



DIVISION OF FINANCE



**To:** Honorable Mayor Paul A. Young

**From:** Kristie Hardy, Purchasing Agent *cc*

**Date:** May 20, 2024

**DOCU-SIGN**

**Subject:** Contract # 41129 - PEACHTREE RECOVERY SERVICES, INC.

Please find attached the above referenced contract for the Mayor's signature. This document does not require City Council approval.

**Purpose:** Contract for property damage recovery services. Term: 1 year from execution with 3 1-year options to renew. New

**Type:** New

**Type Amount:** \$

**Financial Commitment:** This is a revenue based contract. There is no financial obligation .

**M/WBE Participation Goal:** 0.00%

**M/WBE Participation Commitment:** 0.00%

**SBE-Only Bid:** N/A

**Contracting Authority:** By Home Rule Amendment 1852, Section 14, BE IT FURTHER ORDAINED, That the power to contract (other than by franchise agreements) shall remain with the Mayor.

After approval, please return all documents to the Purchasing Department for further processing.

Should you have any questions, please advise.

Attachment



FY 24

# PURCHASING

## New Contract Agreement Checklist

Division: Public Works

REQ#: \_\_\_\_\_

RFQ#: \_\_\_\_\_

PO/ Contract #: 4129

Name & Date: E.P. 5/20/24

Negotiated Contract	YES	NO	N/A
RFP Required			/
Scoring Criteria Attached			/
Purchasing Has Original Proposals			/
Check Award Recommendation Information			/
Check Scope of Services	/		
Check Term of Contract/ Extension Clauses	/		
Check and Enter Not to Exceed Amount	/		
Check Contract Amount	/		
Check Source of Funds/ POETA	/		
Check Insurance Requirements	/		
Rcv'd IRS Tax Exempt Letter or Mem. Shelby Co. Bus. Tax Receipt/ License			/
Copy of License & Establish Date – Shelby County 222-3059			/
Check Signatures	/		
Copy of Insurance/ Endorsement to Clerk	/		
Tabs Inserted Into Packet	/		

Term: 1 year from execution w 3 additional 1 year options to renew

Estimate/ NTE/ Total Cost (Circle One): \$ Revenue Based Contract

Description for Processing: Property Damage Recovery Services

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

# City of Memphis Inter-Office Memorandum

To: Paul Young, Mayor

From: Robert Knecht, Director of Public Works *RK*

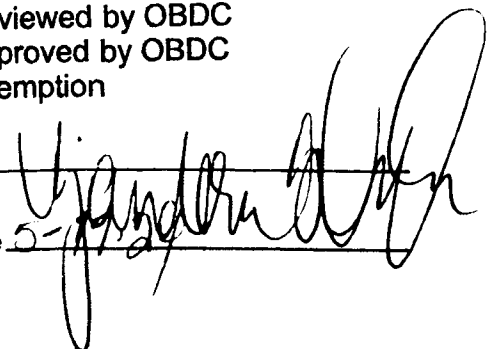
Date: May 6, 2024

Subj: Public Works – Property Damage Recovery Services

- Reviewed by OBDC
- Approved by OBDC
- Exemption

Reason \_\_\_\_\_

Sig/Date 5-7-24



## Brief/Memo

### 1. Statement of Opportunity

Public Works has the need for property damage (third party responsible) recovery services.

### 2. Prior Public Works Action

Public Works has initiated a negotiated contract property damage recovery services.

### 3. EBO Participation

The City's EBO Goals Committee did not assign a goal to this project as this is a revenue contract. No City funds will be used for this service.

### 4. CCO Action

The COO is requested to advise the Mayor to sign the attached contract.

# CITY OF MEMPHIS INTEROFFICE MEMO Professional Services

To: Office of Business Diversity & Compliance  
From: Rickena Patterson  
Project Name: Peachtree Recovery Services - Revenue Contract  
Date: 05/14/24  
Subject: **EBO Goals**

Division: **Public Works**  
Project Number: \_\_\_\_\_

BID DATE:

<u>NAME</u>	<u>ESTIMATED AMOUNT</u>	<u>PERCENT</u>	<u>FIRMS M</u>	<u>FIRMS W</u>
Professional Services		0.00%		

TOTAL ESTIMATE

RECOMMENDED TOTAL MBE GOAL OF:      %

RECOMMENDED TOTAL WBE GOAL OF:      %

OR

RECOMMENDED TOTAL COMBINED M/WBE GOAL OF:      %

APPROVED: Zanderia Davidson  
Zanderia Davidson, Director OBDC or Designee

Date: 5/17/24


*Revenue Contract  
no City funds*

APPROVED: \_\_\_\_\_  
Kristie Hardy, Purchasing Agent or Designee

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

APPROVED: \_\_\_\_\_  
Tannera Gibson, City Attorney or Designee

Date: \_\_\_\_\_  
or Designee

 An official website of the United States government [Here's how you know](#)

**Important Reqs and Certs Update** [Show Details](#)  
*Mar 1, 2024*


**See All Alerts**

X

**Entity Validation Processing** [Show Details](#)  
*May 15, 2024*


X



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**Search** All Words e.g. 1606N020Q02



**Please Sign In:** You must sign in to your SAM.gov account to search Entities, Responsibility/Qualification and the Disaster Response Registry.

