



City of Memphis

**REQUEST FOR QUALIFICATIONS
FOR GRASS MITIGATION SERVICES**

[Request for Qualifications #26718](#)

**Prepared By: Public Works
Closing Date for RFQ: 06/13/14
RFQ Accepted at Attn: Purchasing Agent
Grass Mitigation Services/RFQ #26718
125 North Main Street, Suite 354
Memphis, TN. 38103
E-Mail Inquiries: [Johnny Harper@memphistn.gov](mailto:Johnny.Harper@memphistn.gov)**

**The City of Memphis
Division of Public Works
Request for Qualifications
For Grass Mitigation Services**

Qualification Submittals Due by 2:00 p.m. on Friday, June 13, 2014

A mandatory Pre-Submittal Conference will be held on Wednesday, June 4, 2014

Equal Business Opportunity

In the selection of Contractors to perform the services specified herein, the City of Memphis will use its best efforts to select vendors certified with the City as MWBE certified in order to meet its EBO Participation Goal. If you are a certified MWBE vendor, please submit your company's certification documents with your submittal packet.

Summary of Request

The City of Memphis, through its Division of Public Works, is seeking qualified grass mitigation contractors to mow privately owned lots and certain specified right of ways as needed by the City, including emergency grass cutting where necessary. At the present time, the City of Memphis desires to solicit licensed grass contractors. All bidders for grass mitigation services are encouraged to respond to this RFQ. The City intends to select an unspecified number of contractors and enter into one year contractual agreements with the selected contractors who will provide grass mitigation services for the City of Memphis. The City of Memphis may extend the contract for additional years based upon need and funding availability.

The City will set the compensation rate for the grass mitigation based upon a predetermined rate and the selected contractors will be paid according to the rate set. The rates will be paid hourly based upon the type of lot expected to be mitigated. Each selected contractor will be used to mow the grass based upon a rotational system as established and implemented by the City. The City will determine which group of Selected Contractors will be best suited for the different grass mitigation demands. The City will not guarantee a minimum number of lots to mitigate during the term of the contract and at its discretion will pull from the pool of contractors as the need arises. The City expects to cover thousands of lots during the term of the contract.

Only Contractors who meet the program qualifications will be able to submit applications. Contractors must comply with all state, county and city policies related to grass mitigation and must have meet all necessary License Requirement to conduct business in Memphis/Shelby County, Tennessee.

Contract Application packets are available online on the City of Memphis website located at www.memphistn.gov. Completed applications must be received by the City of Memphis no later than 2:00 p.m. on Friday, June 13, 2014. Late Applications will not be accepted. Incomplete Applications will be deemed ineligible and will not be considered for review. 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, access to grass mitigation equipment 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 Friday, June 13, 2014.

Contract Terms and Conditions
Table of Contents

REQUEST FOR QUALIFICATIONS TERMS5
INSTRUCTIONS TO RESPONDENTS.....7
GENERAL GUIDELINES FOR RESPONSE PREPARATION.....9-11
SCHEDULE OF EVENTS.....12
GRASS MITIGATION REQUIREMENTS.....13
SUBMISSION REQUIREMENTS.....14-15
EVALUATION.....16

REQUEST FOR QUALIFICATIONS TERMS

The City of Memphis seeks responses from qualified, grass mitigation contractors who have the expertise to provide Grass Mitigation Services for private owned lots and specified right of ways in accordance with this solicitation document. This is a Request for Qualifications that may be modified by the City during the selection process.

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

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

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

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: May 27 & 28, 2014

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:
Johnny Harper, Manager, Grounds Services at 901-636-4762.

REQUEST FOR QUALIFICATIONS TERMS AND CONDITIONS

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

Attn: Johnny Harper, Manager, Grounds Services
Fax: 901-278-8960; Email Address: Johnny Harper@memphistn.gov

Response Submission

To be considered for selection, one (1) original and three (3) copies of the complete response shall be delivered before June 13, 2013 at 2:00p.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

Respondents 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.

Respondents shall identify all e-mail inquiries in the subject line as "RFQ Inquiry" and shall submit questions no later than **the day prior to the Pre-Submittal Conference date**. To ensure the fair and consistent distribution of information, all questions will be answered at the Pre-Submittal 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 Respondent 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 Respondents 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, Respondents will have the right to retrieve and revise their responses.

Ambiguity, Conflict, or other Errors in the RFQ: If a Respondent 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 Respondent 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 Respondent 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 Respondent 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 Respondent that is determined to be non-responsive.

