



CITY OF MEMPHIS

REQUEST FOR PROPOSAL (RFP)

#276759 – 2 Re-Bid

Groundbreakers - Regal Plaza Redevelopment Proposal

Date Issued: February 15, 2025

**Proposal Submission Deadline: On or before 4 June 2025 No
Later Than 12:00 PM (Central Time)**

CONTENTS

1. OVERVIEW.....	4
1.1 GENERAL CONDITIONS.....	4
1.2 OBJECTIVE	5
1.3 OPPORTUNITY.....	5
1.4 PROJECT GOALS	5
1.5 THE SITE/PROPERTY CONDITIONS.....	6
2. SCOPE OF SERVICES.....	7
2.1 FINANCIAL ASSUMPTIONS	7
2.2 LIST OF FINANCING AND TAX INCENTIVES	7
2.3 INSURANCE REQUIREMENTS	8
2.4 DURATION.....	8
3. PROPOSAL RESPONSE	9
3.1 COVER LETTER	9
3.2 NON-COLLUSION AFFIDAVIT.....	10
3.3 CRIMINAL AND CIVIL PROCEEDINGS DISCLOSURE	10
3.4 INITIAL DESIGN CONCEPT, TIMELINE, AND FINANCIAL FEASIBILITY.....	10
3.5 PRICING.....	10
3.6 RELEVANT EXPERIENCE.....	11
3.7 DEVELOPMENT TEAM DETAILS.....	11
3.8 FINANCIAL CAPACITY	11
3.9 EQUAL BUSINESS OPPORTUNITY (EBO) PROGRAM.....	11
4. INSTRUCTIONS ON RFP PROCESS.....	16
4.1 USE OF INFORMATION	16
4.2 PRINCIPAL CONTACT AND INFORMATION REQUESTS.....	16
4.3 SCHEDULE OF ACTIVITIES	16
4.4 PRE-SUBMITTAL CONFERENCE	17

4.5	INITIAL QUESTIONS SUBMISSION, FINAL QUESTIONS SUBMISSION	17
4.6	PROPOSAL SUBMISSIONS	18
4.7	FINALIST SELECTIONS (OPTIONAL)	20
4.8	RECIPIENT PRESENTATIONS (OPTIONAL).....	20
4.9	CONTRACT AWARD.....	20
4.10	PROTESTS.....	21
4.11	MODIFICATION OR TERMINATION OF RFP PROCESS	21
4.12	SUPPLEMENTAL INFORMATION	21
4.13	NO REPRESENTATIONS OR WARRANTIES.....	21
4.14	PROPOSAL PREPARATION COSTS	22
5.	EVALUATION MODEL	23
5.1	QUALIFYING PROPOSALS.....	23
5.2	EVALUATION OF QUALIFYING PROPOSALS.....	23
6.	RFP TERMS AND CONDITIONS	24
7.	EXHIBITS	27
	EXHIBIT 1 – NON-COLLUSION AFFIDAVIT – NOTARY SEAL REQUIRED	27
	EXHIBIT 2 – CRIMINAL AND CIVIL PROCEEDINGS DISCLOSURE.....	30
	EXHIBIT 3 – ESTIMATED DEVELOPMENT COSTS.....	31
	EXHIBIT 4 – PROPOSER QUESTIONS TEMPLATE.....	33
	EXHIBIT 5 – CITY OF MEMPHIS SERVICE AGREEMENT SAMPLE CONTRACT.....	34
	EXHIBIT 6 – EVALUATION CRITERIA.....	50
	EXHIBIT 7 – INSURANCE REQUIREMENTS	53

1. OVERVIEW

1.1 GENERAL CONDITIONS

The following data is intended to form the basis for submission of proposals to **provide experienced development teams the opportunity to partner with HCD on the redevelopment of an 8-acre site at 3373 Regal Plaza in the Whitehaven neighborhood**. 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 accordance with the requirements listed in Section 4.5 Initial Questions Submission, Final Questions Submission. 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 Department will post them to the City's website at <https://www.memphistn.gov/rfp/>. 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. **Failure to include such addendums in the Proposer's bid packet shall cause the bid to be disqualified.**

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

The Whitehaven District is characterized as a strong, stable single-family neighborhood with minimal blight or vacancy. Over the next five years, Whitehaven is projected to see an influx of 65 new households annually, creating market-rate, mixed-use, and multifamily development opportunities. This reinvestment effort seeks to capitalize on the district's potential while preserving its cultural vibrancy and residential stability.

The City's comprehensive plan-Memphis 3.0 serves as our guiding plan that provides a shared vision for the district and outlines areas of focus, community priorities, and recommended projects. A vital recommendation of the plan is to acquire vacant and unoccupied properties to facilitate an increase in quality housing stock.

This RFP represents an essential opportunity for the City of Memphis' Division of Housing and Community Development (HCD) to partner with experienced development teams to realize this vision.

1.3 OPPORTUNITY

HCD seeks proposals from experienced development teams to partner with on the redevelopment of the 8-acre site at 3373 Regal Plaza in the Whitehaven neighborhood. The redevelopment can include any of the below:

- Full Residential – Single-family housing, missing middle housing, multifamily housing
- Mixed Use – Live/work opportunity for apartment and community stores/office spaces

Incorporation of landscaped green space for the use of residents or commercial amenity space is encouraged.

Formerly known as the Maple Ridge Apartments, this city-owned parcel is situated near major employment centers, commercial districts, and residential areas. The site is surrounded by single-family homes and is conveniently located near key transit routes such as U.S. Highway 61 and I-240, with easy access provided by major thoroughfares like Winchester Road and East Brooks.

The development-ready site aligns with the City's objectives of stimulating economic activity, expanding the tax base, and offering new housing and mixed-use opportunities. Developers are encouraged to take advantage of the site's strategic location and demographic trends to create a project that supports the City's broader vision for Whitehaven.

1.4 PROJECT GOALS

- The primary goal for redeveloping 3373 Regal Plaza is to create a high-quality, mixed-use development that enhances the character and appeal of the Whitehaven district.
- This development should provide residents with convenient access to goods, services, and jobs, while also fostering economic growth within the community.
- The project should include housing options that meet the needs of current residents and attract new residents seeking a high quality of life.
- The development must prioritize walkability, support increased mobility options, and contribute to an improved pedestrian experience in the district.
- A strong commitment to diversity and inclusion is also strongly encouraged, with the project's design, construction, and ownership actively involving minority and women-owned business enterprises (MWBs).

- The successful proposal will also maximize housing affordability through the efficient use of available incentives.
- ***During the proposal review process as well as development agreement negotiations, developers will be expected to engage with the community on project details.

1.5 THE SITE/PROPERTY CONDITIONS

The City owns the one parcel totaling 8 acres, details shown in the table below. The site is located outside the city core and south of downtown Memphis in the Whitehaven community. It is bordered by Tulane to the west, Graves to the east, Winchester Road to the south, and East Brooks to the north. It was previously the location of the Maple Ridge Apartments, a 100-unit apartment complex.

