUD hereinafter referred to as "the Partners. All of the Partners are Equal Opportunity/Affirmative Action Employers.

This Request for Proposals (RFP) is issued on behalf of the Partners and solicits written proposals from consultants or consultant teams who are interested in providing services in accordance with instructions provided where the successful candidate(s) will be selected and invited to enter into a contractual relationship with the Partners for the Services outlined in this RFP.

In this RFP, the terms Proposers and Consultant are used interchangeably unless the context indicates otherwise. Qualified Section 3, MBE, WBE, and LOSB Business Concerns are encouraged to respond. The City has an Equal Business Opportunity Program, whose intent is to increase the participation of minority and women owned business enterprises ("M/WBE") in the City's purchasing activities. Toward achieving this objective, the M/WBE participation goal for this solicitation is 18%. The percentage of M/WBE participation is defined as the dollar value of subcontracts awarded to minority and/or women business enterprises divided by the total proposed base bid amount.

Interested consultants should submit a response related to the services requested by the RFP specifications. Based on an evaluation of responses to this RFP, one or more consultants and/or contractors will be selected and invited to participate in further discussions and negotiation of a contract for the requested services.

## 1.3 PROJECT OVERVIEW

On July 16, 2015, HUD published a final rule on Affirmatively Furthering Fair Housing. The AFFH rule establishes a process that certain recipients of HUD funding will use to help them meet their long-standing obligations to affirmatively further fair housing. The AFFH rule creates a standardized process for fair housing planning – this process is referred to in the AFFH rule as an Assessment of Fair Housing. Given the new requirements of the AFFH final rule, the Partners will be relying heavily on the expertise of the successful proposer in preparation of the AFH and has an expectation the successful proposer will bring adequate capacity and subject matter expertise to ensure proper completion of the AFH.

The successful Proposer will contract with the City of Memphis to conduct an Assessment of Fair Housing for the Partners.

## 2. SCOPE OF SERVICES

The AFFH rule requires community participation, consultation, and coordination. The Partners recognize the value of community participation, local data, and local knowledge for the development of a successful Assessment of Fair Housing. On behalf of the Partners and based on the AFFH Guidebook posted on the HUD Exchange website, <https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf>, the proposer will be required to prepare an Assessment of Fair Housing that includes, at a minimum, the following elements:

1. An analysis of data and other information, in which the program participant will assess the following fair housing issues:
  - a. Integration and segregation patterns and trends based on race, color, religion, sex, familial status, national origin, and disability in the jurisdiction and region;
  - b. Racially or ethnically concentrated areas of poverty (R/ECAPs) in the jurisdiction and region;
  - c. Significant disparities in access to opportunity for any protected class in the jurisdiction and region; and
  - d. Disproportionate housing needs for any protected class within the jurisdiction and region.
2. The Assessment of Fair Housing will also discuss fair housing issues related to publicly supported housing; disability and access; and fair housing enforcement, outreach capacity, and resources.
3. An identification of significant contributing factors for segregation, R/ECAPs, disparities in access to opportunity, and disproportionate housing needs, including the significant contributing factors that are related to publicly supported housing, disability and access issues, and fair housing enforcement, outreach capacity, and resources.
4. A prioritization of the contributing factors identified for each fair housing issue and a justification for the prioritization. In prioritizing such factors, program participants shall give highest priority to those factors that limit or deny fair housing choice of access to opportunity, or negatively impact fair housing or civil rights compliance.

5. An identification of the fair housing goals that each program participant will use to, overcome the effects of the prioritized contributing factors and related fair housing issues, including a description of how the goals relate to overcoming the contributing factor(s) and related fair housing issue(s). Each goal also will include an identification of the metrics and milestones for determining what fair housing results will be achieved and the timeframes for achieving them. For joint or regional AFHs, program participants will also specify which program participants are responsible for each goal.
  
6. Community engagement to insure maximum input for local stakeholders and agencies is an integral component of the AFH. At a minimum the following groups of stakeholders must be contacted, a minimum of four (4) public hearings must be held throughout Memphis and Shelby County, and a final presentation of the AFH and Impediments found will be held on behalf of the partners. In order to maximize community participation, it is strongly encouraged that proposers include a local partner as part of their team to assist in the community engagement process.
  - Housing Agencies/Authorities
  - Non-profit Organizations whose mission relates to fair housing issues
  - Non-profit Organizations and Agencies who service the Elderly and Disabled
  - Planning Agencies/Departments
  - Planning and Development Districts
  - Elected Officials
  - Memphis Area Transit Authority
  - Economic/Industrial Development Agencies/Departments
  - Public Health Departments
  - Budget Departments
  - Public School Districts and Achievement School District

## 2.1 CONTENTS OF THE ASSESSMENT OF FAIR HOUSING

The Assessment of Fair Housing will include information that will assist the Partners in completing the assessment using HUD's Assessment Tool, including, but not limited to, the following areas:

1. Cover Sheet
  
2. Executive Summary
  
3. Community Participation Process – Adhering to 24 CFR 91.110 at a minimum, when planning the public participation process. A draft of the individual Partners Citizen Participation Plan will be available to the successful proposer.
  
4. Assessment of Past Goals and Actions
  
5. Fair Housing Analysis
  - a. Demographic Summary
  
  - b. General Issues

1. Segregation/Integration
2. Racially or Ethnically Concentrated Areas of Poverty (R/ECAPs)
3. Disparities in Access to Opportunity
4. Disproportionate Housing Needs

c. Publicly Supported Housing Analysis

d. Disability and Access Analysis

e. Fair Housing Enforcement, Outreach Capacity, and Resources

f. Fair Housing Goals and Priorities

Proposers should note that the Scope of Services identified herein is considered an advanced draft and may be modified after selection of a consultant based upon changing circumstances and/or negotiations with the proposing firm(s).

## 2.2 DURATION

The contract period will begin upon award of the grant. The City reserves the option of extending the contract without bid on a six (6) month basis for the duration of the award.

## 2.3 INSURANCE REQUIREMENTS

Insurance Requirements are listed in the sample contract attached as an exhibit to this RFP.

## 3. PROPOSAL RESPONSE

This Section describes the contents of Proposer’s Proposal and provides an outline of how the Proposer should organize it. Proposer’s Proposal will not be considered responsive unless it fully complies with the requirements in this Section, as well as, the additional instructions provided in Section 4.6 regarding the required Proposal formats and submission process.

Specifically, Proposer’s Proposal shall include each of the sections referenced in the table below. The preferred method of submittal is in a three-ring binder with tabbed sections. The requirements for each of these Proposal sections are described in more detail in this Section.

**PROPOSER'S PROPOSAL WILL BE DISQUALIFIED FROM THIS RFP PROCESS IF THE PROPOSER FAILS TO CONFORM TO THE PROPOSAL INSTRUCTIONS IN THIS SECTION.**

Sections and Topics
Section 1 – Cover Letter

Section 2 – Non-Collusion Affidavit
Section 3 – Comprehensive Response
Section 4 – Pricing
Section 5 – Relevant Experience
Section 5 – Section 3 Opportunity Plan

### 3.1 COVER LETTER

Proposer's Proposal shall contain a cover letter acknowledging Proposer's understanding of the RFP process and requirements set forth in this RFP, including its commitment to its Proposal. The cover letter shall be signed by an authorized representative of Proposer's company.

Provide agency's name, address, web address, telephone and fax numbers. Please include name, title and e-mail address of the individual who will serve as agency's primary contact. Describe your agency's ownership.

### 3.2 NON-COLLUSION AFFIDAVIT

Please use the form provided in Exhibit 2.

### 3.3 COMPREHENSIVE RESPONSE

- a. Outline of how proposer can meet or exceed the minimum requirements.
- b. A detailed description of the approach for accomplishing the services (include a time schedule for completion of each element).

### 3.4 PRICING

Provide the applicable itemized fees and any commissions included in the proposal for the Services for each element in the scope of work (this includes a break-down of the cost proposed for any sub-contractor working in conjunction with your organization on the project).

Explain any assumptions or constraints in a price proposal to perform the services.

Explain any additional charges or fees in the proposal.

Consultants are advised that the lowest cost proposal will not necessarily be awarded the contract, as the selection will be based on qualifications criteria as deemed appropriate by the review and selection committee and the City Mayor.

### 3.5 RELEVANT EXPERIENCE

Briefly describe agency's relevant experience as it relates to this project.

A sufficient description of the experience and knowledge base of the proposer to show the proposer's capabilities should be included in the proposal. At a minimum, the description of the experience and knowledge base of the proposer included in the Proposal should include, but not necessarily be limited to, the following:

A brief description of the history and mission of the proposer, including the proposer's background and mission statement, the length of time the proposer has been in business, a description of the proposer's organizational structure and a description of the proposer's customer make-up;

A statement of how long the proposer has provided services similar to the Services requested herein;

A general description of the proposer's experience and background in providing services similar to the Services requested herein;

Resume of each employee engaged in the services, including the role of each and an overview of their previous experience with similar projects.

References of the proposer, including at least three (3) other clients for whom the Proposer has provided services similar to the Services (with preference given to clients comparable to the City of Memphis, Shelby County Government, and the Memphis Housing Authority) and, for each such reference, the business name, the identification of a contact person, the title of the contact person and a telephone number.

A description of any other resources available to the proposer that will be useful in providing the Services;

Any other relevant information about the capabilities of the proposer deemed to be material.

