



City of Memphis

**REQUEST FOR QUALIFICATIONS
FOR BOARD UP SERVICES**

[Request for Qualifications #13033](#)

**Prepared By: Pubic Works
Closing Date for RFQ: April 19, 2013
RFQ Accepted at Attn: Purchasing Agent
Board Up Services/RFQ #13033
125 North Main Street, Suite 354
Memphis, TN. 38103
E-Mail Inquires: debra.hardaway@memphistn.gov**

**The City of Memphis
Division of Public Works
Request for Qualifications
For Board Up Services**

Qualification Submittals Due by 2:00 P.M. on Friday, April 19, 2013

Summary of Request

The City of Memphis, through its Department of Code Enforcement, is seeking qualified board up contractors to carry out board up services for single and multi-family residential and commercial properties as needed by the City, including emergency board ups where necessary. The City intends to select an undisclosed number of board-up contractors and enter into one year contractual agreements to provide board-up services for the City of Memphis. The City of Memphis may extend the contract for an additional two years based upon need and funding availability.

The City will set the compensation rate for each window and door that is boarded up. The total number of windows and doors in a particular structure will determine the total compensation for the board up services and the selected contractors will be paid according to the rate determined by the City. Each selected contractor will be assigned to board up specified buildings throughout the City of Memphis and the assignments will be based upon a rotational system utilizing all of the selected contractors. The City will not guarantee a minimum or maximum number of board ups needed during the term of the contract.

This Request for Qualifications has been designated as a Small Business Enterprise (SBE) Project. Only Contractors who have been SBE qualified will be considered for the proposed funded project. In addition, Contractors must comply with all state, county and city policies pertinent to the CIP funds including Memphis/Shelby County Business License and other certifications deemed necessary for board ups by the City of Memphis.

The City of Memphis reserves the right to reject any and all submittals, and to accept any submittals which it deems most favorable to the City. Submittals of qualifications will be evaluated based on qualifications, experience, references, and other factors deemed important to the City of Memphis.

To be considered, please complete and submit the enclosed form to the City by 2:00 P.M. on April 19, 2013.

Contract Terms and Conditions
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REQUEST FOR QUALIFICATIONS TERMS

The City of Memphis seeks responses from qualified, board-up contractors who have the expertise to provide BOARD UP SERVICES for single and multi-family dwellings in accordance with this solicitation document. This is a Request for Qualifications that may be modified by the City in the selection process.

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

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

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

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

Any protest of award must be filed in writing with the Purchasing Agent within five (5) calendar days of the award announcement at the following address: City of Memphis Purchasing Agent; 125 North Main, Room 354; Memphis, Tennessee 38103.

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

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

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

Any contract resulting from the responses received in response to this solicitation shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and

enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee without regard to conflicts of laws principles.

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

A C WHARTON, JR., MAYOR

Eric S. Mayse, City Purchasing Agent

Published in the Daily News: April 2, 3, 2013

INSTRUCTIONS TO RESPONDENTS

Respondents shall submit their responses in a sealed envelope INDICATING ON THE OUTSIDE: THE COMPANY NAME and THE REQUEST FOR QUALIFICATION NUMBER. Responses submitted and accepted by the City become the property of the City of Memphis and will not be returned. **The City has the right to reject any or all responses.**

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

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

For additional information concerning this solicitation, please contact:
DEBRA HARDAWAY at 901-636-7448

REQUEST FOR QUALIFICATIONS TERMS AND CONDITIONS

All **inquiries** regarding this solicitation shall be forwarded to:

Attn: Debra Hardaway, Condemnation Coordinator
Fax: 901-636-7448; Email Address: [Debra.Hardaway@ Memphistn.gov](mailto:Debra.Hardaway@Memphistn.gov)

Response Submission

To be considered for selection, one (1) original and three (3) copies of the complete response shall be delivered before **April 19, 2013** at **2:00 P.M.**, Central Standard Time (CST) to:

Office of the City of Memphis
Purchasing Agent
Room 354, City Hall
125 North Main
Memphis, TN 38103

LATE RESPONSES WILL BE CONSIDERED NON-CONFORMING AND WILL NOT BE CONSIDERED IN THE EVALUATION PROCESS.

The response must set forth accurate and complete information as required in this solicitation. Incomplete responses will not be considered for selection if the omission(s) are determined, in the City's sole discretion, to be significant. Unclear and/or inaccurate documentation may not be considered for a contract award. Falsification of any information may result in disqualification.

RFQ Inquiries

Offerors shall submit all questions or concerns related to this RFQ by fax or by e-mail to the address as specified above. No oral requests for clarification or information will be accepted.

The Offeror shall identify all e-mail inquiries in the subject line as "RFQ Inquiry" and shall submit questions no later than **five (5) days** before the Pre-Bid Conference. To ensure the fair and consistent distribution of information, all questions will be answered at the Pre-bid Conference. No individual answers will be given other than those given at the Conference. All other official answers or position of the City will be the one posted via the City's website.

Any revisions to the solicitation will be made only by an addendum issued by the City, which will be posted on the City's website (www.memphistn.gov) or issued to all parties who have been issued a copy of this solicitation and have been duly recorded as having received a copy in the City's solicitation distribution log.

GENERAL GUIDELINES FOR RESPONSE PREPARATION

Response Format: The format in which responses are to be submitted is included in this RFQ. Responses that do not conform to this format will be declared non-responsive and will not be considered for an award from the City.

Amendments to RFQ: The City reserves the right to re-issue or change any portion of this RFQ, in its sole discretion.

Withdrawing RFQ: The City reserves the right to withdraw this solicitation at any time prior to making an award based on this solicitation.

Preparation and Presentation Costs: The Offeror shall bear the total costs for any and all appearances and the costs associated with preparing the response or responding to the RFQ. **The City shall not, in any event, be liable for any expenses incurred by Offerors in the preparation and/or submission of the responses. Responses shall not include any such expenses as part of the proposed budget.**

Deadline Extension: The City reserves the right to extend the submission deadline, if such action is considered necessary by the City. In the event the deadline is extended, Offerors will have the right to retrieve and revise their responses.