The site is zoned RU-3, which allows for various residential developments such as single-family detached homes, two-family homes, townhouses, and multifamily units. The zoning is conducive to mixed-use development and encourages diverse housing options while preserving the area's character.

Property Address	Parcel ID	Lot Area (acres/sq. ft)	Zoning
3373 Regal Plaza	07700100047	8 acres	RU-3 conducive for mixed-use development.

Property description with background information:

The site is well-connected to major thoroughfares, providing convenient access to U.S. Highway 61 (South Third Street) and U.S. Highway 51 (Elvis Presley Boulevard). Both highways link to I-55, I-69, and I-240, offering easy connectivity to greater Memphis. In addition, the site is surrounded by single-family homes, a church, and two commercial properties, making it an ideal location for a residential or mixed-use project. There is proximity to major employment centers such as FedEx and essential community assets, including schools and parks, further enhancing the property's appeal for redevelopment.

This site offers developers an excellent opportunity to contribute to the revitalization of Whitehaven. It has the potential to bring new housing and commercial options to a well-positioned area of Memphis.

2. SCOPE OF SERVICES

2.1 FINANCIAL ASSUMPTIONS

The developer selected must identify and secure all necessary pre-development financing and, if needed, acquire the property. The development team must provide a financial analysis and a plan outlining the expected costs for the proposed project, including where the budget will come from and how it will be used.

The financing plan should involve consideration for using public funds and resources effectively. If there's a need for public funding or incentives to cover a financing gap, HCD may be able to provide funding for the project. In the event public funds are not allocated to the project, HCD will act as a committed project sponsor.

2.2 LIST OF FINANCING AND TAX INCENTIVES

The City has identified the following possible incentive opportunities for which this development opportunity may qualify. The City does not guarantee that:

1. All the incentives listed below apply to this geographic location or type of project.
2. All these incentives will be available at the time of development.
3. This is an exhaustive list of possible incentives for this project site.

The selected developer will be responsible for seeking those incentives deemed beneficial to the proposed project.

FINANCING INCENTIVES

EDGE Impact Fund – Economic Development Growth Engine

Appraisal Gap Program – Tennessee Housing Development Agency (THDA)

Affordable Housing Program – Federal Home Loan Bank of Cincinnati (FHLB)

<https://www.fhlbcin.com/community-investment/affordable-housing-program/>

Zero Interest Fund Program – Federal Home Loan Bank of Cincinnati (FHLB)

<https://www.fhlbcin.com/community-investment/other-programs/zero-interest-fund/>

Housing and Economic Development Incentives – Memphis Light, Gas & Water

[http://www.mlgw.com/images/content/files/pdf/IncentivePoliciesforHousing\(1\).pdf](http://www.mlgw.com/images/content/files/pdf/IncentivePoliciesforHousing(1).pdf)

Economic Development Incentives – Tennessee Valley Authority

TAX INCENTIVES

Low Income Housing Tax Credits (4% noncompetitive or 9% competitive) - Tennessee Housing Development Agency (THDA)

Multi-family Tax-Exempt Bond – Memphis Health Educational and Housing Facility Board (HEHFB)

<http://www.memphishehf.com/snapshot/>

Payment in Lieu of Tax (PILOT) – Memphis Health Educational and Housing Facility Board (HEHFB)

Destination Retail PILOT – Economic Development Growth Engine <http://www.growth-engine.org/business-assistance/tax-incentives/>

Expansion PILOT – Economic Development Growth Engine

Fast Track PILOT – Economic Development Growth Engine

Jobs PILOT – Economic Development Growth Engine

Tax Exempt Industrial Revenue Bonds – Economic Development Growth Engine (EDGE) <http://www.growth-engine.org/business-assistance/tax-incentives/>

Industrial Revenue Bond – Economic Development Growth Engine (EDGE) <http://www.growth-engine.org/site-selectors/resources/>

2.3 INSURANCE REQUIREMENTS

Insurance requirements for this project are attached as Exhibit 7.

If the proposer is unable to provide the required insurance referenced above or in Exhibit 7, questions concerning a change to the requirements should be addressed during the question-and-answer phase and will not be considered after the deadline in Section 4.3.

2.4 DURATION

Contract will be executed once a bidder/developer is successfully selected. Contract duration will be determined and will align with the construction period and project closeout.

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 – Criminal and Civil Proceedings Disclosure
Section 4 – Initial Design Concept, Timeline, and Financial Feasibility
Section 5 – Pricing
Section 6 – Relevant Experience
Section 7 – Development Team Details
Section 8 – Financial Capacity
Section 9 – Equal Business Opportunity (EBO) Program

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.

The cover letter should explain your interest in the opportunity and outline the main elements of your development concept. 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 1.

3.3 CRIMINAL AND CIVIL PROCEEDINGS DISCLOSURE

Please use the form provided in Exhibit 2.

3.4 INITIAL DESIGN CONCEPT, TIMELINE, AND FINANCIAL FEASIBILITY

1. Provide a narrative of the proposed development concept and how it addresses the project goals. Identify your team's vision for this development and how it would fit into your overall business strategy. Proposals should illustrate the development team's understanding of Memphis, the Whitehaven district neighborhoods, and the importance of a successful project. Include any conceptual site plans, building elevations, floor plans, or renderings as needed to communicate the concept and design. Describe how the proposed development will look and how the design will be in accordance with the Unified Development Code. The site should be developed as a high-quality, mixed density development.
2. Describe how the design will be compatible with the existing character of the neighborhood and with the character of new development currently underway or proposed for the Whitehaven District. Include a statement that following construction, the proposed development structure will meet all current City codes and ordinances.
3. Describe rezoning requirements, if any. Note that it will be the responsibility of the respondent to request any desired rezoning, if selected.
4. Provide an estimated development budget indicating the likely costs of the project. This budget should include the purchase offer that will be made by the developer to HCD as well as the estimated hard and soft costs. Provide a summary of the assumptions on which these estimates are based, such as previous comparable projects or estimates provided by contractors.
5. Explain the proposed capital stack and financing strategy. If possible, provide a Sources and Uses Statement estimating the amount of debt and equity by source.
6. Provide a clear overview of identified/desired HCD funding, if needed, so to make the project viable.
7. Provide a project timeline with key milestones listed. Explain any project phasing, if planned.

3.5 PRICING

Please use the form included in Exhibit 3 for this section.

3.6 RELEVANT EXPERIENCE

Briefly describe agency's relevant experience as it relates to this project. Provide descriptions for at least three previously completed projects similar to the proposed project and their respective locations. Include project timelines, showing all pertinent dates of the project development. Include all funding sources utilized for the project. Provide the names and telephone numbers of project references (private and/or public sector) for each project described.

3.7 DEVELOPMENT TEAM DETAILS

This section should provide information on all members of your development team and relevant experience, expertise, and capacity. Identify the development entity's name and contact information and specify the legal form of the organization (e.g. corporation, partnership, joint venture, other).