### 3.6 SECTION 3 OPPORTUNITY PLAN

The Contractor hereby agrees, warrants, and assures compliance with the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. Sec. 1701u) as found at 24 CFR Part 135. The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

Proposals must include a completed Section 3 Opportunity Plan in the format provided in Exhibit 4.

## 4. INSTRUCTIONS ON RFP PROCESS

### 4.1 USE OF INFORMATION

**All correspondence about this RFP and the Initiative should be limited to the Principal Contact described in Section 4.2 or other designated City personnel or agents.**

### 4.2 PRINCIPAL CONTACT AND INFORMATION REQUESTS

**Eric Mayse** is the single point of contact (the “Principal Contact”) for all matters relating to this RFP. Proposer should direct all inquiries to the Principal Contact at:

**[eric.mayse@memphistn.gov](mailto:eric.mayse@memphistn.gov)**

Proposer should not, under any circumstances, contact any City personnel (including senior City management or City employees with whom Proposer has an existing business or personal relationship) to discuss this RFP without the Principal Contact’s prior written consent. Utmost discretion is expected of Proposer and all other RFP recipients. Any recipient attempting to circumvent this process will risk elimination from further participation in the bidding process.

### 4.3 SCHEDULE OF ACTIVITIES

- In order to accelerate the business transformation, service improvements and cost savings the City anticipates, the City has developed an estimated timeline for this Initiative. The City will move as quickly and efficiently as possible to determine the feasibility of each Proposer’s Proposal and to move forward with term sheet discussions and ultimately conclude an agreement accordingly.
- As a result, the City requests that Proposer make a dedicated team available to participate in the proposal development and evaluation processes as necessary to participate in the activities and meet the deadlines provided in the table below.
- It is the City’s option to conduct interviews with finalists. However, in no way is the City obligated to interview finalists.
- The City reserves the right to modify or update this schedule at any point in time.

**In no event shall the deadline for submission of the proposal be changed except by written modification by the City of Memphis Purchasing Department.**

<b>Activity</b>	<b>Date</b>
Publish RFP	July 25, 2017
Proposer Questions Deadline	August 4, 2017 by 5:00 pm CST
City Response to Questions	August 11, 2017 by 5:00 pm CST
Proposal Submission Deadline	August 25, 2017 by 2:00 pm CST
Finalist Selections – Optional	September 2017
Finalist Presentations – Optional (City’s Discretion)	September 2017
Negotiations	September/October 2017
Agreement Finalization	September/October 2017

Several of the activities identified in the above table are described in more detail in the remainder of this Section 4.

#### 4.4 PRE-SUBMITTAL CONFERENCE

No Pre-Submittal Conference is scheduled for this RFP.

#### 4.5 INITIAL QUESTIONS SUBMISSION, FINAL QUESTIONS SUBMISSION

Proposer may submit an initial set of questions based on its review of this RFP, by completing the template provided at Exhibit 1 (Proposer Questions Template) and sending it via email by August 4, 2017 by 5:00 pm CDT. Questions received after 5:00 will not be answered. This email should be sent to the individual(s) described in Section 4.2, with the subject heading: “[Your company’s name] – Assessment of Fair Housing RFP Questions.” The City will post the responses to the questions on the City’s web site on or before August 11, 2017 by 5:00 pm CDT. To ensure the fair and consistent distribution of information, no individual answers will be given. The only official answer or position of the City will be the one posted via the City’s website. Any questions or concerns not submitted by the stated time and date will be deemed waived.

## 4.6 PROPOSAL SUBMISSIONS

### PROPOSAL SUBMISSION AND DUE DATE

Proposer shall submit, in a sealed packet, one (1) original (clearly marked on the outside of the binder as "ORIGINAL") and 5 complete printed copies of its Proposal (including the signed Cover Letters), and one flash drive copy on or before August 25, 2017, **at 2:00 pm CDT**, to the addressee provided below:

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

The label should identify the contents as:

**Your company name & address.  
Assessment of Fair Housing, RFP #28463.**

**PROPOSALS SUBMITTED AFTER THE DEADLINE OR WHICH STATE THAT INFORMATION WILL BE PROVIDED 'AT A LATER DATE', OR WHICH ARE OTHERWISE INCOMPLETE OR FAIL TO COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS RFP WILL BE DISQUALIFIED FROM PARTICIPATION IN THIS RFP PROCESS.**

Proposals may not be amended after the submission deadline.

Notwithstanding any legends on the proposal or any other statements to the contrary, all materials submitted in connection with proposer's response to this RFP will become the property of the city and may be returned only at the City's option.

### PROPOSAL FORMAT

The City expects the Proposal to be a compilation of various documents, in particular because Proposer's Proposal must utilize the RFP response templates, if provided, set forth in the Exhibits in this RFP.

Proposer shall use Microsoft Office file formats in preparing its Proposal to the maximum extent possible. All pages should be formatted to print on 8 ½" x 11" paper, unless another format is provided by the response template. Proposer responses should be specific, factual, brief and to the point.

### PROPOSAL EXPIRATION DATE

Proposals in response to this RFP shall remain valid for six (6) months from the Proposal due date. The City may request an extension of time if needed.

## **PROPOSER DATA**

The confidentiality of information and data contained in the firm of contractor's Proposal shall be subject to and governed by the Open Records Act and any other Public Records laws with which the City is legally obligated to comply (including a Freedom of Information Act Request under "FOIA").

### **Deadline Extension**

The City reserves the right to extend the submission deadline, if such action is considered necessary by the City.

### **Ambiguity, Conflict, or other Errors in the RFP**

If a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify, in writing e-mail, the City of such error and request modification or clarification of the document. The Proposer shall include the RFP number, page number and the applicable paragraph title. The City will issue/post any revisions to the RFP on the City's website ([www.memphistn.gov](http://www.memphistn.gov)). The Proposer is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the Request for Proposals prior to submitting the proposal or any ambiguity, conflict, discrepancy, etc. shall be waived.

### **Failed Competition**

The City reserves the right to reject any or all proposals which are not responsive to the specifications of this Request for Proposal (RFP). Competitive negotiation requires that at least two responsive proposals for the same scope of work and service area be received in response to the RFP. A competition is considered failed if only one responsive proposal is received. If a competition has been declared failed, the City then has the option to reopen the procurement or enter into a non-competitive procurement.

### **Withdrawing or Amending a Proposal**

At any time prior to the scheduled deadline for receipt of proposals, the Proposer may withdraw or amend its proposal by submitting a written request from the authorized representative whose name and signature appears on the proposal. A written request to withdraw or amend the proposal must be submitted to the individual and address to whom/which the proposal was submitted in accordance with the section above titled "PROPOSAL SUBMISSION AND DUE DATE."

### **Acceptance/Rejection of Proposals**

The City reserves the right to accept or reject, in whole or in part, any or all proposals submitted. The City shall reject the proposal of any Proposer that is determined to be non-responsive.

### **Informalities/Minor Irregularities**

The City reserves the right to waive minor irregularities or informalities in a Proposer's proposal when the City determines that it will be in City's best interest to do so. Any such waiver shall not modify any

remaining RFP specifications or excuse the Proposer from full compliance with the RFP specifications and other contract requirements if the Proposer is awarded the contract.

### **Proposer indebted to the City**

No contract will be knowingly awarded to any organization which, in the City's sole discretion, is in arrears to the City of Memphis upon any debt or contract, or which is a defaulter as surety or otherwise under any obligations to the City of Memphis, or which has failed to perform faithfully on any previous contract with the City of Memphis.

### **Tax Payments**

The City of Memphis is exempt from federal excise, state and local taxes on all purchases and will issue tax exemption certificates, upon request.

## **4.7 FINALIST SELECTIONS (OPTIONAL)**

The City may or may not select a number of the RFP proposers who will be asked to give an oral presentation of its proposal to the City. However the City is not obligated to interview any finalist. If interviews are conducted, these providers will be selected based on an evaluation of their Proposals against the criteria described in Section 5 of this RFP. RFP recipients that are not selected to progress to the oral presentations likely will be excluded from further consideration.

For this reason, Proposer is strongly encouraged to make as complete and compelling a Proposal as possible. The RFP recipient who fails to comply risks being dropped from further consideration without having an opportunity to improve its offer.

## **4.8 RECIPIENT PRESENTATIONS (OPTIONAL)**

Details pertaining to the oral presentation phase of the RFP process will be confirmed after Proposal submission, however the presentations are tentatively scheduled to begin in September 2017.

If Proposer is one of the RFP recipients asked to give an oral presentation, Proposer should prepare a comprehensive presentation that concentrates on the business and technical aspects of the Proposal, and should not be marketing discussions. **PROPOSER'S PROPOSAL WILL NOT BE ALTERED OR ENHANCED DURING THE ORAL PRESENTATION.**

Appropriate visual and written materials are expected, but the format will be left to the discretion of the Proposer. A soft copy of all presentation materials must be delivered to the Principal Contact at least one business day before the beginning of the presentation. Proposer should also bring a sufficient number of printed copies of the materials for the City attendees at the presentation.

The City may provide a last minute agenda or other direction for the Proposer's presentation based on the City's initial review of the Proposals.

#### 4.9 CONTRACT AWARD

The award of contract will be made on the basis of the best proposal, as solely determined by the City, which meets the requirements and criteria set forth in the solicitation. The City will only accept proposals for the services requested. The proposal submitted in response to this solicitation is not a legally binding document; however, the contract, which will be based on information provided in the proposal, becomes legally binding once all parties have signed it. Any contract resulting from this RFP shall be subject to the City of Memphis General Terms and Conditions set forth in this solicitation and any additional terms imposed by City. The successful Contractor shall be required to execute the contract originated by the City of Memphis and satisfy all contract requirements as specified by the City. One or more contracts may be awarded under this RFP, and any contract awards and amounts are subject to the availability and appropriation of funds.