Ambiguity, Conflict, or other Errors in the RFQ: If an Offeror discovers any ambiguity, conflict, discrepancy, omission or other error in the RFQ, it shall immediately notify the City, in writing via fax or e-mail, of such error and request modification or clarification of the document. The Offeror shall include the RFQ number, page number and the applicable paragraph title. The City will issue/post any revisions to the RFQ on the City's website (www.memphistn.gov). The Offeror is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the solicitation prior to submitting the response or any ambiguity, conflict, discrepancy, etc. shall be waived.

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

Amendments to Response: Once a response has been submitted, the City will not accept any amendments to the response.

Withdrawing a Response: At any time prior to the scheduled deadline for receipt of responses, the Offeror may withdraw its response by submitting a written request from the authorized representative whose name and signature appears on the response. A written request to withdraw the response must be submitted in writing to: Office of the City of Memphis Purchasing Agent Room 354, City Hall, 125 North Main, Memphis, TN 38103

Acceptance/Rejection of Responses: The City reserves the right to accept or reject, in whole or in part, any or all responses submitted. The City shall reject the response of any Offeror that is determined to be non-responsive.

Informalities/Minor Irregularities: The City reserves the right to waive minor irregularities or informalities in an Offeror's response when the City determines that it will be in City's best interest to do so. Any such waiver shall not modify any remaining RFQ specifications or excuse the Offeror from full compliance with the RFQ specifications and other contract requirements if the Offeror is awarded the contract.

Offeror indebted to the City: No contract will be 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.

Validity of Responses: All responses shall be valid for a period of 120 days from the opening date of the responses.

Compliance with the RFQ: The submission of a response shall be taken as **prima facie** evidence that the Offeror has familiarized itself with the contents of the RFQ and with these terms and conditions, in particular. The failure or omission by the Offeror to receive or examine this RFQ shall in no way relieve the Offeror of any obligation with respect to its submission or of any term or condition of this RFQ and may result in disqualification. In order to be deemed responsive, Offerors must provide responses to address all items in the RFQ.

Lengthy Responses: The City discourages overly lengthy and costly responses; however, in order for the City to evaluate responses fairly and completely, Offerors should follow the format set out herein and provide all information requested. Responses shall be as thorough and detailed as possible, but prepared simply providing a straightforward, concise description of the Offeror's capabilities to provide the services and satisfy the requirements of the RFQ. Emphasis should be placed on completeness and clarity of content.

Local Preference: 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 the Memphis and Shelby County Tennessee Business Tax Receipt shall accompany the bid for consideration of this ordinance.

Living Wage: This procurement may be subject to Ordinance No. 5185, as amended, which establishes a minimum wage for employees of businesses providing services for the City of Memphis. The Living Wage Ordinance and any amendments thereto, can be accessed on the City's website (www.memphistn.gov). Once on the City's homepage, click on the "Business" link, and then click on the "Doing Business with the City" link. A link to the Ordinance will be accessible on the top right side under the section "Links."

Contract Award: The City may fund all or any part of a response, and the City will only accept responses for the services requested. The response submitted in response to this solicitation is not

a legally binding document; however, the contract, which will be based on information provided in the response, becomes legally binding once all parties have signed it. Any contract resulting from this RFQ shall be subject to the City of Memphis General Terms and Conditions set forth in this solicitation. The successful Contractors shall be required to execute the contracts originated by the City of Memphis and satisfy all contract requirements as specified by the City (**See General Conditions of Contract included herein**). Any contract awards and amounts pursuant to this solicitation are subject to the availability and appropriation of funds. Unless changed by the City, the anticipated contract will commence upon execution and end June 30, 2014. The City reserves the option to extend the contract term for 2 additional 12-month periods.

Insurance: If awarded a contract pursuant to this RFQ, the Contractor will be required to have and maintain the insurance specified in the RFQ. The successful Contractor will be required to furnish the City, on or before the effective date of the Agreement, a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required is in effect. All insurance companies must be acceptable to the City of Memphis and be licensed in the State of Tennessee.

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

Pre-Bid Conference: The Pre-Bid Conference for this RFQ will be held at **10:00am on Wednesday, April 10, 2013** at the Department of Code Enforcement, 701 North Main, Memphis, Tennessee 38107.

In no event shall the deadline for submission of the qualification statements be changed except by written modification by the City of Memphis Purchasing Department

SCHEDULE OF EVENTS

ACTIVITY

DATE

Issuance of Request for Qualification	March 27, 2013
Written Questions Due at the City	April 4, 2013
Pre-bid Conference	April 10, 2013
Qualification Statements (Response) Due at City	April 19, 2013
Evaluation of Qualification Statements (Responses)	April 22-26, 2013
Designation of Qualified Respondents	April 29, 2013

This timetable is for the information of submitting entities. Project restraints may cause these dates to change.

BOARD-UP REQUIREMENTS

Time of Completion:

1. Contractors must have the capacity to provide all labor and equipment to board all openings on a structure within Five (5) calendar days, and
2. Must be able to mobilize a crew within 24 hours for all board-up jobs, including emergency board-ups.

Equipment Requirement

Contractors will be required to have in their possession and to have proof of ownership through title record or other approved form the following equipment:

- a) Power Drill
- b) Saw
- c) Extension Ladder
- d) Generator

General Specifications for Board-ups:

See Board-up Specifications below under General Conditions of the Contract.

Public Safety:

Contractor must maintain all necessary safety precautions during board-ups:

1. Contractor must check and confirm that no persons have gained access to the structure and assure it is vacant on the same day prior to beginning board-ups.
2. Public safety and welfare will always be the highest priority. The site must be left clean and safe at the end of each workday and work must be conducted in a way that minimizes all risk to public safety.
3. Walkways or roadways must be kept clear of equipment & debris.