Provide relevant experience and qualifications for each team member – including architects, engineers, contractors, financial and equity partners, lenders, or any other consultants or entities. This section should include a resume, a description of previous projects, and the team members' role in the cited project and proposed project. Provide information on whether any of these team members are a certified MWBE business.

3.8 FINANCIAL CAPACITY

Provide information that demonstrates the development team has the financial capacity and willingness to carry out the proposed project and to initiate development within 6 months of completing the development agreement. Submittals should include the following information:

1. Identify the team's capacity to secure the equity and financing required to construct, market, and sell the proposed development. Include the developer or related entities' financials and holdings.
2. Provide a basic pro forma and identify the potential amount of gap financing required and the gap financing resources related to underwriting the cost of development and operations. Define the firm's experience with securing sources of gap financing that may be used for the project. HCD may be able to provide funding for financial gaps identified in the pro forma.

3.9 EQUAL BUSINESS OPPORTUNITY (EBO) PROGRAM

Joint Venture Participation on City of Memphis Projects

The proposer shall provide a complete participation plan or well documented good faith efforts. See the following pages for descriptions and forms.

Equal Business Opportunity Program

This contract will be subject to the requirements of the City of Memphis Ordinance which establishes the Equal Business Opportunity ("EBO") Program. It is up to the Respondent to ensure that all requirements of this ordinance are met. The Ordinance may be accessed on the City's website at www.memphistn.gov under "Business Resources". The intent of the EBO Program is to increase the participation of locally owned minority and women owned business enterprises ("M/WBE") in the City's purchasing activities. The City of Memphis encourages, where economically feasible, the establishment of joint ventures agreements to ensure prime contracting opportunities for all businesses,

including good faith outreach efforts to utilize certified Minority, Women-owned Business Enterprises (MWBE) on Eligible Projects valued over \$500,000 or greater.

The OBDC shall review and approve all contractual agreements regarding the terms and provisions of each joint venture relationship prior to the award of a contract on an eligible project to the joint venture, including agreements pertaining to: 1. The initial capital investment of each venture partner; 2. The proportional allocation of profits and losses to each venture partner; 3. The sharing of the right to control the ownership and management of the joint venture; 4. Actual participation of the venture partners on the project; 5. The method of and responsibility for accounting; 6. The method by which disputes are resolved; and 7. Any additional or further information required by the OBDC as set forth in bid documents or otherwise. Joint ventures may submit agreements for pre-approval no later than seven calendar days prior to the date set for receipt of bids on an eligible project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a joint venture that does not include a satisfactory written joint venture agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.

Joint venture: An association of two or more persons, partnerships, corporations, or any combination of them, established to carry on a single business activity that is limited in scope and duration. The agreement establishing the joint venture, partnership or other multi-entity relationship shall be in writing. Further, participation in a joint venture shall be based on the sharing of real economic interest in the venture and shall include proportionate control over management, interest in capital acquired by the joint venture and interest in earnings. The OBDC shall review and approve all contractual agreements regarding the terms and provisions of each joint venture relationship prior to the award of a contract on an eligible project.

Participation Plan: The utilization plan must be completed by Bidder/Contractor/Respondent or Construction Manager. A listing of current M/WBE certified firms can be found at [The City of Memphis > Minority and Women's Business Enterprise \(M/WBE\) - Contract Compliance System](#). Please include the percentage of the M/WBE partner, type of work to be performed by the M/WBE partner and the name(s) of the M/WBEs the Respondent plans to partner with on this RFP.

Good Faith Efforts Documentation: If a Joint Venture involving an M/WBE is not achieved, responsive BIDDER, CONTRACTOR, OR RESPONDENT shall provide the required documentation of good faith efforts, and the M/WBE firms that will be used on the project (*see attached Good Faith Effort form*).

Eligible M/WBE Firms: To qualify as a Minority or Woman-owned Business Enterprise (M/WBE) firm, per the requirements of City of Memphis Ordinance, a firm must be included on the City's list of certified M/WBE firms.

Requests for verification must be submitted to the City's Contract Compliance Office listed below:

Office of Business Diversity & Compliance
125 North Main Street, Suite 546; Memphis, TN 38103
Phone 901-636-6210; Fax 901-636-6560

CITY OF MEMPHIS
EQUAL BUSINESS OPPORTUNITY PROGRAM JOINT VENTURE FORM

PROJECT TITLE: _____

Project M/WBE Joint Venture Percentage: _____%

The following sections must be completed by Bidder/Contractor/Respondent/Construction Manager a certified M/WBE joint venture partner is defined as a firm from the list of certified firms provided with this specification.

 Name of Bidder/Contractor/Respondent/Construction Manager

Section A - If the Name of Bidder/Contractor/Respondent/Construction Manager is a certified firm, so indicate here with a check mark.

_____ MBE _____ WBE

Section B - Identify below those certified firms that will be joint venture partners on this project. By submitting this bid, the bidder commits to the use of the firms listed below.

% = Show the percentage this Joint Venture partner is of your base bid

M/WBE = Show by inserting an M or W whether the Joint Venture partner is a Minority or Woman-Owned Business Enterprise.

Percentage	M/WBE	SERVICE	CERTIFIED JOINT VENTURE NAME, ADDRESS, TEL. #

Total	%
MBE	
WBE	

REPORTING: The BIDDER, CONTRACTOR, RESPONDENT OR CONSTRUCTION MANAGER shall provide City of Memphis Office of Business Diversity and Compliance with all Trade Contractors and/or Subcontractors participating on this project and associated payments. It is required that this information be updated regularly in the software program as required by the City of Memphis-Office of Business Diversity and Compliance. **The Bidder, Contractor, Respondent or Construction Manager shall consult with the City of Memphis Office of Business Diversity and Compliance when reviewing projects for MWBE participation.**

THIS FORM and SUPPORTING DOCUMENTATION MUST BE SUBMITTED WITH THE BID OR THE BID WILL BE CONSIDERED NON-CONFORMING.

LETTER OF INTENT TO PERFORM AS A JOINT VENTURE PARTNER

Project Name: _____ Project/Bid # _____

Prime Bidder, Contractor, or Respondent: _____

Address: _____
Street City State Zip Code

Telephone: _____ Email: _____

Name of Certified MBE _____ or WBE _____

Vendor: _____

Address: _____
Street City State Zip Code

Telephone: _____ Email: _____

The undersigned intends to perform work in connection with the above project as (indicate with a checkmark):

Minority Business Enterprise _____ Woman Business Enterprise

The undersigned declares that the firm is certified by the Office of Business Diversity and Compliance of the City of Memphis.

Certification number: _____ Expiration date: _____

Description of work to be performed by certified MBE or WBE:

Name of Certified MBE/WBE Company

Title of Authorized Officer

Signature of MBE OR WBE Authorized Officer

Date

Due with bid/proposal, if Bidder/Contractor/Respondent has identified MBE or WBE participation that will be used on the project.

**CITY OF MEMPHIS
GOOD FAITH EFFORT DOCUMENTATION FORM**

To The Honorable Mayor City of Memphis, Tennessee
From:

PROPOSER NAME _____

PROJECT TITLE: XXXXXXXXXXXXXXXXXXXXX

Enclosed please find the required documents:

Said Bidder ____ did / or ____ did not attend the project pre-bid meeting.