#### 4.10 PROTESTS

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the award announcement at the following address:

City of Memphis Purchasing Agent:  
125 North Main, Room 354, Memphis, Tennessee 38103.

#### 4.11 MODIFICATION OR TERMINATION OF RFP PROCESS

Subject to the rules and regulations of the City's Procurement Office, including with respect to providing notification and, where applicable, providing the opportunity to revise proposals, the City reserves the right to, in its sole discretion, discontinue, amend, supplement, or otherwise change this RFP, the Initiative, the process used for evaluation, and the expected timeline at any time and for any reason, and makes no commitments, implied or otherwise, that this process will result in a business transaction with any provider.

#### 4.12 SUPPLEMENTAL INFORMATION

If, subsequent to issuance of this RFP, additional relevant material is produced by or becomes available to the City, such material will (where appropriate) be transmitted to all RFP participants for their consideration. The City will make modifications by issuing a written addendum, which will be posted on the City's website. Any revisions to the solicitation will be made only by an addendum issued by the City. It is the responsibility of the Proposer to check the website for possible addenda and should consider such information in its Proposal. The City will assume that all changes or additional requirements transmitted have been taken into account in Proposer's Proposal (including with respect to pricing), unless otherwise specified.

#### 4.13 NO REPRESENTATIONS OR WARRANTIES

The City makes no representations or warranties regarding the accuracy or completeness of the information contained in this RFP or otherwise provided by the City through the RFP process. Proposer is responsible for making its own evaluation of information and data contained in this RFP or otherwise provided by the City, and for preparing and submitting responses to the RFP. The City has attempted to validate the information provided in this RFP, but it is possible that Proposer may detect inconsistencies or potential errors. While Proposer should identify these potential issues in its questions or in an appendix to its Proposal, Proposer should use the information provided on an “as-is” basis for its initial Proposal. Information regarding the City and the Initiative may be revised or updated, and republished for inclusion in a final response.

#### 4.14 PROPOSAL PREPARATION COSTS

Proposer will be responsible for all costs it incurs in connection with this RFP process (including but not limited to Proposal preparation, personnel time, travel-related costs, and other expenses) and any subsequent agreement negotiations.

### 5. EVALUATION MODEL

#### 5.1 QUALIFYING PROPOSALS

City will review each submitted Proposal to determine whether it is a Qualifying Proposal. A Qualifying Proposal is one that meets all of the criteria set forth below. All Proposals that ARE NOT a Qualifying Proposal will be disqualified from this RFP process. A Qualifying Proposal is a Proposal that:

- Was submitted (in the form and format required) by the due date as specified in Section 4.6.
- Conforms to the requirements of the RFP (as outlined in Section 3).

#### 5.2 EVALUATION OF QUALIFYING PROPOSALS

An evaluation team composed of representatives of the City, County, and MHA will evaluate proposals on a variety of quantitative and qualitative criteria. Upon receipt of proposals, the City will review to determine whether the proposal is acceptable or non-acceptable based on the criteria outlined below.

Submissions will be reviewed by a review and selection committee comprised of City of Memphis, Division of Housing and Community Development staff, Shelby County Department of Housing staff, Memphis Housing Authority staff, and other representatives as deemed necessary to fully evaluate the submission. An interview with some or all of the proposers may be requested.

Evaluation of the proposal will include a review of the Consultant's knowledge of Fair Housing issues, qualifications and previous experience, proposed project design, availability during the proposed schedule of work, proposed cost of the project, and overall responsiveness to the RFP.

After evaluating the proposals received and accepted, the review and selection committee will make a recommendation to the Director of the Division of Housing and Community Development for approval of the selected Consultant. Final contract approval rests with the Mayor of the City of Memphis, Tennessee.

The criteria, and their associated weights, upon which the evaluation of the proposals will be based on the following:

Capacity - The ability to provide services in a timely manner including, but not limited to, providing sufficient personnel, documentation, and all such services needed for the completion of the assessment as well as the capability and means to gather the required data. (30%)

Relevant Experience - The experience and qualifications of the consultant(s) and team members including relevant experience and knowledge in the analysis of Fair housing issues, education and training in carrying out similar programs analysis, and the experience and financial capacity to undertake and complete the proposed project in a timely manner. (50%)

Cost - Cost effectiveness as evidenced by anticipated costs as outlined in a budget detail. (20%)

The City encourages the use of MBE/WBE/SBE entities and section 3 firms as defined by the U.S. Department of Housing and Urban Development and other relationships that promote opportunities for such firms.

Selection will be based on determination of which proposal best meets the needs of the City and the requirements of this RFP.

Contract(s) will be awarded based on a competitive selection of proposals received. The contents of the proposal of the successful consultant will become contractual obligations and failure to accept these obligations in a contractual agreement may result in cancellation of the award.

The City reserves the right to negotiate any portions of the successful consultant's fees and scope of work or utilize their own resources for such work.

Selection will be based on determination of which proposal best meets the needs of the City and the requirements of this RFP.

## 6. RFP TERMS AND CONDITIONS

The City of Memphis seeks proposals from firms who have the expertise to provide to provide the products and/or services as is in accordance with this RFP document. This is a Request for Proposal that may be modified by the City in the selection process.

THE CITY OF MEMPHIS ENCOURAGES THE PARTICIPATION OF SMALL, MINORITY AND WOMEN-

OWNED BUSINESSES IN THE PURCHASING PROCESS.

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

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the intent to award announcement at the following address: City of Memphis Purchasing Agent; 125 North Main, Room 354; Memphis, Tennessee 38103. Notice will be posted on the City's website and outside Council Chambers, located on the lobby floor of City Hall. The intent to award notification shall be deemed publicly announced on the date specified on the notice.

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

No objections with regard to the application, meaning, or interpretation of the specifications will be considered after the opening of the subject proposals. If there are questions or concerns regarding any part of plans, terms, specifications or other proposed documents, a written request for interpretation thereof may be submitted to the City Purchasing Agent prior to the deadline date. The organization submitting the request shall be responsible for the prompt delivery of the request. Any interpretation in response to the written request will be made only by addendum duly issued, and a copy of such addendum will be mailed or delivered to each organization receiving a set of such documents and/or posted on the City's website. The City of Memphis will not be responsible for any other explanation or interpretation of the proposed documents. By submission of its proposal, a proposer shall be deemed to have understood fully the contents and meaning of the RFP.

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

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

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

**JIM STRICKLAND, MAYOR**

Eric Mayse, City Purchasing Agent

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## **INSTRUCTIONS TO PROPOSERS**

Proposers shall submit their signed proposal in a sealed envelope INDICATING ON THE OUTSIDE: THE COMPANY NAME and THE REQUEST FOR PROPOSAL NUMBER.

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

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

Any firm receiving a mailed solicitation on the above subject and not bidding will be electronically removed from the City's mailing list used for the above-referenced subject after 3 consecutive non-responses or no bids.

For additional information concerning this solicitation, please contact: Eric Mayse via e-mail at [Eric.Mayse@memphistn.gov](mailto:Eric.Mayse@memphistn.gov). Subject line must read "Questions – Assessment of Fair Housing."

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

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

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

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





**EXHIBIT 2 – NON-COLLUSION AFFIDAVIT**

**The Proposer, by its officers and its agents or representatives present at the time of filing this Proposal, being duly sworn on their oaths say, that neither they nor any of them have in any way, directly or indirectly, entered into any arrangement or agreement with any other Proposer, or with any officer of the Owner or Owner’s representative whereby such affiant or affiants or either of them has paid or is to pay such other Proposer or officer any sum of money, or has given or is to give to such other Proposer or officer anything of value whatever, or such affiant or affiants or either of them has not directly or indirectly, entered into any arrangement or agreement with any other free competition into the letting of the contract sought for by the attached prices that no inducement of any form or character other than that which appears on the face of the Proposal will be suggested, offered, paid or delivered to any person whomsoever to influence the acceptance of the Proposal or awarding of the Contract, nor has this Proposer any agreement or understanding of any kind whatsoever, with any person whomsoever to pay, deliver to, or share with any other person in any way or manner, any of the proceeds of the Contractor sought by this Proposal.**

**Submitted By:**

**Firm Name** \_\_\_\_\_

**Authorized Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**SIGNATURES**

**If PROPOSER is:**

**A. An Individual**

**By** \_\_\_\_\_

**(SEAL)**

**(Individual's Name)**

**Doing business as**

\_\_\_\_\_

**Business Address:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

**B. A Partnership**

By \_\_\_\_\_

(SEAL)

(Firm Name)

\_\_\_\_\_

\_\_\_\_\_

(General Partner)

Business Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

**C. A Corporation**

By \_\_\_\_\_

(SEAL)

(Corporation Name)

\_\_\_\_\_

(State of Incorporation)

By \_\_\_\_\_

(Name of Person Authorized to Sign)

Title \_\_\_\_\_

Attest \_\_\_\_\_

(Secretary)

Business Address:

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

D. A Joint Venture

By \_\_\_\_\_  
(Name)

Business Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
(Name)

Business Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Each joint venture member must sign. The manner of signing for each individual partnership and corporation that is party to joint venture should be in manner indicated above.