Informalities/Minor Irregularities: The City reserves the right to waive minor irregularities or informalities in a Respondent'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 Respondent from full compliance with the RFQ specifications and other contract requirements if the Respondent is awarded the contract.

Respondent 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 Respondent has familiarized itself with the contents of the RFQ and with these terms and conditions, in particular. The failure or omission by the Respondent to receive or examine this RFQ shall in no way relieve the Respondent 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, Respondents 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, Respondents 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.

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 contract execution and end June 30, 2015. 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.

Mandatory Pre-Submittal Conference: The Pre-Submittal Conference for this RFQ will be held at **10:00 a.m. on Wednesday, June 4, 2014** at Community Affairs, Community Resource Room, 315 S. Hollywood, Memphis, TN 38104.

SCHEDULE OF EVENTS

ACTIVITY

DATE

Issuance of Request for Qualification	May 27, 2014
Written Questions Due at the City	June 3, 2014
Mandatory Pre-Submittal Conference	June 4, 2014
Qualification Statements (Response) Due at City	June 13, 2014

(the below dates are tentatively scheduled dates, and may change)

Evaluation of Qualification Statements (Responses)	June 16-20, 2014
Designation of Qualified Respondents	June 23, 2014

GRASS MITIGATION REQUIREMENTS

Time of Completion:

1. Contractors must have the capacity to provide all labor and equipment in order to perform grass mitigation services to all assigned properties within Five (5) calendar days.
2. Must be able to mobilize a crew within 24 hours for emergencies and mobilize a crew within 72 for non-emergencies.

Equipment Suggested

While no specific grass mitigation equipment is required, Contractors are encouraged to have in their possession and to have proof of ownership through title record or other approved forms the following equipment:

- a. Two tractors with bush hogs – one must be side-mount type. (Successful bidders must have one additional tractor and one additional side-mount bush hog for each additional area awarded.)
- b. Two commercial type lawnmowers.
- c. Manual tools – two blowers, two hand blades, two commercial line trimmers, two chainsaws and other equipment that may be needed to perform task.
- d. Excavator or front-end loader

Compliance with Laws:

All work must be done in strict compliance with the laws of Memphis, Shelby County, Tennessee. The contractors must obtain and retain current contract registration throughout the life of the contract.

Public Safety:

Contractor must maintain all necessary safety precautions during mitigation including:

1. Contractor must check and confirm that no persons have gained access to the structure and property.
2. Contractor must make every effort to prevent damages to parked or passing vehicles, pedestrians, or adjacent homes and properties due to projectiles from the operation of mowers, bush hogs, etc.
3. This list is not meant to be exhaustive. Any unsafe or potentially unsafe situation must be discussed with the City and addressed immediately.

Environmental Compliance:

Please be advised that in accordance with City Ordinance 4538, it is unlawful for any person to improperly dispose of, any contaminant into the storm water system. This ordinance prohibits the placing of debris in the street curb, street inlets or open ditches. This includes collected lawn clippings, leaves or branches.

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) Certificate of Nondiscrimination**
- 6) 2013 Federal Tax Return (Or Latest)**

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

1) Professional Information

Please provide a brief discussion of your firm's grass mitigation experience in Tennessee. Respondents must have a minimum of two (2) years experience in providing grass mitigation work or the equivalent. 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 client references to include municipalities of comparable size and/or complexity as the City of Memphis.

Submission of Qualification Statements

Qualification Statements must be received by the City no later than 2:00 p.m. prevailing time on June 13, 2014, 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 Respondents that will provide high quality, effective, and professional services to the citizens of the City of Memphis in a timely manner. 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
- 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 are 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
Ground Services Department**

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 GRASS MITIGATION 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 grass mitigation 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 length of experience performing grass mitigation?

Describe your company's experience performing grass mitigation on right of ways?

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

In the event of the need for an emergency grass mitigation requirement, how quickly could you 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

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

Ground Services Department

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 RFQ #: _____
City, State, Zip: _____	Vendor # (If any): _____

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
Ground Services Department
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: _____ Address: _____ City, State, _____ Zip: _____	Program Name: _____ Program Client #: _____ Contractor Vendor #: _____
---	---

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 Grass Mitigation Agreement For Privately Owned Lots and Designated Right of Ways For the Division of Public Works Ground Services Department

Grass Mitigation for properties as designated by the Division of Public Works, Neighborhood Improvement, Ground Services Department

I. LOCATION

All locations shall be identified and assigned by the City of Memphis Grounds Services Department.