***Copies of all written notification to City of Memphis M/WBE listed firms. (Please attach list of all firms notified, detail how they were notified and when).**

Said Bidder ____ did / or ____ did not select economically feasible portions of the work to be performed by M/WBE firms.

***List all M/WBE firms with which negotiations took place. (Attach list. If no negotiations were held, please state so.) Provide names, addresses, and dates of negotiations.**

***Statement of efforts to assist M/WBE firms, with bonding, insurance, financing, or with document review. (Attach list. If no assistance was provided, please state so.)**

The Bidder ____ did / or ____ did not use all M/WBE quotations received. If the Bidder did not use all M/WBE quotations received, list on attached sheets, as required as to the reasons those quotes were not used.

***List (on attached sheets as required) all M/WBE firms contacted that the bidder considered not to be qualified, and a statement of the reasons for the bidder's conclusions. If no firms were found to be non-qualified, please state so.**

THIS SIGNED FORM AND REQUESTED DOCUMENTATION (noted by an asterisk '*') MUST BE SUBMITTED WITH THE BID, IF THE BIDDER, CONTRACTOR, RESPONDENT OR CONSTRUCTION MANAGER FAILS TO ACHIEVE THE INCLUSION OF M/WBE JOINT VENTURE PARTICIPATION. IF REQUESTED DOCUMENTATION IS NOT SUBMITTED THE BID WILL BE CONSIDERED NON-CONFORMING.

Name of Bidder/Contractor/Respondent/Construction Manager

Signature

Printed or Typed Name and Title

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 listed in Section 4.2 or other designated City personnel or agents.

4.2 PRINCIPAL CONTACT AND INFORMATION REQUESTS

Chequita Crim and Frances Brooks are the points of contact (the “Principal Contact”) for all matters relating to this RFP. Proposer should direct all inquiries to the Principal Contact at:

Chequita Crim at Chequita.crim@memphistn.gov, **Frances Brooks** at frances.brooks@memphistn.gov, and procurement@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.

Activity	Date
Re-Publish RFP	March 14, 2025
Proposer Questions Deadline	22 May 2025
City Response to Questions	28 May 2025
Proposal Submission Deadline	June 4, 2025
Finalist Selections – Optional	
Finalist Presentations – Optional (City’s Discretion)	
Negotiations	To be determined
Agreement Finalization	To be determined

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 adhering to the format template provided in Exhibit 4 and submitted as an attached WORD document or as part of the body of the email (no pdf documents) and sending it via email by 5:00 pm on the date listed in Section 4.3 Schedule of Activities. Questions received after this time and date will not be answered. This email should be sent to the individual(s) listed in Section 4.2 Principal Contacts and Information Requests, with the subject heading: “Your company’s name – RFP #XXXXX - RFP Name – Questions”. The City will post the responses to the questions on the City’s web site on or before the date listed in Section 4.3 Schedule of Activities. 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”), three (3) complete printed copies, and one (2) thumb drive containing softcopies of its entire Proposal (including the signed Cover Letters) on or before the date specified in Section 4.3 Schedule of Activities **at 12:00 noon CT**, to the addressee provided below:

Note: Please ensure you time stamp and date your envelope using the clock and labels downstairs in the Lobby prior to dropping your bid in the box. If you drop it off in room 368, please ensure someone is there to verify the time and date you dropped it off.

USPS (or other common carrier)
City of Memphis
Purchasing Department, Room 368
125 N. Main Street
Memphis, TN 38103

Hand Delivery
City of Memphis
Main Lobby – Bid Drop Box
125 N. Main Street
Memphis, TN 38103

The label should identify the contents as:

Your company name & address.
RFP Title, RFP #XXXXX.

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). 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.

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 select a number of the RFP respondents 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 on the date listed in Section 4.3 Schedule of Activities.

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 enough 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, or via email (Chequita Crim at Chequita.crim@memphistn.gov, Frances Brooks at frances.brooks@memphistn.gov and procurement@memphistn.gov).

City of Memphis Purchasing Agent:
125 North Main Street, Room 368, 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.

Note: All addenda must be included in the Proposer's proposal.

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).
- Includes copies of all addenda related to this RFP.

5.2 EVALUATION OF QUALIFYING PROPOSALS

An evaluation team composed of representatives of the City will evaluate proposals on a variety of quantitative and qualitative criteria. Proposals will be evaluated and scored on a 100-point scale. Additional information and point breakdown can be found in Exhibit 6. The criteria, and their associated weights, upon which the evaluation of the proposals will be based, are as follows:

Project feasibility (30 points):

- The project should be achievable in a timely manner.
- The project should be economically sound and supported by realistic assumptions.
 - Proposed capital stack and financing strategy.
- The project should not face insurmountable regulatory hurdles or constraints.

Project understanding and approach (25 points):

- The proposal should meet the project/community goals and requirements outlined in this RFP.
- Overall scope and quality of the proposed development.
- Quality of the design of the proposed development and its compatibility with the surrounding neighborhood.

Development team, capacity and experience (35 points):

- The developer should have a proven track record of delivering high-quality infill projects of a similar scale and level of complexity.
- Proven ability to obtain sufficient financial resources for similar projects.
- The proposal should include a proforma and explanation of any foreseeable financing gap.

Economic and community inclusion (10 points):

- The proposal should provide a plan for community engagement throughout the design and implementation process, demonstrating an understanding of the collaborative nature of the project and the need for strong community partnership.

6. RFP TERMS AND CONDITIONS

The City of Memphis seeks proposals from firms who have the expertise 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.

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

Any protest of award must be filed with the Purchasing Agent pursuant to Section 4.10 Protests. Notice of Intent to Award will be emailed to all vendors that submit a valid proposal. 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, pursuant to Section 4.5 Initial Questions Submission, Final Questions Submission. 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.

PAUL A. YOUNG, MAYOR

Chequita Crim, Interim 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. Bidders will be notified of any cancellation, and cancellation of this RFP or any subsequent award will be posted on the City's website.

To request additional information concerning this solicitation, please see Section 4.5 Initial Questions Submission, Final Questions Submission.

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.

7. EXHIBITS

EXHIBIT 1 – NON-COLLUSION AFFIDAVIT – **FILL IN FORM NOTARY SEAL REQUIRED**

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 _____

Individual's Name (NOTARY SEAL REQUIRED)

Doing business as

Business Address

Phone Number: _____

B. A Partnership

By _____ Firm
Name (NOTARY SEAL REQUIRED)

(General Partner(s))

Business Address:

Phone Number: _____

C. A Corporation

By _____
Corporation Name (NOTARY SEAL REQUIRED)

(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.

EXHIBIT 2 – CRIMINAL AND CIVIL PROCEEDINGS DISCLOSURE

PROPOSING FIRM'S DISCLOSURE OF CRIMINAL AND CIVIL PROCEEDINGS

Describe all ongoing and past civil and criminal proceedings and investigations within the last 10 years. Indicate the status of current proceeding/investigations and the outcome of closed or completed actions. Also, describe, if any, how the outcome of actions impacted company business operations. Attach additional pages if necessary.