## STANDARD SERVICE AGREEMENT

### CMEM STANDARD SERVICE AGREEMENT (HEADER)

This Agreement is made and entered into this \_\_\_\_\_, by and between [ @ CONTRACTOR NAME @ ], hereinafter called the "Contractor" and the City of Memphis, a municipal corporation of the State of Tennessee, hereinafter called the "City":

### WITNESSETH

**WHEREAS**, the City, by and through its [ @ DIVISION NAME @ ], has the need for [ @ SERVICES TO BE PROVIDED @ ]; and **WHEREAS**, the Contractor has the knowledge and expertise to provide such services; and **WHEREAS**, the parties desire to enter into an agreement setting forth the terms and conditions under which the Contractor shall provide said services. **NOW THEREFORE**, for and in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties desire to enter into Agreement and hereby agree as follows:

### CMEM STANDARD SERVICE AGREEMENT (SCOPE OF SERVICES)

**SCOPE OF SERVICES.** The Services to be provided in connection with this Agreement shall include, but not be limited to, those items listed in the Scope of Work, which is attached hereto and incorporated herein as Exhibit A (the "Services").

### TERM

This Agreement shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the City in accordance with applicable ordinances, laws and regulations.

The Initial Term of this Agreement shall commence beginning [ @ CONTRACT BEGIN DATE @ ] and shall end on the earlier of [ @ CONTRACT END DATE @ ] or until all goods/services herein have been provided to the City ("Initial Term"), subject to the availability and appropriation of funds to finance the same and the successful operation of the program.

The City shall have the option to extend the Initial Term for [ @ OPTION YEARS @ ] additional one-year periods (the "Option Periods"), subject to the appropriation of funds by the Memphis City Council and mutual agreement of the parties. The Initial Term and the exercised Option periods are collectively referred to hereinafter as the "Term."

### CMEM SERVICE AGREEMENT (PAYMENT TERMS AND CONDITIONS)

**INVOICES.** The Contractor shall submit original invoices, or copies of original invoices certified as such by the Contractor, on the Contractor's letterhead and in form and substance acceptable by the City and with all necessary supporting documentation, to the City. The invoice shall describe the services

provided, list the price per unit, reflect any applicable terms of payment, and show the contract number to which it relates. Unless the contract number is shown on the invoice, it may be returned to the Contractor. Invoices shall be submitted to: [ @ DIVISION NAME @ ], [ @ INVOICE ADDRESS @ ]; Memphis, Tennessee [ @ ZIP CODE - INVOICE @ ]; Attn: [ @ CITY CONTACT/REPRESENTATIVE @ ]

**COMPENSATION.** Unless the City has good faith and reasonable objections to the Contractor's invoice(s), the City shall compensate the Contractor, based on invoices submitted by the Contractor, the sum total not to exceed \$[ @ CONTRACT AMOUNT @ ] (USD) (the "Fee") during the term of the Agreement, which shall include all reimbursable expenses.

The City shall use its best efforts to remit payment based on the Contractor's invoice within thirty (30) days after receipt of accurate invoice and approval by the City. The City is not obligated to pay, and may withhold from payment, any amounts the City has in dispute with the Contractor based on the Contractor's non-performance, unsatisfactory performance or negligent performance of any services hereunder.

**TRAVEL EXPENSES.** Where travel expenses are otherwise allowed and payable herein, such travel expenses shall be in accordance with the City's Travel Policy and Procedures, as may be amended from time to time. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the City.

**TAX PAYMENTS.** The City of Memphis is exempt from Federal Excise, State and Local Taxes on all purchases and upon request, will issue tax exemption certificates to the Contractor. Contractor shall be solely responsible and liable for any taxes and business license fees assessed or imposed by any government having jurisdiction over the work and/or goods to be provided herein.

**PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK.** The payment of an invoice shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as acceptance of the work nor as final approval of any of the costs invoiced therein, and the City's payment shall not relieve the Contractor from its obligation to replace or correct any work that does not conform to this Agreement, even if the unsatisfactory character of such work may have been apparent or detected at the time such payment was made. Work, data or components that do not conform to the requirements of this Agreement shall be rejected by the City and replaced by the Contractor, without delay or additional cost to the City.

If the Contractor receives payment from the City for a service or reimbursement that is later disallowed or rejected by the City or another governmental entity on the basis of audit or monitoring, the Contractor shall promptly refund the disallowed amount to the City upon the City's request. At its option, the City may offset the amount disallowed from any payment due to the Contractor under this Agreement or any other agreement.

**FINAL CONTRACT INVOICE.** The Contractor shall submit to the City a final contract invoice within 45 calendar days from the termination date of the contract, for any services provided pursuant to this Agreement. The Contractor further acknowledges and agrees the City will not be responsible for any Contractor invoices, pertaining to this Agreement, submitted to the City after the final contract invoice. The Contractor shall close out its accounting records at the end of the Agreement period in

such a manner that reimbursable expenditures and revenue collections are NOT carried forward.

## **CMEM SERVICE AGREEMENT (GENERAL TERMS AND CONDITIONS)**

**INCORPORATION OF WHEREAS CLAUSES.** The foregoing whereas clauses are hereby incorporated into this Agreement and made a part hereof.

**TITLE & RISK.** The title and risk of loss of any goods hereunder shall not pass to the City until the City actually receives and takes possession of the goods at the point or points of delivery. The Contractor/successful bidder shall assume all liability and responsibility for delivery of such goods in good condition to the City.

**PATENT INDEMNIFICATION.** The Contractor warrants that any goods/services furnished hereunder do not infringe or violate any patent, trademark, copyright, trade secret, or any other proprietary right of any third party; that it shall defend all suits that may arise with respect thereto; and that it shall indemnify, defend, save and hold harmless the City, its officials, employees, agents, successors and assigns, from and against all liabilities, suits, claims, damages, costs or expenses, including without limitation attorney and expert witness fees, for or by reason of any actual or alleged claim the goods/services purchased by City hereunder infringe any patent, copyright, or is a violation of trade secret disclosure laws, whether by reason of the Contractor's purchase or otherwise. This indemnification obligation shall survive the expiration or termination of this Agreement.

**TRANSPORTATION CHARGES/F.O.B. DELIVERY.** All pricing is F.O.B. destination, in which Contractor shall be responsible for freight, transportation costs, and all incidental charges, unless delivery terms are specified otherwise in the bid and agreed to by the City. In the event shipping other than FOB destination is allowed by the City, The City agrees to reimburse the Contractor for transportation costs in the amount specified in the Contractor's bid, or actual costs, whichever is lower, provided the City shall have the right to designate what method of transportation shall be used to ship the goods.

**SHIPMENTS.** Substitutions will not be accepted, unless otherwise specified herein. Partial shipments may be allowed unless otherwise stated in writing by City, however, full shipment of all items ordered hereunder must be completed by the date specified in this Agreement or this Agreement will be subject to cancellation by the City. The Contractor shall not ship excess quantities without the City's prior written approval.

**REPORTS.** Upon request, the Contractor shall prepare and submit reports of its activities, funded under this agreement, to the originating department of the City. The reports shall include an itemization of the use of the City's funds, inclusive of specific services delivered by the Contractor. Any such reports provided to the City shall be prepared with the understanding that the City may make such reports available to the public.

In addition, Contractor shall submit and, as necessary, update subcontractor information (including but not limited to payments thereto), for **any and all subcontractors** used on City project(s), in the City's compliance tracking software, B2GNow. The City shall have the right to withhold future disbursement of funds under this Agreement and any future Agreements until the requirements of this provision have

been met.

**ENTIRE AGREEMENT.** This Agreement constitutes the full and final understanding of the parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, express or implied, between the parties with respect to the subject matter of the Agreement.

**STANDARD OF PERFORMANCE.** All services by the Contractor shall be performed in compliance with the specified requirements, in a manner satisfactory to the City, and in accordance with the generally accepted business practices and procedures of the City and pursuant to the governing rules, practices and regulations of the industry, based on the type of services performed hereunder.

**HEADINGS.** Titles and headings used herein are for the convenience of reference only and shall be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

**MODIFICATION AND AMENDMENT.** This Agreement shall be amended or modified only by a written document signed by the parties hereto, in accordance with applicable laws and regulations.

**CONFIDENTIALITY.** While performing work under this Agreement, the Contractor may gain access to proprietary and/or confidential information that, if disclosed to third parties, may be damaging to the City or its officials or employees. Such information shall include materials considered to be confidential information as a matter of law (e.g., personnel records), and shall also include (i) all materials in any form developed or created by the City related to funding and financial and business information; (ii) all information owned, possessed or used by the Contractor, which is communicated to, learned, developed or otherwise acquired by the Contractor in the performance of the Services for the City; (iii) the terms, conditions and pricing contained herein; and (iv) any other information that the Contractor has been advised by the City is confidential, privileged or proprietary. Confidential information, as used in this Agreement, shall not include (i) information in the Contractor's possession prior to disclosure by the City; (ii) information generally available to the public or that becomes available to the public through a source other than the City, or (iii) information that was rightfully obtained by the Contractor from a third party who is under no obligation of confidentiality to the City with respect to such information. The Contractor agrees that it will accept and hold confidential information obtained from the City in confidence at all times during and after termination of this Agreement. The Contractor shall neither use nor disclose such information, except as provided in this Agreement or as required by law, without the prior written permission of the City.