This list is not meant to be exhaustive. Any unsafe or potentially unsafe situation must be discussed with the City and addressed immediately.

SUBMISSION REQUIREMENTS

Application Format:

All applicants must submit the completed Package, which includes the following:

- 1) **Cover Sheet**
- 2) **Contractor Qualification Application**
- 3) **Licenses and Certifications**
- 4) **Conflict of Interest Certification**
- 5) **2011 Federal Tax Return (Latest Submittal)**

All applications must be submitted on the provided forms where applicable and include a completed Contractor's Qualification Form.

Contractor's Qualification Form Requirements:

The Respondent shall provide, as part of its Qualification Statement, the following information:

1) Professional Information

Please provide a brief discussion of your firm's board-up or construction experience in Tennessee. Respondents must have a minimum of two (2) years experience in providing construction contract work. Briefly discuss your firm's capabilities, experience, and qualifications to perform the required services.

2) Staffing

Respondents should identify the staff that will directly work with City staff, and those who will provide relevant backup expertise. The role and qualification for all direct staff should also be provided. Qualification information should include educational background, any licenses or certifications for the State of Tennessee. Levels of experience should be specific for the service requested.

3) Prior experience and references

Please provide at least three recent client references to include municipalities of comparable size and/or complexity as the City of Memphis.

4) Certification

Respondents must be certified as a Small Business Enterprise to be considered.

Submission of Qualification Statements

Qualification Statements must be received by the City no later than 2:00 P.M. prevailing time on April 19, 2013, by mail or hand-delivered. To be responsive, Qualification Statements must provide all requested information, and must be in strict conformance with the instructions set forth herein. Qualification Statements and all related information must be bound, and signed and acknowledged by the Respondent.

Number of copies

Respondents must submit one (1) signed original and at least three (3) copies of their proposal of which must be unbound (for photocopying purposes). Proposals forwarded by facsimile or e-mail will not be accepted.

ALL APPLICATIONS MUST BE TYPED AND SEALED -NO HANDWRITTEN APPLICATIONS WILL BE ACCEPTED.

EVALUATION

General

The City's objective in soliciting Qualification Statements is to enable it to select a Respondent that will provide high quality, effective, and professional services to the citizens of the City of Memphis. The City will consider Qualification Statements only from Respondents that, in the City's sole judgment, have demonstrated the capability and willingness to provide high quality services to the citizens of the City in the manner described in this RFQ.

Evaluation criteria

Qualification statements will be evaluated by the City on the basis of what is most advantageous for the City of Memphis. The evaluation will consider:

- Experience and reputation in the field;
- Experience with projects of similar size/complexity;
- Prior work history with the City of Memphis
- Availability to accommodate the needs of the City; and
- Other factors demonstrated to be in the best interest of the City.

Selection of Qualified Contractors

Each Qualification Statement must satisfy the objectives and requirements detailed in this RFQ. The City will select the most advantageous Qualification Statements based on all of the evaluation factors set forth in this RFQ. The City will make the awards that is in the best interest of the City. Successful Respondents shall be determined by an evaluation of the total content of the Qualification Statement submitted. The City reserves the right to:

1. Not select any of the Qualification Statements;
2. Award a contract for the requested services at any time within the qualification period.
3. Select less than the desired amount of Contractors based on qualifications

Every Qualification Statement should be valid through the qualification period. The City shall not be obligated to explain the results of the evaluation process to any Respondent.

COVER SHEET
Contractor Application Package

Contractor Name
Contractor Address
Contractor's Telephone Number and Email Address
Authorized Representative

**City of Memphis
Division of Community Enhancement
Department of Code Enforcement**

CONTRACTOR QUALIFICATION APPLICATION

I. COMPANY INFORMATION

NAME: _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP** _____

BUSINESS PHONE: _____ **HOME PHONE:** _____

FAX NO.: _____

MONTH & YEAR ESTABLISHED: _____ **TYPE OF BUSINESS:** _____

YEARS OF CONSTRUCTION EXPERIENCE: _____

Name of Principal Contact Person: _____

Is your company registered and licensed to do business in Memphis? Yes No

Is your company a member of the Better Business Bureau? Yes No

Is your company a Minority Owned Business? Yes No

Is your company a Female Owned Business? Yes No

How long has your company been in business? _____

Can your company meet the insurance requirements specified in the RFQ? Yes No

Can your company meet the timing requirements specified in the RFQ? Yes No

Can your company meet all of the board-up specifications in the RFQ? Yes No

Are you certified as MBE/WBE?

YES **Certifying Agency:** _____

NO

II. OWNERSHIP OF FIRM:

Type of
Ownership Individual _____ Partnership _____ Corporation _____

Name and address of Owner, all Partners or all Stockholders (use back if necessary):

Name/Title	Address	% Ownership Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____

Experience

Describe your company's experience providing board-ups.

Describe your company's general construction experience.

Identify the site supervisor who will be overseeing the work. As part of the qualifications evaluation, the City may conduct an in person interview with him/her.

If an emergency board-up is requested, how quickly could your company mobilize a crew?

II. COMPANY PERSONNEL AND RESOURCES

Supervisory Personnel

Name	Years Experience	Responsibilities
_____	_____	_____
_____	_____	_____
_____	_____	_____

Administrative Staff

Name	Position
_____	_____
_____	_____
_____	_____

List all Subcontractors

Company Name	Trade	Contact Person	Phone #
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Trade References (Please list all materials. Suppliers with whom you have open accounts.)