Additionally, please provide detailed information on any situation, event or ongoing activity involving your company that could impact the City's award decision for this RFP.

The City reserves the right to disqualify any vendor who does not disclose information that is discovered by the City after the vendor's submission.

Note: If no civil and criminal proceedings within the last 10 years, indicate here and return this attachment with your proposal.



EXHIBIT 3 – ESTIMATED DEVELOPMENT COSTS

The developer selected must identify and secure all necessary pre-development financing and, if needed, acquire the property. The development team must provide a financial analysis and a plan outlining the expected costs for the proposed project, including where the budget will come from and how it will be used. The financing plan should involve consideration for using public funds and resources effectively. If there's a need for public funding or incentives to cover a financing gap, HCD may be able to provide funding for the project.

Please provide a funding plan (estimated Sources and Uses) below:

Lender/Funding Source	Term	Estimated Rate	Collateral	Amount
Total Sources of Funds				

Uses	Amount
Land	
Building Construction	
Machinery and Equipment	
Contingencies	
Professional Fees	
Fees & Permits	

Financing Costs	
Other (Specify)	
Other (Specify)	
Other (Specify)	
Total Uses of Funds	



EXHIBIT 4 – PROPOSER QUESTIONS TEMPLATE

RFP Section	QUESTION

**CITY OF MEMPHIS STANDARD CONTRACT
FOR PROFESSIONAL SERVICES**

PARTIES TO THE AGREEMENT. This Agreement is made and entered into as of the date of execution by and between **[@CONTRACTOR NAME@]**, ("Contractor") and the City of Memphis, a municipal corporation of the State of Tennessee ("City").

WITNESSETH

WHEREAS, City, by and through its Division of **[@DIVISION NAME@]** has the need for **[@SERVICES TO BE PROVIDED@]**; and

WHEREAS, 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 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 hereby agree as follows:

PAYMENT TERMS AND CONDITIONS

SCOPE OF SERVICES. The services to be provided in connection with this Agreement will include, but not be limited to, those items listed in Exhibit **[@EXHIBIT IDENTIFICATION@]**, attached hereto and incorporated herein as if stated verbatim.

TERM. This Agreement shall not be binding upon the parties until it has been signed first by Contractor and then by the authorized representatives of 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 services herein have been provided to City ("Initial Term"), subject to the availability and appropriation of funds to finance the same and the successful operation of the program.

City shall have the option to extend the Initial Term for **[@NO. OF OPTION PERIODS@]** additional **[@LENGTH OF OPTION PERIOD@]** period(s) (the "Option Periods"), subject to the appropriation of funds by the Memphis City Council and mutual agreement of the parties, evidenced in writing. The Initial Term and the exercised Option Periods are collectively referred to hereinafter as the "Term."

Eligible costs authorized by City and incurred after the Initial Term begins, but prior to the execution of this Agreement, shall be paid under this Agreement.

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

Contractor. Invoices shall be submitted to: [@DIVISION NAME@], [@INVOICE ADDRESS@]; Memphis, Tennessee [@ZIP CODE - INVOICE@]; Attn: [@CITY CONTACT/REPRESENTATIVE@].

COMPENSATION. Unless City has good faith and reasonable objections to Contractor's invoice(s), City shall compensate Contractor, based on invoices submitted by Contractor in accordance with the terms of this Agreement, the sum total [@CHOOSE NOT TO EXCEED OR ESTIMATED TO BE@] \$[@CONTRACT AMOUNT@] (the "Fee") per year during the Initial Term of the Agreement, which shall include all reimbursable expenses/cost. City shall use its best efforts to remit payment based on Contractor's invoice within thirty (30) days after receipt of accurate invoice and approval by City. City is not obligated to pay, and may withhold from payment, any amounts City has in dispute with Contractor based on Contractor's non-performance, unsatisfactory performance or negligent performance of any services hereunder, until such time as the parties resolve the dispute.

City reserves the right to review all Charges billed and incurred on a monthly basis.

COMPENSATION FOR CORRECTIONS. No compensation shall be due or payable to Contractor pursuant to this Agreement for any services performed by Contractor to correct services performed, when such corrections are required as a direct result of negligence caused solely by Contractor or their representative to properly fulfill any of its obligations herein, provided contractor has a reasonable opportunity to respond to any allegations of negligence.

TRAVEL EXPENSES. Where travel expenses are otherwise allowed and payable herein, such travel expenses shall be in accordance with 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 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 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 services to be provided herein.

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

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

FINAL CONTRACT INVOICE. Contractor shall submit to City a final contract invoice within 45 calendar days from the termination date of the Agreement, for any services provided pursuant to this Agreement. Contractor further acknowledges and agrees City will not be responsible for any Contractor invoices, pertaining to this Agreement, submitted to City after the final contract invoice. Contractor shall close out its accounting records at the end of the Agreement period in such a manner that reimbursable expenditures and revenue collections, related to this Agreement, are NOT carried forward.

GENERAL TERMS AND CONDITIONS

AMENDMENT. This Agreement may be modified or amended only by a written amendment executed by all parties hereto and approved by the appropriate City officials in accordance with applicable laws and regulations.

ASSIGNMENT, SUBCONTRACTING, or TRANSFER. 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 City. Any purported assignment, transfer, or delegation in violation of this Section shall be voidable by City. No subcontracting, assignment, delegation or transfer shall relieve Contractor from performance of its duties hereunder; neither shall City be responsible for the fulfillment of Contractor's obligations to its transferors or subcontractors. Upon request of 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 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. 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 Contractor is allowed to sublet any part of the Agreement, Contractor shall be as fully responsible to City for the acts and omissions of the subcontractor and the subcontractor's employees, as Contractor is responsible for the acts and omissions of Contractor's own employees.

ASSIGNS. See **SUCCESSORS**.

AUDITS. See **RECORDS**.

BOYCOTT OF ISRAEL. In connection with Tennessee Code Annotated Section 12-4-119, Contractor certifies that it is not currently engaged in nor will it engage in a boycott of Israel. For this purpose, a "boycott of Israel" shall mean engaging in refusals to deal, terminating business activities, or other commercial actions that are intended to limit commercial relations with Israel, or companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or persons or entities doing business in Israel, when such actions are taken (i) in compliance with, or adherence to, calls for a boycott of Israel, or (ii) in a manner that discriminates on the basis of nationality, national origin, religion, or other unreasonable basis, and is not based on a valid business reason. This provision is not applicable to contracts with a value less than \$250,000 or to companies with less than 10 employees.

CITY FACILITIES. Not Applicable

CITY LIABILITY. City shall have no liability except as specifically provided in this Agreement. 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.