II. SCOPE AND GENERAL CONDITIONS

- A) Provide weed cutting and clean up services for privately owned vacant property, with or without residential or commercial buildings, within the City limits of Memphis, Tennessee.
- B) The Contractor shall provide service for a period covering Twelve (12) months based upon the need as determined by the Ground Services Department.
- C) Although there are no set boundaries, work assignments will be made using geographically convenient considerations. Volume may be based on production. This contract does not grant an exclusive right to the contractor. The City reserves the right to supplement weed cutting as necessary. The approximate hours in the Bid Section are a probability rather than a guarantee of work volume. Service charges are not to be greater than \$15.00 each.

III. SPECIFICATIONS:

- 1. Yards shall be cut with commercial lawnmowers, push mowers, tractor with a bush hog and/or whatever equipment necessary to properly cut grass according to the City's standards. Line trimmers and hand blades might be necessary in hard to reach areas such as steep slopes, utility poles, sidewalk areas, and some borders.
- 2. According to each Contractor's profile and ability, the Contractor will be given job orders requiring mitigation services that have been certified by the City. A Contractor's assignment cannot exceed a maximum of 300 job orders at one time. All job orders must be completed within five (5) days of the assignment or may result in nonpayment or reduced payment. Before cutting, the Contractor will assess each property to make certain that the overgrowth is a minimum of 12" high. Contractor must ensure that quality grass mitigation services are performed by the Contractor's crew personnel.

3. Contractor shall remove litter and debris before cutting and take said debris to curbside (large items or a large amount of trash). Contractor must separate tires from bagged trash and miscellaneous debris. Contractor shall contact Ground Maintenance after placing it on curbside for location of pickup.

4 Contractor shall cut grass (over 12" tall), hedges, clearing of fence lines. Mowing shall be a maximum height of 1" (one inch) for improved property (with vacant structures) and the height of 3" (3 inches) for unimproved property (vacant lots). Sidewalks and driveways shall be cleared of grass and/or shrubbery to permit clear pedestrian and vehicular passage. All clippings shall be blown, swept or raked from streets, curbs, gutters, sidewalks, and adjoining properties.

5. The contractor shall be available to do the work when requested by the Division. Other work done shall not interfere with work agreed to herein. Weather permitting, the contractor shall complete the work scheduled by the Division within five (5) working days, and shall report progress of said work on a daily basis.

6. It shall be the duty of the contractor to adequately communicate with the City personnel. Contractor will occasionally be required to update the vendor information such as crews, number of employees, equipment inventory, or other information as requested.

7. Work shall be picked up in the mornings and invoices shall be submitted as soon as available but no more than three (3) days following completion of work unless otherwise instructed. Invoices shall be submitted for payment as invoices are received and verified. Verification shall include matching the invoice with an existing work order, checking rates assigned, and visual inspection of work to determine the level of performance. Work determined to be below the standards set by the Division shall be rejected and the invoice deleted from payment. Upon notification the contractor has twenty-four (24) hours to correct the problem. All billings are subject to verification and the books of the contractor may be subject to audit insofar as items under this contract are concerned.

8. Contractors may arrive to cut property and find that the property has already been cut. If assigned lots are already cut, Contractor may not recut but may billed at the service charge rate allowed. In such case, Contractors must take a picture for verification in City's records. If the front yard is cut and not the back yard, Contractors are to cut uncut portions of property and take before and after pictures showing the grass mitigation. If the entrance to the backyard is not large enough or something is blocking the entrance, the cutting of backyard will have to be done by weed eating.

9. The City shall pay the contractor only for actual time spent cutting and/or cleaning with the minimum charge being 1 hour. Travel time to and from the job and breakdown time shall not be included. Contractor is required to get preapproval for any mitigation time that is two (2) hours or greater. If preapproval is not granted, your invoice hours are subject to be reduced at the discretion of Management.