NAME	PHONE #	CONTACT PERSON
_____	_____	_____
_____	_____	_____
_____	_____	_____

III. PROJECT REFERENCES (Completed Projects)

NAME/ADDRESS	PHONE/FAX #	AMOUNT
_____	_____	_____
_____	_____	_____
_____	_____	_____

IV. ACTIVE PROJECTS (In Progress)

NAME/ADDRESS	PHONE #	DESCRIPTION	AMOUNT
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

V. FINANCIALS

Name of Bank and Branch	Name of Back Officer (Familiar with Contractor)
_____	_____
_____	_____

Is there any pending litigation with which your company is engaged? If so, please list and state the nature of this litigation:

By my signature, I make legal affirmation that all representation included by me in this application form are true and factual to the full extent of my knowledge. I also agree to the release of any business or credit information required by the Division of Community Enhancement for the processing of this application.

_____	_____
DATE	SIGNATURE OF PRINCIPAL
NUMBERS	
REQUIRED:	SOCIAL SECURITY NUMBER: _____
	IRS FEDERAL IDENTIFICATION NO.: _____
	62- _____

CITY OF MEMPHIS

Department of Code Enforcement

CONFLICT OF INTEREST DISCLOSURE FORM

Conflict of Interest Regulation: No person who exercise or have exercised any functions or responsibilities with respect to activities assisted with CIP Funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from an assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Name: _____	Program Name: _____
Address: _____	Program Client #: _____
City, State, Zip: _____	Contractor Vendor #: _____

The purpose of this document is to assist in the determination of whether additional restrictions, oversight or other conditions might be advisable prior to execution of any contract, funding or providing assistance. The term 'Conflict of Interest' refers to situations in which financial or other personal considerations may compromise, or have the appearance of compromising professional judgment in the following rules and regulations of the program. Please Mark the appropriate box for each question and complete the attachment if indicated. This form (with Attachments, if required) must be completed and returned to your Program Representative.

1. Family Relationships: Do you have a family member directly or indirectly involved or employed with the City of Memphis that creates a conflict of interest or the appearance of a conflict under the Conflict of Interest Regulation provided above?

YES NO (If YES, please complete Part A of the Attachment)

2. Program Relationships: Are you involved in any other activity directly or indirectly with the City of Memphis that may create a conflict of interest or the appearance of a conflict under the Conflict of Interest Regulation provided above?

YES NO (If YES, please complete Part B of the Attachment)

3. Business Relationships: Are you or a family member (spouse, child, stepchild, parent, sibling, or domestic partner) involved as an investor, owner, employee, consultant, contractor, or board member with an entity that has a contractual relationship with the City of Memphis to provide goods or services, sponsor development activities and/or

receive referrals from the City of Memphis?

YES NO (If YES, please complete Part C of the Attachment)

4. Gifts of Personal Use:

To the best of your knowledge, have you or your family members accepted gratuity gifts, or special favors from someone that is doing business with or proposing to do business with the City of Memphis?

YES NO (If YES, please complete Part D on Attachment)

To the best of your knowledge, have you or your family members made any donations or gifts, or provided special favors to the City of Memphis or any employee of the City of Memphis who exercises or may exercise any functions or responsibility with respect to the activities involving your award, contract or program assistance?

YES NO (If YES, please complete Part D on Attachment)

5. Legal Proceedings and Debarment Have you been involved in any fraud, antitrust or criminal proceedings as a defendant (other than a minor traffic offense) or been debarred, suspended or otherwise excluded by a duly authorized regulatory agency or had a transaction with any such agency terminated for any reason?

YES NO (If YES, please complete Part D on Attachment)

I have read and understand the Conflict of Interest Disclosure Form and have disclosed all information required by this disclosure, if any, in an attached statement. I agree to comply with any conditions or restrictions imposed by the agency to reduce or eliminate actual and/or potential conflicts of interest. I will update this disclosure form promptly if relevant circumstances change. I understand that this Disclosure Form is not a confidential document.

Print
Name: _____ Date: _____

Signature: _____ Date: _____

CITY OF MEMPHIS
Department of Code Enforcement

CONFLICT OF INTEREST DISCLOSURE FORM
ATTACHMENT PARTS A - E

Conflict of Interest Regulation: No person who exercise or have exercised any functions or responsibilities with respect to activities assisted with CIP Funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from an assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Name: _____	Program Name: _____
Address: _____	Program Client #: _____
City, State, _____	Contractor Vendor #: _____
Zip: _____	

If you answered YES to any questions on the previous page, please complete the relevant section(s) below. If you answered NO to All questions, you may discard this attachment. Give your complete form to your Program Representative.

PART A: FAMILY RELATIONSHIPS

1. Name of your family member(s) directly or indirectly involved or employed at City of Memphis:

2. Do any of your family members work in the program area?

3. Are any of your family members elected officials or members of any City of Memphis Board of Commissions?

4. Relationship to you: _____ Position: _____

Department: _____ Supervisor: _____

PART B: PROGRAM RELATIONSHIPS

1. Activities: Name and describe the activity and/or program that you are directly or indirectly involved with:

2. Have you used the name of the City of Memphis, or their resources (facilities, personnel, or equipment), or confidential information in connection with the activity and/or program?

YES NO (If YES, describe the resource used):

PART C: BUSINESS RELATIONSHIPS

Please provide this section for each business relationship, or attach a separate explanation of business and research activities.

1. Name of business: _____

2. Categorize the business' relationship with the City of Memphis:

- Consultant or advisor
- Research activities
- Business or referrals
- Other Contractual or business relationship

Briefly describe the business or licensing activity:

3. Who is involved with the business? Check all that apply:

- Yourself
- Your family member (name and relationship) _____

Describe the position or involvement (check all that apply):

Owner/Investor

Board Member

Employee/Manager

Other _____

4. Are you receiving any type of compensation? NO YES If YES, describe _____

5. Who at City of Memphis oversees the relationship with this business?

Name: _____ Title: _____

Department: _____ Phone: _____

PART D: GIFTS FOR PERSONAL USE

1. What was the dollar value of the gift(s) you or your family member received or donated?

2. Who was the donor or donee of the gift? _____

3. What is the donor's or donee's relationship with City of Memphis? _____

PART E: LEGAL PROCEEDINGS AND DEBARMENT

Describe any legal proceedings or debarment situation: _____

Print

Name: _____ Date: _____

Signature: _____ Date: _____

GENERAL CONDITIONS OF THE CONTRACT

Master Board Up Agreement For the City of Memphis Department of Code Enforcement

I. GENERAL REQUIREMENTS:

All windows, doors, window air conditioner openings and all other external wall openings shall be boarded in an approved manner to prevent entry by unauthorized persons and shall be painted to the color of the existing structure. Completion of proper boarding and securing shall be the responsibility of the Contractors. Contractors shall take all precautions to insure no damage is incurred to the existing windows, doors, and air conditioning units during the course of the board-up and securing operations.