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 Contractor has failed to pay subcontractors, laborers employed on its work, or failed to pay for materials used therein, or if City has reason to suspect the same, City may withhold such balances and upon evidence satisfactory to City as to the amount due for such goods, labor, and materials, City, acting as the agent of Contractor, may settle and pay for the

same and charge the amounts to Contractor and deduct the same from the said balance or balances provided contractor has reasonable notice and opportunity to respond to any determination.

COMPANY'S/CONTRACTOR'S PERSONNEL. Contractor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all services performed under this Agreement shall be supervised by Contractor. Contractor will make its personnel aware of and cause them to comply with City's policies that have been made known to Contractor while performing pursuant to this Agreement. Contractor further represents that all of its employees assigned to perform any services hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of Contractor who, in the opinion of City, is incompetent, whose conduct becomes detrimental to the services, or whom City deems to be unsatisfactory for any reason, shall immediately be removed from association with the services hereunder per City's request. Upon such request, 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.

Contractor shall be solely liable and responsible for providing all employee compensation and benefits to, or on behalf of, all persons performing services pursuant to this Agreement. 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 Contractor. In addition, 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 services performed by or on behalf of Contractor pursuant to this Agreement.

CONFIDENTIALITY. Subject to the open records laws of the State of Tennessee, while performing under this Agreement, the parties may gain access to proprietary and/or confidential information that, if disclosed to third parties, may be damaging to each other. The parties agree not to disclose such information to third parties and shall take all reasonable steps to prevent unauthorized access to any of each other's confidential and proprietary information. Such information shall include, but shall not be limited to, 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 each party related to funding and financial and business information; (ii) all information owned, possessed or used by a party, which is communicated to, learned, developed or otherwise acquired by that party in the performance of this Agreement; (iii) the terms, conditions and pricing contained herein; and (iv) any other information that has been advised by a party is confidential, privileged or proprietary. Confidential information, as used in this Agreement, shall not include (i) information in a party's possession prior to disclosure; (ii) information generally available to the public or that becomes available to the public through a source other than a party under this agreement, or (iii) information that was rightfully obtained by a party from a third party who is under no obligation of confidentiality to either party to this Agreement with respect to such information. Each party agrees that it will accept and hold confidential information obtained from each other in confidence at all times during and after termination of this Agreement. A party shall neither use nor disclose such information, except as provided in this Agreement or as required by law, without the prior written permission of affected party.

Subject to the open record laws of the State of Tennessee, each party acknowledges and agrees that a breach of this section may cause the affected party irreparable injury and damage; therefore, each party expressly agrees that the affected party shall be entitled to seek injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement. Each party agrees that it will disclose confidential information only to those employees who have a right and need 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."

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. 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 Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor or any agent or representative of Contractor, to any officer, official, agent or employee of City, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to Contractor in connection with anything contemplated or performed relative to this Agreement. For breach or violation of this provision, City shall have the right to recover or withhold the full amount of such gratuities.

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.

COVENANT AGAINST CONTINGENT FEES. Contractor represents that it has not employed or retained any company or person other than a *bona fide* employee working solely for 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 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/warranty, City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

DEBARRED OR SUSPENDED ENTITIES. By signing this Agreement, Contractor certifies that it is not presently listed by any federal agency as debarred, suspended, or proposed for debarment from any federal contract activity. If during the term of this Agreement this information changes, Contractor shall notify City without delay. Such notice shall contain all relevant particulars of any debarment, suspension, or proposed debarment.

DESCRIPTION OF SERVICES. See **SCOPE OF SERVICES.**

DISPUTE RESOLUTION. In the event of any dispute, 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 Contractor and City shall be referred in successive order for resolution, first to City's Purchasing Agent, second to City's Chief Legal Officer/City Attorney, and thirdly to the Mayor of the City of Memphis, whose decision regarding City's position as to the same shall be final.

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

DUE DILIGENCE AND NON-RELIANCE. Contractor represents that it has had opportunity to conduct, and has conducted, due diligence with respect to this Agreement, and all other items and conditions it deems

necessary to conclude this Agreement, and Contractor represents that it has not relied upon any written or oral statement of City or its employees, directors, officers, consultants, attorneys or any elected or appointed officials in executing this Agreement.

EMPLOYMENT OF CITY WORKERS. Contractor shall not engage, on a full-time, 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 employment of City.

EMPLOYMENT OF ILLEGAL IMMIGRANTS. 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 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 City, and Contractor may be prohibited from contracting to supply goods and/or services to 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 City.

ENTIRE AGREEMENT. This Agreement, together with all exhibits, attachments, and addendums hereto (if applicable), 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.

FORCE MAJEURE. Neither City nor Contractor shall be deemed in default hereunder, nor shall either 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. Both shall put forward its best efforts to mitigate any delay, interruption, or cessation in the performance of its obligations under this Agreement related to said *force majeure* event.

GENERAL COMPLIANCE WITH LAWS. If required, Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and shall obtain, 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 will be made available to City upon request.

Contractor is assumed to be familiar with and agrees that at all times it will observe and comply with all applicable federal, state, and local laws, ordinances, and regulations in any manner affecting this Agreement. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA). Contractor shall promptly notify City of any conflict discovered between the Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict.

GOVERNING LAW. 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.

HEADINGS. Titles, articles, and/or section headings to the provisions herein are for reference purposes only and will be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

HOLD HARMLESS. See **INDEMNIFICATION**.

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

INDEMNIFICATION. Contractor shall indemnify, defend (until or unless determined by court that Contractor is not at fault), save and hold harmless City and its officers, agents and employees from and against any and all claims, losses, demands, suits, actions, penalties, damages (consequential or otherwise), 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. Neither Contractor nor any employees of Contractor shall be liable under this section for damages arising out of injury or damage to persons or property directly caused by the negligence of City or any of its officers, agents, or employees.

Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Contractor shall in no way limit Contractor's responsibility to indemnify, defend (until or unless determined by court that Contractor is not at fault), save and hold harmless City or its elected or appointed officials, officers, employees, agents, assigns, and instrumentalities as herein required.

City reserves the right to appoint its own counsel regarding any matter defended hereunder. Contractor acknowledges that City has no obligation to provide legal counsel or defense to 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 Contractor as a result of or relating to obligations under this Agreement. City shall have no obligation for the payment of any judgments or the settlement of any claims asserted against Contractor or its subcontractors or employees as a result of or relating to Contractor's obligations hereunder.

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

INDEPENDENT CONTRACTORS. Nothing in this Agreement shall be deemed or construed to represent that Contractor, or any of Contractor's employees or agents, are the agents, representatives, or employees of City. Contractor acknowledges that it is an independent contractor over the details and means for performing this Agreement. Anything in this Agreement which may appear to give City the right to direct Contractor as to the details of the performance of its obligations hereunder or to exercise a measure of control over Contractor is solely for purposes of compliance with applicable local, state and federal regulations and means Contractor will follow the desires of City only as to the intended results of the scope of this Agreement.

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

INSURANCE. See insurance requirements attached hereto as Exhibit **[@EXHIBIT IDENTIFICATION FOR INSURANCE@]** and incorporated herein as if stated verbatim within the Agreement.