The Contractor acknowledges and agrees that a breach of this section by the Contractor will cause the City irreparable injury and damage; therefore, the Contractor expressly agrees that the City shall be entitled to injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement. The Contractor agrees that it will disclose confidential information only to those employees who have a right to know, and shall require its employees, agents, and subcontractors to comply with the requirements of this provision and the requirements of the provisions herein titled "Public Statements" and "Rights in Data."

**PUBLIC STATEMENTS.** The Contractor shall not make any announcement, release any information, or authorize or participate in any interview concerning this Agreement and the goods and/or services required herein, without obtaining prior written consent from the City. The Contractor shall require its employees, agents, and subcontractors to comply with the requirements of this provision. This provision shall survive the expiration or termination of this Agreement.

**RIGHTS IN DATA.** The Contractor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type produced under this Agreement, whether or not the same is accepted or rejected by the City, shall remain the property of the City and shall not be published by the Contractor or any other party without the express prior written consent of the City. In implementing the foregoing, the Contractor hereby grants and assigns to the City all rights and claims of whatever nature, whether now or hereafter, arising in and to any and all of such reports, studies, plans, models, drawings, specifications, and other information or data and shall cooperate fully with the City in any steps the City may take to obtain copyrights, trademark or like protections with respect thereto. The signing of this Agreement shall constitute a complete transfer of ownership, intellectual property and copyright of all documents from the Contractor to the City upon the Contractor's delivery of such documents and/or information to the City or upon completion of the Project, whichever occurs first. The Contractor shall not construe such transfer as a grant for usage nor can the Contractor revoke it.

**EMPLOYMENT OF CITY WORKERS.** The Contractor shall not engage, on a full, part-time or any other basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employ of the City.

**CONTRACTOR'S PERSONNEL.** The Contractor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all work performed under this Agreement shall be supervised by the Contractor. Contractor will make its personnel aware of and cause them to comply with the City's policies that have been made known to Contractor while performing pursuant to this Agreement. The Contractor further certifies that all of its employees assigned to perform any work hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Contractor who, in the opinion of the City, is incompetent, whose conduct becomes detrimental to the work, or whom the City deems to be unsatisfactory for any reason, shall immediately be removed from association with the services hereunder per the City's request. Upon such request, the Contractor shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training. Contractor is responsible for the acts or omissions of its personnel under or relating to this Agreement.

The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. The City shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, health, welfare and disability benefits, Federal and local taxes, or other compensation, benefits or taxes for any personnel provided on behalf of the Contractor. In addition, the Contractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.

**INDEPENDENT CONTRACTORS.** Nothing in this Agreement shall be deemed or construed to represent

that the Contractor, or any of the Contractor's employees or agents, are the agents, representatives, or employees of the City. The Contractor acknowledges that it is an independent contractor over the details and means for performing the services hereunder. Anything in this Agreement which may appear to give the City the right to direct the Contractor as to the details of the performance of its obligations hereunder or to exercise a measure of control over the Contractor is solely for purposes of compliance with local, state and federal regulations and means the Contractor will follow the desires of the City only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by the Contractor that neither it nor its employees or agents shall hold itself out contrary to the terms of this paragraph, and the City shall not be liable for any representation, act or omission of the Contractor contrary to the provisions hereof.

## **TERMINATION**

1. It shall be cause for the immediate termination of this Agreement if, after its execution, the City determines that either:

the Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or

the Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without the City's consent or approval; or

the Contractor has filed bankruptcy, has been adjudicated bankrupt, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the Contractor's assets.

2. The City may cancel/terminate this Agreement, in whole or in part, upon providing written notice to the Contractor of the City's intention to terminate the Agreement as a result of Contractor's failure to provide the goods and/or services specified under this Agreement or in violation(s) of any of the terms herein, and the Contractor has failed to cure such breach within [ @ NUMBER OF DAYS TO CURE BREACH @ ] business days of such notice. The City may reject the goods and/or services and cancel this Agreement for any goods/services rendered or to be rendered hereunder. At its option, City may return the rejected portion of such goods to Contractor at its expense or hold the same for such disposal as Contractor shall indicate. In the event of any such rejection/termination, the City shall, at the City's option, have the right to obtain like goods and/or services elsewhere or to take over the work and prosecute the same to completion, both at the Contractor's expense; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, etc. as may be on the site of the work and necessary therefore. The Contractor shall be liable to the City for any loss, damage, or additional cost incurred thereby, including but not limited to any difference between the cost for procuring such like services and the price specified herein, attorneys' fees and court costs.

3. Notwithstanding the foregoing or any section herein to the contrary, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor, for the purpose of setoff, until such time as the exact amount of damages due the City from the Contractor is determined.

4. The City may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving [ @ NUMBER OF DAYS TO TERMINATE CONTRACT FOR CONVENIENCE @ ] business days prior written notice to the Contractor. In the event a purported termination for cause by the City is in

error, then such termination may, at the City's sole discretion, be deemed to be a termination for convenience under this section. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation, as determined by the City, for any satisfactory authorized work performed in accordance with the Agreement up to the termination date; but in no event shall the City be liable to the Contractor for expenses incurred after the termination date. All goods accepted by City or services completed by the Contractor prior to the Termination Date shall be documented and all tangible work documents shall be transferred to the City prior to payment for services rendered, and shall become the sole property of the City. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall not be compensated for any anticipatory profits, or other damages of any description, that have not been earned as of the date of termination.

5. The Contractor shall deliver to the City all hard copy and electronic files maintained on behalf of the City within thirty (30) calendar days of termination of this Agreement. Upon reasonable request, the City reserves the right to obtain such information prior to the termination of this Agreement.

**COMPENSATION FOR CORRECTIONS.** No compensation shall be due or payable to the Contractor pursuant to this Agreement for any of the services performed by the Contractor to correct services, when such corrections are required as a direct result of negligence by the Contractor to properly fulfill any of its obligations herein.

**CITY'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF.** If evidence is produced before the final settlement of all or any balances that the Contractor has failed to pay laborers employed on his work or failed to pay for materials used therein, or if the City has reason to suspect the same, the City may withhold such balances and upon evidence satisfactory to the City as to the amount due for such labor and materials, the City, acting as the agent of the Contractor, may settle and pay for the same and charge the amounts to the Contractor and deduct the same from the said balance or balances.

**REMEDIES CUMULATIVE.** All remedies available to the City herein are cumulative and shall be in addition to all other rights and remedies provided by law. The termination, expiration, or suspension of this Agreement shall not limit the City from pursuing other remedies available at law or in equity.

**SUBCONTRACTING, ASSIGNMENT or TRANSFER.** The Contractor shall not subcontract, assign, delegate or transfer all or part of its rights, responsibilities, or interest under this Agreement without the prior written consent of the City. Any purported assignment, transfer, or delegation in violation of this Section shall be voidable by the City. No subcontracting, assignment, delegation or transfer shall relieve the Contractor from performance of its duties hereunder; neither shall the City be responsible for the fulfillment of the Contractor's obligations to its transferors or subcontractors. Upon request of the City, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the transfer. At any time, City may, in its sole discretion, revoke its prior approval of a subcontractor and direct Contractor to replace such subcontractor or perform the services that were being performed by such contractor itself if the City finds in its reasonable judgment that (i) such subcontractor's performance is materially deficient or otherwise unacceptable to City; (ii) good faith doubts exist concerning the subcontractor's ability to render future performance because of changes in the subcontractor's ownership, management, financial condition, or otherwise; or (iii) there have been one (1) or more material misrepresentations by or concerning the subcontractor. The City reserves the right to terminate the Agreement if Contractor, in whole or in part, is acquired by another entity during the term of this Agreement.

In the event the Contractor is allowed to sublet any part of the Agreement, the Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractor and of the persons

employed or directly or indirectly employed by the subcontractor as he is for the acts and omissions of persons employed by Contractor. The Contractor shall not subcontract more than [ @ SUBCONTRACTOR PERCENT @ ]% of the work required hereunder. The computation for percentages will be based on monetary values.

**CONFLICT OF INTEREST.** Neither party shall engage in any conduct or activity in the performance of this Agreement that constitutes a conflict of interest under applicable federal, state or local laws, rules and regulations.

The Contractor covenants that it has no public or private interest, and shall not acquire, any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and the Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer, official, agent or employee of the City, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement. For breach or violation of this provision, the City shall have the right to recover or withhold the full amount of such gratuities.

**COVENANT AGAINST CONTINGENT FEES.** The Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

**GENERAL COMPLIANCE WITH LAWS.** The Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall obtain and maintain, at its own expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. Such permits and licenses shall be made available to the City, upon request.

The Contractor is assumed to be familiar with and shall comply with all applicable federal, state, and local laws, ordinances, and regulations in performing any of its obligations under this Agreement, including but not limited to the City of Memphis Living Wage Ordinance, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA), and the Americans with Disabilities Act (ADA). The Contractor shall promptly notify the City of any conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict.

**NON-DISCRIMINATION.** The Contractor hereby agrees to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination, which provide in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the Contractor's

employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, State or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. In the event the Contractor fails to comply with the City's non-discrimination policy and any and all other laws prohibiting discrimination, this Agreement may be canceled, terminated or suspended in whole or in part by the City.

The City reserves the right to investigate any claims of illegal discrimination by the Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the City. The Contractor's failure or refusal to do so shall be cause for termination of this Agreement in accordance with the terms of this Agreement.

**EMPLOYMENT OF ILLEGAL IMMIGRANTS.** The Contractor hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. Contractor shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event the Contractor fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this agreement may be canceled, terminated or suspended in whole or in part by the City, and the Contractor may be prohibited from contracting to supply goods and/or services to the City for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with the City.