II. SCOPE AND GENERAL CONDITIONS

A). The CITY shall engage the services of no less than 5 Contractors to serve as CONTRACTORS to provide board-up services on certain residential structures as designated by the City of Memphis Department of Code Enforcement. Said matters will be assigned to CONTRACTOR by notification from the Condemnation Department its designee and accepted by CONTRACTOR. The City of Memphis Department of Code Enforcement shall be responsible for providing CONTRACTOR with information necessary to allow CONTRACTOR to complete the board-up on the structures as assigned. Said information shall include at a minimum, the address and description of the property, and the work to be performed. The City will continue to provide Contractor with additional project assignments during the contract term subject to funding availability.

B). The Division of Community Enhancement Department of Code Enforcement will give the selected CONTRACTORS equal amount of properties for board-up. Once the CONTRACTOR has completed its board-up assignment within the specified period of time, that CONTRACTOR will be placed back in line for the next assignment on a rotational system.

C). CONTRACTOR shall be responsible for completing the board-up of the designated property, and providing the same to the City of Memphis, Department of Code Enforcement no later than five (5) calendar days from the date of delivery of the information to CONTRACTOR. In the event that CONTRACTOR shall not be able to meet the time requirements of the City, said CONTRACTOR, shall within a reasonable time, advise the City of Memphis, Department of Code Enforcement of its inability to complete the requested matters within the time frame required by the City, as well as the actual time frame in which such matters shall be provided. If the Contractor fails to complete the project within the time allotted, the Contractor shall be assessed a penalty performance. The City of Memphis shall reserve the right to obtain additional resources to complete the project in the event CONTRACTOR shall be unable to complete assignment during the penalty performance period of three (3) days. If the Contractor fails to

complete a project within the required timeframe for the second time within a calendar year, the City may suspend the contractor from the program for up to one year.

D). CONTRACTOR shall be responsible for providing the City of Memphis, Department of Code Enforcement with digital photographic evidence of the board-ups of the property, a statement of completion including final completion date, an invoice for payment, and any additional analysis as required by the City. The City of Memphis, Department of Code Enforcement shall be responsible for making duplications of all reports produced and provided to the City by CONTRACTOR.

E). The CONTRACTOR shall furnish all materials, supervision, labor and equipment to complete the requirements of this Agreement. The CONTRACTOR shall obey all laws, ordinances, regulations, permit requirements and rules of the federal, state, county and municipal governments that may be applicable to its operations. The CONTRACTOR shall at all times comply with all federal, state and local environmental laws and regulations as the same may apply to the CONTRACTOR'S acts and responsibilities in connection with this Agreement, and use due care with respect to such acts or responsibilities.

F). Immediately upon completion of the work of the project, CONTRACTOR shall, at its sole expense, clean up and remove all refuse materials of every kind and transport all rubble and junk to approved sites or dumps, fill depressions, restore the ground surface to an even finished grade. CONTRACTOR shall provide written documentation stating the specific location wherein refuse material is deposited or dumped. CONTRACTOR shall keep the premises clean and safe at all times as accumulation of refuse material shall not be tolerated.

III. BOARD-UP SPECIFICATIONS

A). GENERAL

All windows, doors, window air conditioner openings and all other external wall openings shall be boarded in an approved manner to prevent entry by unauthorized persons and shall be painted to the color of the existing structure. Completion of proper boarding and securing shall be the responsibility of the Contractors. Contractors shall take all precautions to insure no damage is incurred to the existing windows, doors, and air conditioning units during the course of the board-up and securing operations.

B). MATERIAL

1) Boarding Sheet Material- Boarding sheet material shall be minimum ½ inch (12.7mm) thick wood structural panels.

2) Boarding Framing Material- Building framing material shall be minimum nominal 2-inch by 4-inch (51 mm by 102mm) solid sawn lumber.

C). INSTALLATION

1) Boarding Installation-The boarding installation shall be in accordance with attached Appendix A.

2) Board Sheet Material – The boarding sheet material shall be cut to fit the door or window opening neatly or shall be cut to provide an equal overlap at the perimeter of the door or window.

3) Windows – The windows and similar openings shall be boarded with exterior grade plywood of a minimum thickness of 2” x 4” solid sawn lumber or plywood. The windows shall remain as they are found but the windows should be measured and framed around the window openings and either nailed or screwed into the current frames to secure it.

4) Door Walls – The door opening shall be framed with minimum 2-inch by 4-inch framing material secured at the entire perimeter and vertical members not more than 24 inches on center. Blocking shall also be secured at not more than 48 inches on center vertically. Boarding sheet material shall be secured with screws and nails alternating every 6 inches on center.

5) Doors – Door shall be secured by the same methods as for windows and door openings. One door to the structure shall be available for authorized entry and shall be secured and locked in an approved manner.

D). Work Scheduling or Rotation

1) The City will issue work orders for various jobs to be performed. A department official from the requesting department will provide notification by phone or fax to the Contractor detailing the date, time, address and legal description of the property or properties where a structure is to be secured and the number and type of openings to be boarded. This information will provide the necessary authorization for the Contractor to commence work. The Contractor shall visit the site and secure the facility in accordance with the specifications provided in this scope of work.