JURISDICTION AND VENUE. See **GOVERNING LAW.**

MINORITY, WOMEN, AND/OR SMALL BUSINESS ENTERPRISE(S) CONTRACTING. Contractor shall take affirmative action to ensure that small, minority-owned and women-owned businesses which have been certified by City are utilized when possible as sources of supplies, equipment, construction and services.

MODIFICATION. See **AMENDMENT.**

MONITORING RIGHTS. See **RECORDS.**

NONDISCRIMINATION. Contractor hereby agrees to abide by, to take affirmative action to ensure that, and 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 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. 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 Contractor fails to comply with City's nondiscrimination policy and any and all other laws prohibiting discrimination, this Agreement may be canceled, terminated or suspended in whole or in part by City.

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

Any other agreement which relates to this Agreement to which Contractor is a party, including without limitation, Contractor's agreements with its subcontractors, shall specifically contain a provision to this effect.

NOTICES. All notices, approvals, and other communications required or permitted to be given hereunder shall be written and hand-delivered with signed receipt; 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 delivery *via* U.S. mail, on the date of receipt appearing on a return receipt card; or (iii) 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 City:

City of Memphis **[@DIVISION NAME@]**

[@ADDRESS - NOTICES@]

Memphis, TN **[@ZIP CODE - NOTICES@]**

Attn: **[@CITY CONTACT/REPRESENTATIVE@]**

With copy, if requested,

to:

Chief Legal Officer/City Attorney

125 N. Main Street, Room 336
Memphis, TN 38103

To CONTRACTOR:

[@CONTRACTOR NAME@]

[@CONTRACTOR ADDRESS@]

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

Attn: [@CONTRACTOR REPRESENTATIVE@]

Contractor shall advise City as to any changes to the notice party and address as identified above.

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*.

OBLIGATIONS EXTENDED BEYOND PERIOD OF PERFORMANCE. See **SURVIVAL**.

ORGANIZATION STATUS AND AUTHORITY. 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 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 Contractor, any provision of any indenture, agreement or other instrument to which Contractor is a party, or by which 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.

PARTIES IN INTEREST. See **SUCCESSORS**.

PATENT INDEMNIFICATION. Contractor represents that any 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 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 services purchased by City hereunder infringe any patent, copyright, or are a violation of trade secret disclosure laws, whether by reason of Contractor's purchase or otherwise. This indemnification obligation shall survive the expiration or termination of this Agreement.

PENALTIES AND LIQUIDATED DAMAGES. Not Applicable.

PRECEDENCE. In the event of any inconsistency between the terms or provisions expressed in this Agreement, and any term or provision in any of the other contract documents, the order of precedence shall be as follows: (1) this Agreement, including all Exhibits, except that all general terms and conditions contained

in the main body of this Agreement shall control over any conflicting general terms and conditions contained in any Exhibit hereto; (2) Contractor's response, if applicable; (3) City's solicitation, if applicable.

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

PUBLIC STATEMENTS. Contractor shall not make any announcement, release any information, or authorize or participate in any interview concerning this Agreement and the services required herein, without obtaining prior written consent from City. 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.

RECORDS. Contractor shall make and keep as the same legally enforceable, full and complete financial books, documents, accounting records and other evidence, that specifically relate to this Agreement, in accordance with generally accepted accounting principles. Contractor shall retain such records, and shall make same available to City except for records related to profits and margin, upon reasonable request, during the term of this Agreement, and for a minimum period of seven (7) 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 retention period, such records shall be retained until such litigation, claim or audit finding has been resolved.

Contractor's activities conducted pursuant to this Agreement shall be subject to monitoring and evaluation by City, the state, the federal government or their duly appointed agents or employees. Upon reasonable written notice, Contractor shall permit City, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter 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 Contractor except for records related to profits and margins. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

RELATIONSHIP OF PARTIES. This Agreement does not and shall not be construed to create a partnership or joint venture between the parties hereto. Contractor is performing its obligations hereunder as an independent contractor and not as City's agent or employee. Contractor will not hold itself out contrary to the terms of this paragraph and City will not become liable for any representation, act, or omission of Contractor contrary to the provisions hereof.

REMEDIES CUMULATIVE. All remedies available to 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 City from pursuing other remedies available at law or in equity.

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

services, in City's compliance tracking software, B2GNow. 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.

RIGHTS IN DATA / SOFTWARE. Contractor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type relating to its activities under this Agreement, whether or not the same is accepted or rejected by City, shall remain the property of City and shall not be used or published by Contractor or any other party without the express prior consent of City. Software development, if any, specifically developed as part of this Agreement shall be the intellectual property of City. Contractor recognizes that said data including software development, if any, specifically developed as part of this Agreement shall be the intellectual property of City and is the exclusive property of City and that City reserves the right to use, market, license, or sell it to others.

Contractor shall obtain assurances similar to those contained in this subsection from persons, contractors and subcontractors retained by Contractor. Contractor acknowledges and agrees that a breach by Contractor of the provisions of this section will cause City irreparable injury and damage. Contractor, therefore, expressly agrees that 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.

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

SEVERABILITY. If any terms or provisions of this Agreement are held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added as a part of this Agreement, upon good-faith negotiation by the parties, a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible, and still be legal, valid and enforceable. Parties acknowledge that some Agreement provisions may be inapplicable to the scope of work that are germane to this Agreement. Parties waive no rights or remedies where the provisions are applicable.

SHIPMENTS. Not applicable.

STANDARD OF PERFORMANCE. All services by Contractor shall be performed in compliance with the specified requirements, and pursuant to the governing rules, practices, regulations, and "Standard of Care" of the industry for the type of work performed under this Agreement.

SUBCONTRACTING. See **ASSIGNMENT**.

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 City shall terminate this Agreement upon written notice to Contractor. In the event of such termination, Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed up to the termination date. Such termination by City shall not be deemed a breach of contract by City, and 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.

SUCCESSORS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

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.

TERMINATION: Termination of this Agreement with or without cause.

1. It shall be cause for the termination of this Agreement if, after its execution, City determines that either:
 - a. Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pleaded *nolo contendere*, or has pleaded 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
 - b. Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without City's consent or approval; or
 - c. Contractor has filed for 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 Contractor's assets.
2. City may cancel/terminate this Agreement, in whole or in part, upon providing written notice to Contractor of City's intention to terminate the Agreement as a result of Contractor's material failure to provide the services specified under this Agreement or in violation(s) of any of the terms herein, and Contractor has failed to cure such breach within ten (10) calendar days of such notice. City may reject the services and cancel this Agreement for any services rendered or to be rendered hereunder. If applicable, at its option, City may return the rejected portion of such services to Contractor at its expense or hold the same for such disposal as Contractor shall indicate. In the event of any such rejection/termination, City shall, at City's option, have the right to obtain like services elsewhere or to take over the work and prosecute the same to completion; and in such event, 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.
3. Notwithstanding the foregoing or any section herein to the contrary, Contractor shall not be relieved of liability to City for damages sustained by City by virtue of any material breach of the Agreement by Contractor, and City may withhold any payments to Contractor, for the purpose of setoff, until such time as the exact amount of damages due City from Contractor is determined.
4. City may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving thirty (30) calendar days' prior written notice to Contractor. In the event a purported termination for cause by City is in error, then such termination may, at City's sole discretion, be deemed to be a termination for convenience under this section. In the event of such termination, Contractor shall be entitled to receive just and equitable compensation, as determined by City, for any satisfactory authorized work performed in accordance with the Agreement up to the termination date; but in no

event shall City be liable to Contractor for expenses incurred after the termination date.