**SEVERABILITY.** If any terms or provisions of this Agreement are held to be illegal, invalid or unenforceable as a matter of law, such provision shall be fully severable, and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding and shall not be affected by such provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, the parties may negotiate in good faith to replace such provision with a valid, legal and enforceable provision that most closely approximates the parties' original intent.

**NO WAIVER OF CONTRACTUAL RIGHT.** No term or provision of this Agreement, or of any document executed pursuant hereto, shall be held to be waived, modified or deleted unless in writing and executed by the parties hereto . No delay or failure of the City to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver or relinquishment of the City's right to subsequently enforce and compel strict compliance with such provision or any other provision herein or in any document related hereto and specifically identified as a waiver of any succeeding breach thereto or of any other provision herein contained.

**SUBJECT TO FUNDING.** This Agreement is subject to availability and annual appropriation of funds by the Memphis City Council. In the event sufficient funds for this Agreement are not available or appropriated by the Memphis City Council for any of its fiscal period during the term hereof, then the City shall immediately terminate this Agreement upon written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed up to the termination date. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall have no right to any actual, general,

specific, incidental, consequential, or any other damages whatsoever of any description or amount that have not been earned as of the date of termination.

**CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISE.** The Contractor shall take affirmative action to ensure that small, minority-owned and women-owned businesses are utilized when possible as sources of supplies, equipment, construction and services.

**PUBLIC RECORDS.** Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by the Contractor, the Contractor understands and acknowledges that the City is a governmental entity subject to the State of Tennessee Public Records Act, and any reports, data or other information supplied to the City regarding services performed hereunder may be subject to disclosure as a public record in accordance with the laws of the State of Tennessee.

**ORGANIZATION STATUS AND AUTHORITY.** The Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

The execution, delivery and performance of this Agreement by the Contractor has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Contractor, any provision of any indenture, agreement or other instrument to which the Contractor is a party, or by which the Contractor's respective properties or assets are bound, in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

Each person executing this Agreement represents that: he/she is lawfully authorized to sign the Agreement on behalf of the party he/she represents and execution of the Agreement was duly and regularly authorized by the party's governing body.

**WARRANTY.** The Contractor warrants to the City that all goods/work shall be free from defects in design and faulty or improper workmanship and shall be in strict compliance with the terms of this Agreement. This warranty shall be effective for a period of not less than one year from the date of acceptance by the City of such goods and/or services as satisfactorily complete, and shall be in addition to all other warranties, express, implied or statutory. The warranty shall survive the termination or expiration of this Agreement.

**RECORDS AND AUDITS.** The Contractor shall make and keep as the same accrue, full and complete books, documents, accounting records and other evidence, that specifically relate to this Agreement, in accordance with generally accepted accounting principles. The Contractor shall retain such records, and shall make same available to the City, upon reasonable request, during the term of this Agreement, and for a minimum period of three (3) full years after completion of the contract obligations or from the date of final payment under this Agreement, whichever is later. In the event any litigation, claim or audit is instituted prior to the expiration of the required three-year retention period, such records shall be retained until such litigation, claim or audit finding has been

resolved. Copies of said records shall be furnished to the City upon request.

Upon reasonable notice, the Contractor shall permit the City, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter the Contractor's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by the Contractor. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places

**DISPUTE RESOLUTION.** In the event of any dispute(s), controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations involving themselves or their representatives as they each deem appropriate.

Any dispute concerning a question of fact in connection with this Agreement between the Contractor and the City shall be referred in successive order for resolution, first to the City Purchasing Agent, second to the City Attorney, and thirdly to the Mayor of the City of Memphis, whose decision regarding same shall be final.

**FORCE MAJEURE.** The City shall not be deemed in default hereunder, nor shall the City be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any force majeure event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, acts, governmental authorities or acts of nature or other similar cause beyond its control.

**SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. **NOTICES.** All notices and other communications required or permitted to be given hereunder shall be written and hand delivered with signed receipt; delivered by facsimile; delivered by a nationally recognized overnight courier; or mailed via certified U.S. mail, postage prepaid and return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand delivery, on the date of delivery; (ii) if by fax, on the day the fax transmission is received at the receiving location and receipt is telephonically confirmed by the sender; (iii) if by delivery via U.S. mail, on the date of receipt appearing on a return receipt card; or (iv) if by overnight courier, on the date receipt is confirmed by such courier service. All notices must be addressed to the respective party at the following addresses or to such other person or address as either party may designate in writing and deliver as provided herein:

To the CITY:

City of Memphis [@ DIVISION NAME @]

[@ ADDRESS - NOTICES @]

Memphis, TN [@ ZIP CODE - NOTICES @]

Attn: [@ CITY CONTACT/REPRESENTATIVE @]

Fax: [@ FAX NUMBER - CITY CONTACT/REPRESENTATIVE @]

With copy, if requested,

to:

City Attorney

125 N. Main, Room 336

Memphis, TN 38103

To the CONTRACTOR:

[@ CONTRACTOR NAME @]

[@ CONTRACTOR ADDRESS @]

[@ CONTRACTOR CITY @], [@ CONTRACTOR STATE @] [@ CONTRACTOR ZIP CODE @]

Attn: [@ CONTRACTOR REPRESENTATIVE @]

Fax: [@ FAX NUMBER - CONTRACTOR REPRESENTATIVE @]

**NO THIRD PARTY BENEFICIARY:** This Agreement is entered into solely between, and may be enforced only by, City and Contractor. Unless otherwise specified herein, this Agreement shall not be deemed to create any rights in third parties, including suppliers or customers of either party.

**SERVICE MARKS.** The Contractor agrees that it shall not, without City's prior written consent, use the name, service mark or trademarks of the City.

**NUMBER AND GENDER.** Unless the context requires otherwise, (i) use of a specific gender imports the other gender(s); and (ii) use of the singular imports the plural and vice versa.

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

**DRAFTER.** This Agreement is the result of arm's length negotiations between the parties and shall be construed to have been drafted by both parties such that any ambiguities in this Agreement shall not be construed against either party.

**COUNTERPARTS.** This Agreement may be signed in multiple counterparts and/or counterpart signature pages, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile, and any such signature shall have the same legal effect as an original.

**CITY LIABILITY.** The City shall have no liability except as specifically provided in this Agreement. The City, by execution of this Agreement, assumes no liability for damages caused to persons or property by reason of Contractor providing services herein or for injury to any employee, agent or subcontractor of the Contractor performing under this Agreement.

**INDEMNIFICATION.** CONTRACTOR shall indemnify, defend, save and hold harmless the CITY and its officers, agents and employees from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character, including without limitation attorney fees and litigation expenses, arising out of or in connection with the performance of this Agreement by Contractor, its employees, subcontractors, or agents or the breach of this Agreement by Contractor, its employees, subcontractors or agents. This obligation shall survive the expiration or termination of this Agreement.

The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, defend, save and hold harmless the City or its elected or appointed officials, officers,

employees, agents, assigns, and instrumentalities as herein required.

The City reserves the right to appoint its own counsel regarding any matter defended hereunder. The Contractor acknowledges that the City has no obligation to provide legal counsel or defense to the Contractor, its employees or subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against the Contractor as a result of or relating to obligations under this agreement. The City shall have no obligation for the payment of any judgments or the settlement of any claims asserted against the Contractor or its subcontractors or employees as a result of or relating to the Contractor's obligations hereunder.

The Contractor shall immediately notify the City c/o City Attorney; 125 North Main, Suite 336; Memphis, TN 38103, of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

#### **GOVERNING LAW, JURISDICTION AND VENUE**

The terms and conditions of this Agreement shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, without regard to conflicts of laws principles. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

#### **INSURANCE**

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

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

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

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

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

City of Memphis  
Attn: Risk Management  
170 n. Main St., 5<sup>th</sup> Floor  
Memphis, TN 38103

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

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

**WORKERS COMPENSATION:**

The Company shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and with Minimum Limits of the State of Tennessee and shall require all subcontractors to do likewise.

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

**AUTOMOBILE LIABILITY:**

Covering owned, non-owned, and hired vehicles with Minimum Limits of:

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

**COMMERCIAL GENERAL LIABILITY:**

Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability Coverage with Minimum Limits of:

\$2,000,000	General Aggregate
\$1,000,000	Products-Completed Operations
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence (Bodily Injury & Property Damage)
\$ 50,000	Fire Damage any One Fire
\$ 5,000	Medical Expense any One Person

**PROFESSIONAL LIABILITY /ERRORS & OMISSIONS:**

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

\$2,000,000 Each Claim / Aggregate

**“NETWORK SECURITY AND PRIVACY” LIABILITY: (CYBER):**

For losses arising out of the following areas:

- Privacy Liability
- Network Security Liability
- Media Liability
- Cyber Extortion
- Privacy Breach Response
  - Customer Notification Expense
  - Credit Monitoring Expense
- Business Interruption
- Regulatory Defense and Penalties including PCI Fines/Penalties if applicable
- Social Engineering

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

\$ 10,000,000 Each Claim / \$10,000,000 Aggregate

**UMBRELLA LIABILITY:**

An umbrella liability policy (or excess liability) may be used to provide additional Commercial General Liability, Automobile Liability, and Employer’s Liability limits when damages exceed the primary limits of liability.