2) Upon completion of the work, the Contractor shall prepare an invoice to reflect the number of windows, doors, etc. indicating any special sizes or other apertures, and cost the project in accordance with the contract provisions. The Contractor shall notify the responsible staff person after work has been completed so that a site visit can be made with the City representative to verify completion and compliance with the Contract specifications. The designated City Representative will approve payments upon a physical visit and a sign-off acceptance. The Contractor shall provide the City Representative with a picture proof of the completion of the work.

3) Windows, doors and other external openings shall be paid at \$40.00 per opening. The City of Memphis will set the price for the completion of the project prior to assigning the project to the Selected Contractor.

E). Contractor Requirements

1) Time Requirements. Work orders placed by the City for securing and board-up requirements that are not emergencies, shall be completed by the Contractor not later than three (3) to five (5) business days after City Notification.

2) Emergencies. Work Orders placed as an Emergency basis shall be completed the same day or the next day as directed by City personnel. This time element for emergency service is necessary for public safety. Same day emergency requests and next day requests shall occur only under extreme circumstances.

3) Unusual Requirements. Should the Contractor, on inspection of a designated site, note work that is required which may be beyond the usual exterior openings noted in the Contract specifications, the Contractor shall be responsible to advise the City of such findings. An additional cost, if applicable, will be agreed upon between the Contractor and the City in accordance with the Contract provisions, prior to commencement of the work.

4) Damage to Public and/or Private Property. Extreme care shall be taken to safeguard all existing facilities, site amenities, sprinkler systems, trees, shrubs, windows, and all vehicles on or around the job site. Damage to public and or private property shall be the responsibility of the Contractor and shall be replaced or repaired by the Contractor at no additional cost to the City. If the Contractor has not repaired or replaced by the damaged property within 24 hours notice by the City, the City reserves the right to correct the situation and deduct all charges from the Contractor's invoice

IV. TERM

The initial term of this contract shall include services rendered for a period ending **June 30, 2014**. The term of this agreement shall remain in effect for the entire period unless otherwise abbreviated upon mutual agreement of the parties, and following execution of an appropriate documentation evidencing the modification. The City may extend this Agreement for two (2) one-year periods, renewable on an annual basis, under the same terms and conditions. The City shall serve notice of the time extensions in writing to the Contractors by regular mail at least thirty (30) calendar days prior to the expiration of the original term of this Agreement, or any renewal term, in order for such extension to be effective.

V. COMPENSATION

1) The CITY agrees to pay and CONTRACTOR agrees to accept in full compensation for services to be performed under this agreement for the fixed rate amount of \$40 per opening for all windows, doors and other external openings. The City of Memphis will set the price for the completion of the project prior to assigning the project to the Selected Contractor.

2). CONTRACTOR shall submit monthly statements to the City of Memphis Department of Code Enforcement, showing work performed in accordance with the City of Memphis Billing Guidelines and Procedures. CITY shall pay CONTRACTOR within thirty (30) calendar days after submission of an approvable invoice.

3) Code Enforcement reserves the right to modify compensation amount for all items outside the unit pricing scale of work.

VI. METHOD OF INVOICING AND PAYMENT

A). Invoices with proper documentation to support services completed will be submitted by Contractor to the City for payment. Contractor will include the designated City Contract Number on all invoice requests, reports, and correspondence. Upon receipt and approval of each invoice, the City shall pay the amount shown unless there are some discrepancies. If discrepancies occur, the Contractor will be contacted by the City and notified of the problem. Requests will be adjusted accordingly.

B). The original and one copy of all invoices or statements shall be submitted to the City by the Contractor. Upon receipt and approval of each invoice, the City shall, within thirty (30) days, submit to the Contractor the amount shown to be due and payable.

C). Upon the close of the contract period, the Contractor shall have thirty (30) days from the end date of this agreement to submit a payment request to the City; any requests received after this period will not be honored.

Invoices are to be sent to:

**Department of Neighborhood Improvement
Code Enforcement Department
701 North Main
Memphis, Tennessee 38103**

VII. INSURANCE REQUIREMENTS FOR SERVICE CONTRACTS

1.) The Contractor 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 Contractor shall furnish the City of Memphis Risk Manager a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the City of Memphis and licensed in the state of Tennessee.

2.) 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 Contractor.

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

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

a) **“Should any of the described policies be cancelled or material changed before the expiration date thereof, notice will be delivered in accordance with the policy provisions to the City of Memphis Risk Manager” by registered mail, return receipt requested to the following address:**

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

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

b) Workers Compensation:

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

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

c) Automobile liability Insurance:

Covering owned, non-owned, and hired vehicles with LIMITS OF:
\$1,000,000 Each Occurrence – Combined Single Limits

d) Commercial General Liability:

Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor’s Liability, and Broad Form Property Damage Liability coverage.

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

e) Property Insurance:

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

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

VIII. GENERAL TERMS AND CONDITIONS

REPORTS. Upon request, the Contractor shall prepare and submit reports of its activities, funded under this agreement, to the originating department of the City. The reports shall include an itemization of the use of the City's funds, inclusive of specific services delivered by the Contractor. Any such reports provided to the City shall be prepared with the understanding that the City may make such reports available to the public. The City shall have the right to withhold future disbursement of funds under this Agreement and any future Agreements until the requirements of this provision have been met.

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

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

MODIFICATION AND AMENDMENT. Any changes, modifications or amendments to this Agreement shall not be considered agreed to or binding on the other party, unless such modification(s) have been agreed to in writing and approved by the appropriate City officials in accordance with applicable laws and regulations.