10. Payment shall be made within 30 days as invoices are received and verified by the Grounds Services. Verification shall include matching the invoice with an existing work order, checking proper billing and invoicing rates, and visual inspection of work to determine the level of performance. Work determined to be below the standards set by the Division shall be rejected and the invoice deleted from payment. Upon notification the contractor has forty-eight hours to correct the problem. The successful bidder shall submit all invoice to:

**City of Memphis
Grounds Services Department
281 East Parkway North
Memphis, Tennessee 38112**

11. The City of Memphis shall not be liable for any injuries to persons including contractor's employees, nor damages to private vehicles, nor damages to contractor's machinery and equipment, nor damages to the property cut or adjoining properties, nor damages and injuries to vehicles and their occupants, nor injury to residents or pedestrians, nor be liable for damage to properties the contractor mows, such as ornamental shrubbery, flowers, damaged sidewalk, etc. Damage claims must be efficiently processed and legally satisfied by the contractor.

12. Accident Prevention: Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction published by the Association of General Contractors of America to the extent that such provisions are in contravention of State or local laws and ordinances.

13. The City reserves the right to audit the records of the contractor. The contractor shall make and keep as the same accrue, full and complete records and books of accounts of revenue and income, and costs and expenses that specifically relate to performance under this contract. Records and books of accounts, together with any or all other memoranda pertaining thereto that may be kept, maintained or possessed by the contractor, shall be open to examination during regular business hours, by the City or its representatives for the purposes of inspection, auditing, verifying, or copying the same, or making extracts there from. The contractor shall make and keep said records and books of accounts in accordance with generally accepted accounting principles.

14. All aspects of the work assignment and review of work performed shall be at the sole discretion of the Ground Services Department. This process may be modified as necessary by the Grounds Services Department as deemed necessary.

III. TERM

The initial term of this contract shall include services rendered for a period ending **June 30, 2015**. 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 additional

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.

IV. COMPENSATION:

1) CONTRACTOR shall be paid at a rate of Fifty Dollars (\$50.00) per hour for mitigation of grass on private lots and One Hundred Dollar (\$100) per hour for mitigation on right of ways. The total amount per lot assigned shall be decided by Ground Services upon a review and walk through of the area to be cut. The total amount established by the City shall be reflective of any additional work required that is outside the normal process. Contractor agrees to accept such payment as full compensation for services to be performed under this agreement. Service Charge for lots already cut upon visit shall be at a flat rate of \$15.00 per yard. A City Representative must verify that the property had already been mitigated.

2). CONTRACTOR shall submit invoices and along with invoice packets to the City of Memphis Ground Services Department, 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.

V. METHOD OF INVOICING AND PAYMENT

A). Invoices with proper documentation must be submitted by Contractor to the City for payment within 5 days of receipt of work but not later than 3 days after completion of work assignment. The Contractor shall take good before and after pictures displaying on a cardboard (or an equivalent signage) showing the ward, block and parcel number and the street name of the property where applicable. Before and after pictures are to be taken using a digital camera with labeled date and time stamped on the photos. The before and after pictures should be taken from the same views. If there is a building, the picture should show as much as possible of the building. If the location has no building, choose a landmark.

B). All Invoice Packets should include (1) Summary Coversheet, (2) Detailed Invoice, (3) XORA jobs completed or Printed Pictures, (4) CD of Pictures and (5) Cutter Cards. Print out all before and after pictures and attach with your invoice for payment unless permitted otherwise.

C). Contractor must 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. Adjustment requests by the City are expected to be followed.

D). The original and one copy of all invoices or statements shall be submitted to the City by the Contractor. All invoices for payment are subject to verification and approval by the City. Invoices submitted with no pictures; pictures that are not clear or cannot be identified; and

pictures with no date/time indication may result in no payment. After approval, the City shall, within thirty (30) days, submit to the Contractor the amount shown to be due and payable.

E). 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:

**Grounds Services Department
281 E. Partway North, 2nd Floor
Memphis, Tennessee 38112**

VI. 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.

f) Use of Herbicide

If providing herbicidal treatment, Herbicide/Pesticide applicators coverage should be endorsed to the policy or a separate Stand-a-lone Herbicide/Pesticide coverage of \$1,000,000 Occurrence/Aggregate.

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

VII. 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 be 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 the same, the City may withhold such balances and upon evidence satisfactory to the City as to the amount due for such labor and materials, the City, acting as the agent of the Contractor, may settle and pay for the same and charge the amounts to the Contractor and deduct the same from the said balance or balances.

REMEDIES CUMULATIVE. All remedies available to the City 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 violable 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, 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.

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.

VIII. 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.

IX. 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 violation) of any of the terms herein, 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.

X. 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 contract.

2). Assignability/Transfer

Contractor agrees that it shall not assign or transfer any work or benefits under this agreement without the advanced written permission of the City.

3). Independent Contractor

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

XI. 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.