With Minimum Limits of:

\$2,000,000 Each Occurrence / Aggregate

**PROPERTY INSURANCE:**

The Company shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors to do likewise. The Company shall require all subcontractors to carry insurance as outlined above, in case they are not protected by the policies carried by the Company.

The Company is required to provide copies of the insurance policies upon request.

## **OTHER Federal REQUIREMENTS**

### **A. Nondiscrimination, Title VI**

Project Sponsor, in compliance with the requirements of Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.), agrees that no person shall on the grounds of race, color, age or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in this program funded with Federal financial assistance.

### **B. Nondiscrimination, Title VII**

Project Sponsor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Project Sponsor will exert every effort to ensure that applicants are employed fairly; and that employees are treated fairly during employment, without regard to their race, color, religion, sex or national origins. Such efforts to employ fair hiring and employment standards shall extend to; employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination, rates of pay or other forms of apprenticeship. Project Sponsor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth the provisions of this nondiscrimination clause.

### **Section 3**

Project Sponsor, in compliance with Section 3 of the Housing and Urban Development Act of 1968, agrees, to the greatest extent feasible and where applicable, to provide opportunities for training and employment of lower income persons residing with the City of Memphis and to award contracts for any work in connection with this agreement to eligible business concerns which are located in, or owned in substantial part by persons residing in the City of Memphis.

### **Section 504 (Rehabilitation Act)**

Project Sponsor agrees not to discriminate against any otherwise qualified individual on the basis of handicap as set forth in Section 504 of the Rehabilitation Act of 1973.

### **Suspended or Debarred Contractors**

Project Sponsor agrees that no federal assistance shall be used directly or indirectly to employ, award contracts to, or otherwise negotiate the services of any contractor during such contractor's period of debarment, suspension, or placement in ineligibility status pursuant to the provisions of 24 CFR §24.

### **Financial Management**

Project Sponsor agrees to comply with OMB Circular A-110, Attachment F 2.1, regarding standards for financial management systems. The financial management system shall provide for the following:

1. Accurate, current and complete disclosure of the financial results of this activity.
2. Records that identify adequately the source and application of funds for this activity. These records shall contain information pertaining to awards, authorizations, obligations, non-obligated balances, assets, outlays and income.
3. Effective control over and accountability for all funds, property and other assets. Project Sponsor shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Procedures for determining the reasonableness, allowability and allocability of costs in accordance with the provisions of cost principles found in OMB Circular A-122, which are incorporated herein by this reference.
5. Accounting records that are supported by source documentation.
6. Examinations of the project defined in the contract in the form of audits or internal audits by qualified individuals. Such audits are to be produced after the completion of the project or at a minimum of every two years.

#### **Lobbying**

No Federal appropriated funds may be paid by or on behalf of Project Sponsor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member in Congress in connection with awarding of any Federal contract, grant, loan or cooperative agreement. If funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an employee of a Member of Congress in connection with a CDBG Contract Agreement, grant, loan, or cooperative agreement, Project Sponsor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Project Sponsor shall require that the language of this paragraph be included in the award documents of all sub-awards and all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.

#### **Clean Air and Water Pollution**

Project Sponsor agrees to comply with all applicable standards, order, and regulations promulgated pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act.

#### **Drug Free Work Place**

Project Sponsor agrees that it will maintain a drug free workplace in accordance with the requirement of 24 CFR 21, and shall administer a written policy for drug and alcohol free facilities.

**CONTRACT EXECUTION**

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement, effective as of the day and year first above written.

**CITY OF MEMPHIS**

By: \_\_\_\_\_  
Jim Strickland, Mayor

\_\_\_\_\_  
Approved:

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

Attest:  
\_\_\_\_\_  
Deputy Comptroller

**CONTRACTOR NAME**

By: \_\_\_\_\_  
Name, Title:

# Section 3 Documents

(Request for Proposals)

## UNDERSTANDING SECTION 3

### What is Section 3?

Section 3 is a HUD requirement designed to ensure that the HUD funds invested in housing and community development activities provide employment opportunities for low-income people.

The HUD regulation states that “to the greatest extent feasible,” businesses and employers working on HUD-funded projects must make a good faith effort to train and employ low- to very low- income individuals in the area (called “Section 3 residents”) and to also contract with businesses identified as Section 3.

In summary, the obligations of Section 3 are:

1. Provide training for Section 3 residents, and report on the outreach and training undertaken.
2. To the greatest extent feasible hire and train Section 3 residents, and report on employees and new hires.
3. To the greatest extent feasible contract with Section 3 businesses, and report on contracts and subcontracts.

### Contracting Obligations

#### APPLIES TO PROJECTS VALUED AT \$100,000 OR MORE

Project award recipients are required to review the HCD Section 3 Business database as a source to fill contracting opportunities. Section 3 requires that project award recipients fulfill the following obligations:

- Meet the HUD contracting requirement that Section 3 businesses receive least 10 percent of the building trades contracts for the project, and at least three percent of the total amount for all non-building trade contracts.
  - “To greatest extent feasible” contract with businesses
    - That are 51 percent or more owned by Section 3 residents; or
    - That have at least 30 percent of its full-time employees identified as Section 3 residents, or were Section 3 residents within three years of the date of first hire; or
    - That provide evidence, as required, of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontractors to businesses that meet one of the qualifications above.
-

## Employment and Training Obligations

### APPLIES TO ALL PROJECTS

Project award recipients are required to review the HCD Section 3 Resident database as the first source to fill open positions and training opportunities. Section 3 requires that project award recipients fulfill the following obligations when new employees are hired:

- Meet the HUD employment requirement that 30 percent of new hires are identified as Section 3 residents.
- “To greatest extent feasible” provide preference to hire:
  - Low- to very low-income residents residing in the service area or neighborhood in which the Section 3 covered project is located; or
  - Participants in HUD Youthbuild programs; or
  - Where the Section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act, homeless persons residing in the service area or neighborhood in which the Section 3 covered project is located; or
  - Other residents (including Section 8 recipients) of the City of Memphis or Shelby County who meet the low- to very low-income guidelines for Section 3 preference.

Project award recipient are required to provide appropriate employment and training outreach signage at the project site and throughout the project area to inform neighborhood residents of available opportunities.

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## **SECTION 3 OPPORTUNITY PLAN**

### **Purpose**

The purpose of the Section 3 Opportunity Plan is to ensure that jobs and economic opportunities generated by the U. S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing and business concerns providing such opportunities.

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BIDDER OR APPLICANT

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PROJECT NAME

---

CONTACT NAME

TELEPHONE

### **Requirements**

The submitter of this Section 3 Opportunity Plan hereby agrees to comply with all the provisions of Section 3 as set forth in 24 CFR 135.

The Section 3 Opportunity Plan must be submitted with the request for quotation (RFP), request for proposal (RFP) or grant application to the City of Memphis, Division of Housing and Community Development (HCD).

If a contract is awarded, a Section 3 Summary Report identifying progress in meeting the goals established in this Plan must be submitted monthly throughout the contract period. The Section 3 Summary Report shall be submitted no later than the 10th of each month. For any goal not met, the report shall identify other economic opportunities that the contract recipient has or intends to provide.

The failure of the contract recipient to comply with the approved Plan shall be considered an event of default under the contract agreement.

## Commitment to Contracting

### APPLIES TO PROJECTS VALUED AT \$100,000 OR MORE

Each bidder or grant applicant for a construction or labor-related contract must complete this Plan and submit all relevant information required herein. The following contracting requirements must be satisfied:

- At least 10 percent (10%) of the total dollar amount of all HUD-funded construction contracts shall be awarded to businesses identified as Section 3.
- At least three percent (3%) of the total dollar amount of all HUD-funded, non-construction contracts shall be awarded to businesses identified as Section 3.

The following documents must be completed and submitted with this Plan:

- Outreach Efforts to Section 3 Businesses (businesses only identified as Section 3 should be listed)
- Section 3 Business Certification Form (use as needed for businesses not previously granted Section 3 business status)
- Section 3 Commitment to Contracting

Project award recipients are required to review the HCD Section 3 Business database as a source to fill contracting opportunities.

## Commitment to Employment and Training

### APPLIES TO ALL PROJECTS

Each bidder or grant applicant for a construction or labor-related contract must complete this Plan and submit all relevant information required herein. Bidders and grant applicants must satisfy the following hiring requirements:

- Thirty percent (30%) of the aggregate number of new positions during a one year period shall be filled with Section 3 residents. Example: A construction contractor hires 10 new workers. Three of the new workers should qualify as local low- to very low- income persons.

Project award recipients are required to review the HCD Section 3 Resident database as the **first source** to fill open positions and training opportunities. Furthermore, project award recipient are required to provide appropriate employment outreach signage at the project site and throughout the project area to inform neighborhood residents of employment opportunities.

The following documents must be completed and submitted with this Plan:

- Estimated Project Workforce Statement (details all positions required for the entire project, including existing positions and anticipated new positions)
- Estimated Contract Workforce Statement (all contractors included in the bid response or grant application are required to complete this document; the document details all positions required for each contractor(s), including existing positions and anticipated new positions)

## Penalties

### NON-COMPLIANCE

The HCD Compliance Department will evaluate compliance with Section 3 requirements based on information submitted in the monthly Section 3 Summary Reports and provide written notification regarding non-compliance issues. Refer to Exhibit K for complete details regarding non-compliance notification and penalties.

## Compliance

The failure of the bidder or grant applicant to comply with the Section 3 Opportunity Plan shall be considered an event of default under the contract agreement.