CONFIDENTIALITY. While performing work under this Agreement, the Contractor may gain access to proprietary and/or confidential information that, if disclosed to third parties, may be damaging to the City or its officials or employees. Such information shall include materials considered to be confidential information as a matter of law (e.g., personnel records), and shall also include (i) all materials in any form developed or created by the City related to funding and financial and business information; (ii) all information owned, possessed or used by the Contractor, which is communicated to, learned, developed or otherwise acquired by the Contractor in the performance of the Services for the City; (iii) the terms, conditions and pricing contained herein; and (iv) any other information that the Contractor has been advised by the City is confidential, privileged or proprietary. Confidential information, as used in this Agreement, shall not include (i) information in the Contractor's possession prior to disclosure by the City; (ii) information generally available to the public or that becomes available to the public through a source other than the City, or (iii) information that was rightfully obtained by the Contractor

from a third party who is under no obligation of confidentiality to the City with respect to such information. The Contractor agrees that it will accept and hold confidential information obtained from the City in confidence at all times during and after termination of this Agreement. The Contractor shall neither use nor disclose or communicate such information, except as provided in this Agreement or as required by law, without the prior written permission of the City.

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

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

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

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

CONTRACTOR'S PERSONNEL. The Contractor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all work performed under this Agreement shall be supervised by the Contractor. The Contractor further certifies that all of its employees assigned to perform any work hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Contractor who, in the opinion of the City, is incompetent, whose conduct becomes detrimental to the work, or whom the City deems to be unsatisfactory for any reason, shall immediately be removed from association with the services hereunder per the City's request.

Upon such request, the Contractor shall use all reasonable efforts to promptly replace such employees) with substitute employee(s) having appropriate skills and training.

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

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

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

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

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

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

SUBCONTRACTING, ASSIGNMENT or TRANSFER. The Contractor shall not subcontract, assign, delegate or transfer all or part of its rights, responsibilities, or interest under this Agreement without the prior written consent of the City. Any purported assignment, transfer, or delegation in violation of this Section shall be voidable by the City. No subcontracting, assignment, delegation or transfer shall relieve the Contractor from performance of its duties hereunder; neither shall the City be responsible for the fulfillment of the Contractor's obligations to its transferors or subcontractors. Upon request of the City, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the transfer.

CONFLICT OF INTEREST. Neither party shall engage in any conduct or activity in the performance of this Agreement that constitutes a conflict of interest under applicable federal, state or local laws, rules and regulations. The Contractor covenants that it has no public or private interest, and shall not acquire, any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and the Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer, official, agent or employee of the City, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement. For breach or violation of this provision, the City shall have the right to recover or withhold the full amount of such gratuities.

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

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

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

conflict discovered between this Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict

NON-DISCRIMINATION. The Contractor hereby agrees to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination, which provide in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the Contractor's employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, State or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. In the event the Contractor fails to comply with the City's non-discrimination policy and any and all other laws prohibiting discrimination, this Agreement may be canceled, terminated or suspended in whole or in part by the City.

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

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

SEVERABILITY. If any terms or provisions of this Agreement are held to be illegal, invalid or unenforceable as a matter of law, such provision shall be fully severable, and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding and shall not be affected by such provision or by its severance. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of (his Agreement a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible.

NO WAIVER OF CONTRACTUAL RIGHT. No term or provision of this Agreement, or of any document executed pursuant hereto, shall be held to be waived, modified or deleted unless in writing and executed by the parties hereto. No delay or failure of the City to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a

waiver or relinquishment of the City's right to subsequently enforce and compel strict compliance with such provision or any other provision herein or in any document related hereto.

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 appropriated by the Memphis City Council for any of its fiscal period during the term hereof, then the City shall immediately terminate this Agreement upon written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall have no right to any actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount.

CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISE. The Contractor shall take affirmative action to ensure that Small and Minority Businesses, which have been certified by the City, are utilized when possible as sources of supplies, equipment, construction and services, and shall, in addition, take similar appropriate affirmative action in support of Women's Business Enterprises.

PUBLIC RECORDS. Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by the Contractor, the Contractor understands and acknowledges that the City is a governmental entity subject to the State of Tennessee Public Records Act.

ORGANIZATION STATUS AND AUTHORITY. The Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary. The execution, delivery and performance of this Agreement by the Contractor has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Contractor, any provision of any indenture, agreement or other instrument to which the Contractor is a party, or by which the Contractor's respective properties or assets are bound, in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets. Each person executing this Agreement represents that: he/she is lawfully authorized to sign the Agreement on behalf of the party he/she represents and execution of the Agreement was duly and regularly authorized by the party's governing body.

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

RECORDS AND AUDITS. The Contractor shall make and keep as the same accrue, full and complete books, documents, accounting records and other evidence, that specifically relate to this Agreement, in accordance with generally accepted accounting principles. The Contractor shall retain such records, and shall make available to the City, upon reasonable request, during the term of this Agreement, and for a minimum period of three (3) years after completion of the contract obligations or from the date of final payment under this Agreement, whichever is later. In the event any litigation, claim or audit is instituted prior to the expiration of the required three-year retention period, such records shall be retained until such litigation, claim or audit finding has been resolved. Copies of said records shall be furnished to the City upon request. Upon reasonable notice, the Contractor shall permit the City, any other governmental entity* any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter the Contractor's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by the Contractor. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

DISPUTE RESOLUTION. In the event of any dispute(s), controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations involving themselves or their representatives as they each deem appropriate. Any dispute concerning a question of fact in connection with this Agreement between the Contractor and the City shall be referred to the Mayor, City Attorney, Purchasing Agent or a duly authorized representative, whose decision regarding same shall be final.

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

LIVING WAGE. In accordance with the City of Memphis Ordinance No. 5185, commonly referred to as the Living Wage Ordinance, and any amendments thereto, certain businesses holding a service or service-related contract with the City of Memphis shall pay its employees performing work on said contract a minimum hourly wage. If applicable, the Contractor agrees to follow and comply with the requirements of said ordinance. The Contractor further agrees to provide certified payrolls associated with this agreement to the City of Memphis c/o Manager, Prevailing Wage Office; 125 N. Main St., Room 1B-18; Memphis, TN 38103.