5. Contractor shall deliver to City all hard copy and electronic files maintained on behalf of City within thirty (30) calendar days of termination of this Agreement. Upon reasonable request, City reserves the right to obtain such information prior to the termination of this Agreement.
6. All services completed by Contractor prior to the termination date shall be documented and all tangible work documents shall be transferred to City prior to payment for services rendered, and shall become the sole property of City subject to rights in Data/Software section above. Such termination by City shall not be deemed a breach of contract by City, and 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.

TERMINATION OF PRIOR AGREEMENTS. See **ENTIRE AGREEMENT**.

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.

TITLE & RISK. Not applicable.

TRANSFER. See **ASSIGNMENT**.

TRANSPORTATION CHARGES/F.O.B. DELIVERY. Not applicable.

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; provided that any such waiver shall not be identified as a waiver of any succeeding breach hereto or of any other provision herein contained. No delay or failure of either to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver, limitation, or relinquishment of that party(s) right to subsequently enforce and compel strict compliance with such provision and/or any other provision herein or in any document related hereto. Parties acknowledge that some Agreement provisions may be inapplicable to the scope of work that are germane to this Agreement. Parties waive no rights or remedies where the provisions are applicable.

No consent or waiver, express or implied, by either party to or of any breach or default by the other in the performance of any of its obligations shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party. Failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party.

The enforcement by any party of any right or remedy it may have under this Agreement or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

WARRANTY. Not applicable.

END OF DOCUMENT - SIGNATURE PAGE NEXT

Remainder of Page Left Intentionally Blank



IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement.

CITY OF MEMPHIS

[@CONTRACTOR NAME@]

By: _____

Paul A. Young, Mayor

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form:

By: _____

Tannera Gibson

Chief Legal Officer / City Attorney

Attest:

By: _____

Comptroller

ADDENDUM

ADDENDUM. The following Addendum to the Agreement is by and between City and Contractor. If not otherwise defined herein, defined terms shall have the meaning as set forth in the Agreement, which is specifically referenced and incorporated herein. In the event of any discrepancy between other provisions of the Agreement and this Addendum, the terms of this Addendum shall govern.

The parties agree that the following provisions shall be added to or amend the Agreement as follows:

(IF NO ADDENDUM THIS PAGE SHOULD BE DELETED/REMOVED)



EXHIBIT 6 – EVALUATION CRITERIA

See below for a sample evaluation criteria and associated point value.

Evaluation Category	Questions/Areas of Evaluation within Categories	Total Possible Points per Question	Total Possible Points
Project Feasibility			30
	Proposed Timeline: project will be shovel ready within 240 days (5) detailed project timeline includes key milestones (5)	10	
	Proposed costs, funding sources and use of incentives: estimated development budget with hard & soft costs is based on industry knowledge (5); explanation of proposed capital stack and incentives to be pursued (5)	10	
	Compliance with existing zoning, knowledge of constraints and needed entitlements: complies with existing zoning (5); understanding of any needed entitlements (5)	10	
Project Understanding and Approach			25
	Understanding and alignment with City's goals, desires for the project, and housing affordability: project is mixed-use (5); project includes affordable/middle-income housing (5)	10	

	Proposed redevelopment concept: conceptual site plan (5)	5	
	Approach to scale and connectivity to the neighborhood/plan: market study/narrative (5); connectivity to community assets (5)	10	
Development Team, Capacity and Experience			35
	3 Examples of local experience for similar residential, commercial or mixed-use development (3 points per example)	9	
	List of verifiable clients or references that have engaged the developer in listed examples of work (1 point for each, with a maximum of 3)	3	
	Development team experience years & roles: includes resumes, roles in previous projects and role in proposed project	3	
	Experience financing/delivering projects of similar scale and leveraging multiple funding sources: examples of prior project's funding sources (5); experience securing gap financing (5)	10	
	Financial capacity to carry out the proposed project: development team financials & holdings (5); basic proforma w/identified gap (5)	10	
Economic and Community Inclusion			10
	Community Engagement Approach	10	

			100
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EXHIBIT 7 – INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS FOR HCD REGAL PLAZA DEVELOPMENT

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 shall furnish the City and Division to which services or materials are being provided under this contract a Certificate of Insurance and/or each policy 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 or authorized in the state of Tennessee with a Best Insurance Rating of A and Class VII or better.

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.

Certificate Holder: City of Memphis
Attn: Risk Management
170 N. Main St., 5th Floor
Memphis, TN. 38103

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

“The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on General Liability, Auto Liability and Umbrella/Excess Liability policies.”

Company shall provide notice to the City within seven (7) 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: Purchasing Agent
125 North Main, Room 354
Memphis, TN 38103

WORKERS COMPENSATION:

Option I: The Company shall maintain in force Workers’ Compensation coverage in accordance with the Statutory Requirements and 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

Option II: Company has submitted the Workers' Compensation letter to the City of Memphis affirming they have fewer than five (5) employees and acknowledge they are financially responsible for all their employees on the job injuries. Company further affirms that should they employ five (5) or more employees in the future, Company will notify the City and provide a certificate of insurance confirming the required Workers' Compensation coverage as required by law.

AUTOMOBILE LIABILITY:

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

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

COI will have owned, non-owned, and hired checked or "ANY" checked. City of Memphis named as Additional Insured.

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

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

COI will have non-owned and hired checked. City of Memphis named as Additional Insured.

COMMERCIAL GENERAL LIABILITY:

Commercial 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
\$2,000,000	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

ERRORS AND OMISSIONS LIABILITY with Minimum Limits of:

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

\$1,000,000 Each Claim / \$1,000,000 Aggregate

ENVIRONMENTAL / POLLUTION LIABILITY with Minimum Limits of:

\$1,000,000 Each Claim / \$1,000,000 Aggregate

BUILDER'S RISK (ALL RISK POLICY):

(All parties that have property involved in the project should be named in the policy.)

Builders risk insurance is designed to cover buildings and construction materials while in the course of construction. Builders risk insurance is a form of property insurance that protects the construction project against loss or damage caused by a variety of perils, such as fire, wind, or hail.

With Limits Equal to the 100% Completed Value of Each Project for New Construction

UMBRELLA / EXCESS LIABILITY with Minimum Limits of:

\$2,000,000 Each Occurrence / \$2,000,000 Aggregate

PROPERTY INSURANCE:

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

SUB-CONTRACTORS:

The Company shall require all sub-contractors 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 claim or lawsuit requiring disclosure of full copies of policies.