Acknowledged by

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PRESIDENT OR AUTHORIZED OFFICER

---

SIGNATURE

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BUSINESS OR ORGANIZATION NAME

---

DATE

## Outreach to Section 3 Businesses

### APPLIES TO PROJECTS VALUED AT \$100,000 OR MORE

Documentation of efforts to engage Section 3 businesses must be provided with responses to RFPs/ RFPs and grant applications.

Project Name \_\_\_\_\_

This form is to be completed by bidders or grant applicants seeking funding under a City of Memphis, Division of Housing and Community Development Section 3-covered program.

Organization \_\_\_\_\_

Submitted By \_\_\_\_\_

The following businesses identified as Section 3 were contacted to determine capacity and availability to work on the above-listed project:

Company \_\_\_\_\_

Contact \_\_\_\_\_ Telephone \_\_\_\_\_

Date(s) Contacted \_\_\_\_\_ Quote Provided (Y/N) \_\_\_\_\_

Follow-up Action and Company Response \_\_\_\_\_

\_\_\_\_\_

Company \_\_\_\_\_

Contact \_\_\_\_\_ Telephone \_\_\_\_\_

Date(s) Contacted \_\_\_\_\_ Quote Provided (Y/N) \_\_\_\_\_

Follow-up Action and Company Response \_\_\_\_\_

\_\_\_\_\_

*Copy and complete additional forms as needed.*

## SECTION 3 BUSINESS CERTIFICATION FORM

Businesses seeking Section 3 status and preference in contracting by the City of Memphis, Division of Housing and Community Development (HCD) must complete and submit a Section 3 Business Certification Form.

Business Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Federal Employer Identification Number \_\_\_\_\_

### Type of Business

Corporation       Partnership       Joint Venture       Sole Proprietorship       Non-Profit

A copy of the current business license or current documents granting non-profit status is required.

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**Please select one of the following three qualification methods for status as a Section 3 business.**

#### Section 3 resident-owned business (51 percent or more owned by Section 3 residents)

The following documents may be required in the future as added confirmation of status:

- Complete list of Section 3 resident owners
- Section 3 Resident Certification Forms for each Section 3 resident owner

#### At least 30 percent of permanent, full-time workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business

The following documents may be required in the future as added confirmation of status:

- Complete list of all current full-time employees
- Complete list of employees claiming Section 3 status and employees Section 3 Resident Certification Forms

#### Subcontracting 25 percent of the dollar awarded to qualified Section 3 business

- This qualification method grants a business Section 3 status only for the project for which 25 percent of the dollar amount will be awarded to Section 3 businesses.
- A complete list of subcontracted Section 3 business(es) and subcontract amount(s) is required.

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I certify to best of my knowledge that the information contained here within is true and accurate.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

## SECTION 3 BUSINESS PROFILE

This document is to be completed and submitted along with the Section 3 Business Certification Form to the City of Memphis, Division of Housing and Community Development Compliance Department.

BusinessName \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ ST \_\_\_\_\_ Zip \_\_\_\_\_

Office Telephone (        ) \_\_\_\_\_ Fax Telephone (        ) \_\_\_\_\_

ContactPerson \_\_\_\_\_

Email Address \_\_\_\_\_ Business Website \_\_\_\_\_

Employer Identification Number \_\_\_\_\_

Date Business Established    Month \_\_\_\_\_ Date \_\_\_\_\_ Year \_\_\_\_\_

Number of Employees    \_Full-time \_\_\_\_\_ Part-time \_\_\_\_\_ Contract \_\_\_\_\_

### Trade Description (please check all that apply)

<input type="checkbox"/>	Carpentry	<input type="checkbox"/>	Heating (HVAC)	<input type="checkbox"/>	Electrical
<input type="checkbox"/>	Painting	<input type="checkbox"/>	Masonry	<input type="checkbox"/>	Asbestos
<input type="checkbox"/>	Plumbing	<input type="checkbox"/>	Masonry Restoration	<input type="checkbox"/>	Lead Abatement
<input type="checkbox"/>	General Contractor	<input type="checkbox"/>	Roofing	<input type="checkbox"/>	Carpet/ Flooring
<input type="checkbox"/>	Boliler/Burner Replacement	<input type="checkbox"/>	Exterminating	<input type="checkbox"/>	Ironwork
<input type="checkbox"/>	Architecture	<input type="checkbox"/>	Rubbish Removal	<input type="checkbox"/>	Demolition
<input type="checkbox"/>	Other: _____	<input type="checkbox"/>	Other: _____	<input type="checkbox"/>	Other: _____

Bonding Capacity \_\_\_\_\_ Insurance Capacity \_\_\_\_\_

### Contracts awarded over the last three (3) years

Project Name or Developer Name

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

Contract Amount

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Additional Comments:

\_\_\_\_\_

\_\_\_\_\_

## COMMITMENT TO CONTRACTING

**APPLIES TO PROJECTS VALUED AT \$100,000 OR MORE**

Project Name \_\_\_\_\_

**To be completed by bidders or grant applicants** seeking funding under a City of Memphis, Division of Housing and Community Development Section 3-covered program.

Organization \_\_\_\_\_

Submitted By \_\_\_\_\_

Total Proposed Project Amount: \$ \_\_\_\_\_

Section 3 Business Goal (10% of Total Project Amount): \$ \_\_\_\_\_

The businesses listed below are identified as Section 3 businesses and included in the official bid response or grant application for project funding. The information is provided to comply with the Section 3 Opportunity Plan requirements established by the City of Memphis, Division of Housing and Community Development.

Section 3 Business	Work to be Performed	Contract Amount	Percentage of Total Project
<b>Totals</b>		<b>\$</b>	

Signature: \_\_\_\_\_

# ESTIMATED PROJECT WORKFORCE STATEMENT

## APPLIES TO ALL PROJECTS

Project Name \_\_\_\_\_

**To be completed by bidders or grant applicants** seeking funding under a City of Memphis, Division of HCD Section 3-covered program.

Organization \_\_\_\_\_

Submitted By \_\_\_\_\_

The bidder or grant applicant hereby submits this statement that identifies \_\_\_\_\_ employment opportunities for Section 3 residents during the term of the contract. The bidder or grant applicant affirms that the jobs identified shall be for meaningful employment that may or may not be related to the scope of services of this project. The bidder or grant applicant has committed to employ \_\_\_\_\_ Section 3 residents, which represents \_\_\_\_\_% of employment opportunities identified.

The estimated project workforce listed below is provided to comply with the Section 3 Plan requirements established by the City of Memphis, Division of Housing and Community Development.

**The attached Estimated Contractor Workforce forms support the information provided.**

Job Category	Positions Occupied by Permanent Employees Needed for This Project	Number of Positions Not Occupied Needed for This Project	Total Estimated Positions Needed for Project
<b>Totals</b>			

Occupied positions include:

\_\_\_\_\_ Neighborhood residents

\_\_\_\_\_ Memphis public housing residents





## SECTION 3 RESIDENT CERTIFICATION FORM

### CITY OF MEMPHIS, DIVISION OF HOUSING AND COMMUNITY DEVELOPMENT

This form is to be completed by residents seeking Section 3 status for preference in employment or training opportunities or by new employees working on Section 3 covered projects.

### Eligibility

An individual is eligible for Section 3 status if he or she is:

- A legal resident of a Memphis Housing Authority property; or
- A resident of Memphis or Shelby County, TN and meets the low- to very low-household income limits set by the U. S. Department of Housing and Urban Development

A photo identification card and proof of current residency is required.

#### 2017 ANNUAL HOUSEHOLD INCOME\*

Select the statement that represents your household size and from that statement check the appropriate annual income level for your household.

	Lo			
	In			
My household size is <b>1</b> and my annual household income was	<input type="checkbox"/>	\$ 33,600 or less	<input type="checkbox"/>	More than \$ 33,600
My household size is <b>2</b> and my annual household income was	<input type="checkbox"/>	\$ 38,400 or less	<input type="checkbox"/>	More than \$ 38,400
My household size is <b>3</b> and my annual household income was	<input type="checkbox"/>	\$ 43,200 or less	<input type="checkbox"/>	More than \$ 43,200
My household size is <b>4</b> and my annual household income was	<input type="checkbox"/>	\$ 48,000 or less	<input type="checkbox"/>	More than \$ 48,000
My household size is <b>5</b> and my annual household income was	<input type="checkbox"/>	\$ 51,850 or less	<input type="checkbox"/>	More than \$ 51,850
My household size is <b>6</b> and my annual household income was	<input type="checkbox"/>	\$ 55,700 or less	<input type="checkbox"/>	More than \$ 55,700
My household size is <b>7</b> and my annual household income was	<input type="checkbox"/>	\$ 59,550 or less	<input type="checkbox"/>	More than \$ 59,550
My household size is <b>8+</b> and my annual household income was	<input type="checkbox"/>	\$ 63,400 or less	<input type="checkbox"/>	More than \$ 63,400

The following documents may be required to confirm Section 3 status and/or household income: public housing residency confirmation, Section 8 assistance documentation, income tax returns, etc.

\*Household income based on HUD FY 2017 Income Limits effective April 14, 2017.

I, \_\_\_\_\_, am a legal resident of \_\_ and \_\_ meet \_\_ do not meet the income eligibility guidelines for a low- or very-low-income person as published and identified above.

My permanent address is: \_\_\_\_\_

I certify to the best of my knowledge that the information contained here within is true and accurate.

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Signature

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Print Name

Date