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

NOTICES. All notices and other communications required or permitted to be given hereunder shall be written and hand delivered with signed receipt; delivered by facsimile; delivered by a nationally recognized overnight courier; or mailed via certified U.S. mail, postage prepaid and

return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand delivery, on the date of delivery; (ii) if by fax, on the day the fax transmission is received at the receiving location and receipt is telephonically confirmed by the sender; (iii) if by delivery via U.S. mail, on the date of receipt appearing on a return receipt card; or (iv) if by overnight courier, on the date receipt is confirmed by such courier service. All notices must be addressed to the respective party at the following addresses or to such other person or address as either party may designate in writing and deliver as provided herein.

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

GOVERNING LAW, JURISDICTION AND VENUE. The terms and conditions of this Agreement shall be construed in accordance with and governed by the laws of the State of Tennessee. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the state or federal 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.

IX. DEFAULT AND REMEDIES

1). Events of Default

Events of Default. In the event that CONTRACTOR shall fail to substantially perform its obligations under this Agreement or any other agreement related hereto, and shall have failed to cure the same within fourteen (14) days unless the event is caused by either an act or omission by City or CONTRACTOR, then an event of default (“Event of Default”) shall have occurred under this Agreement. When an action constituting an Event of Default shall occur, the City shall notify CONTRACTOR in writing and advise them of the Default, as well as the time period within which CONTRACTOR shall have to cure same. An Event of Default shall not have occurred if the failure to substantially perform cannot be cured within said cure period and such party has commenced to cure within said cure period and thereafter diligently pursues such cure. Each of the following events, upon failure to cure within the aforesaid curative periods, shall constitute an Event of Default hereunder:

- a)** Any failure or omission on the part of CONTRACTOR to comply with the material terms and conditions of this Agreement;
- b)** Misrepresentation or omission by CONTRACTOR of any material fact or facts related to this Agreement which materially and adversely affects the rights or obligations the parties hereto;
- c)** The filing of any petition under any bankruptcy, moratorium, reorganization or insolvency act, federal or State, by or against CONTRACTOR which, if again same, is not dismissed within ninety (90) days of such filing;

d) The filing of an application for the appointment of a receiver for, or the making of a general assignment for the benefit of creditors of, the CONTRACTOR, however expressed or indicated; and

e) The failure of CONTRACTOR to pay or discharge any judgment or judgments against it for the payment of money (not covered by insurance) which singularly or in the aggregate exceed One Million Dollars (\$1,000,000) and such judgment or judgments be not satisfied, or an appeal taken there from or enforcement stayed, or any levy thereon not be removed within thirty (30) days from issue;

2). Remedies Cumulative

All remedies of the parties provided for herein are cumulative and shall be in addition to all other rights and remedies provided by law. The exercise of any right or remedy by either party hereunder shall not in any way constitute a cure or waiver of default hereunder or invalidate any act done pursuant to any Event of Default hereunder or prejudice a party hereto in the exercise of any of its rights hereunder, unless in the exercise of said rights the party realizes all amount owed to it under this Agreement.

3). Right to Contest

Notwithstanding anything to the contrary herein contained, CONTRACTOR shall have the right to contest, in good faith, any claim, demand, levy or assessment, the assertion of which would constitute any Event of Default hereunder. Upon demand by the City, CONTRACTOR shall make suitable provision by deposit of funds or by bond or other assurance satisfactory to the City for the possibility that any such contest will be unsuccessful. Such provision shall be made within five (5) business days after receipt of demand by the City therefore.

X. TERMINATION

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

a. the Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contendere, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not

limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or

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

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

2. The City may cancel/terminate this Agreement in whole or in part, upon providing written notice to the Contractor of the City's intention to terminate the Agreement as a result of

Contractor's failure to provide the services specified under this Agreement or in violations) of any of the terms herein, and the Contractor has failed to cure such breach within 5 business days of such notice. The City may reject the entire services and cancel this Agreement for any services rendered or to be rendered hereunder. In the event of any such rejection/termination, the City shall, at the City's option, have the right to obtain like services elsewhere or to take over the work and prosecute the same to completion, both at the Contractor's expense; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, etc. as may be on the site of the work and necessary therefore. The Contractor shall be liable to the City for any loss, damage, or additional cost incurred thereby, including but not limited to any difference between the cost for procuring such like services and the price specified herein, attorneys' fees and court costs.

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

4. The City may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving five (5) days prior written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation, as determined by the City, for any satisfactory authorized work performed in accordance with the Agreement up to the termination date; but in no event shall the City be liable to the Contractor for expenses incurred after the termination date. All services completed by the Contractor prior to the Termination Date shall be documented and all tangible work documents shall be transferred to the City prior to payment for services rendered, and shall become the sole property of the City. Such termination by the City shall not be deemed a Breach of Contract by the City, and the Contractor shall not be compensated for any anticipatory profits, or other damages of any description, that have not been earned as of the date of termination.

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

6. Notwithstanding the foregoing, this agreement may be terminated by either party upon providing thirty (30) days written notice of such intention to terminate to the other party.

XI. OTHER REQUIREMENTS

1). Hold Harmless

Contractor agrees that it will hold the City harmless and will indemnify the City for all reasonable costs including attorney fees and court costs incurred by the City due to the failure of Contractor to comply with any and all statutes and regulations applicable under this contract. Contractor further agrees that the City is not responsible for personal and/or property damage liability claims that may result from work performed by the Contractor under the auspices of this contact.

2). Independent Contractor

Nothing in this Contract shall be deemed to represent that the Contractor or any of Contractor's employees or agents, are the agents, representatives or employees of the City of Memphis. Contractor shall be an independent contractor and shall have responsibility for and control over the details and means for performing its business.

XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the City of Memphis and Contractor and supersedes and replaces any and all prior written or oral agreements, understandings, representations, negotiations and correspondence between the parties. This Agreement shall not be supplemented, amended or modified by any course of dealing, course of performance or usage of trade and may only be amended or modified by a written instrument duly executed by officers of both parties.