**Sign In**

Select Domain  
**Entity Information**

+

All Entity Information

Entities

Disaster Response Registry

Responsibility / Qualification

Exclusions




Filter By

-

**Keyword Search**

For more information on how to use our keyword search, visit our help guide

Simple Search

- Any Words 
- All Words 
- Exact Phrase 

e.g. 123456789, Smith Corp  
 "PEACHTREE RECOVERY SERVICES, INC" x

Entity

Location

Status

- Active
- Inactive

> > <

Reset 



# No matches found

Your search did not return any results for active records.

Would you like to include inactive records in your search results?

**Search inactive**

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Suppliers

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Contact Directory

Business Classification

Products & Services

Banking Details

Surveys

Approval History

Terms and Control

Accounting

Tax and Reporting

Purchasing

Receiving

Payment Details

Relationship

Invoice Management

Suppliers >

### Update PEACHTREE RECOVERY SERVICES, INC. - 156658: Business Classification

#### Certification

Last Certified By  
 20-May-2024

Tip: Date format example: 20-May-2024

...

#### Classification

- Minority Owned
- Service-disabled Veteran Owned
- Small Business
- Veteran Owned
- Women Owned
- Women-owned small business eligible under the WOSB program

- Applicable
- Minority Type
- Certificate Number
- Expiration Date
- Status

Cancel Save

Cancel Save

## Business Classification

[Show directory information and instructions](#)

### Search Parameters

CERTIFICATIONS	Minority Business Enterprise (MBE) Small Business Enterprise (SBE) Women Business Enterprise (WBE)
BUSINESS NAME/DBA	PEACHTREE RECOVERY SERVICES, INC

[Edit Parameters](#)   [Clear Parameters](#)

### Search Results

Your search parameters did not return any matches. Click **Edit Parameters**, modify the information in the fields above and click **Search Again**.

0 firms with 0 certifications found



# City of Memphis



## BID AND CONTRACT AGENDA SHEET

**FY 24**

Original

1. Division: Public Works Date: 5/6/2024  
 Division Contact Person: Mary Daniels Phone #: 7404  
 Print Name

2. Contractor: PEACHTREE RRECOVERY SERVICES, INC. Address: 7778 McGinnis Ferry Road #306  
 City/State/ Zip Code: Suwanee, GA 30024  
 Contractor's Contact Name: Todd Rhoad Contractor's Email Address: Todd.rhoad@peachtreerem.com

3. BID REJECTION:  
 For purchase/construction of \_\_\_\_\_  
 Explanation of rejection \_\_\_\_\_  
 Request to Re-advertise \_\_\_\_\_

4. CONTRACT AWARD RECOMMENDATION: RFQ/RFP # \_\_\_\_\_ Vendor # \_\_\_\_\_  
 Check Box: Low  Best\*  Only  Negotiated

Contract Amount: \$ \_\_\_\_\_  
 Purpose: Property damage recovery services.  
 Special Instructions: \_\_\_\_\_

\*Justification for rejection of low bids attached. (Attach a copy of bid tabulation)  
 5. CHANGE ORDER/AMENDMENT/ENCUMBRANCE/FINAL PAYMENT: Contract# 41129 Expiration: \_\_\_\_\_  
 For: \_\_\_\_\_

Special Instructions: This is a revenue contract

6. Submit Invoices to:  
 Dept. Contact Person: Rickena Patterson Address: 125 N. Main St., Suite 608  
 City/State/Zip Code: Memphis, TN 38103

<input type="checkbox"/>	Extension	Original Contract Amount	_____	Final Payment Due:	\$ _____
<input type="checkbox"/>	Change Order	Previous C. O. Total	_____	Retainage:	\$ _____
<input type="checkbox"/>	Finally Close Contract	Prev. Amend./Encum. Toll.	_____		
<input type="checkbox"/>	Transfer to PO	C. O. # _____	Attached _____		
<input type="checkbox"/>	Amendment	Encumbrance Amount	_____		
<input type="checkbox"/>	Encumber	Adjusted Contract Amount	_____	\$0.00	
<input type="checkbox"/>	Unencumber				

### COST & SOURCE OF FUNDS

Type	Line #	Fund	Serv. Ctr	Account #	Project #	Task #	Award #	Amount
(1)		0111	170101	049160				
(2)								
(3)								
(4)								
(5)								
(6)								

Appropriating Resolution Attached.  Other Attachments

CHECKED & APPROVED BY: Rickena Patterson Date: 5/17/24 Service Center Approval  
 Director, OBDC Approval  
 City Engineer Date \_\_\_\_\_  
 Contract Analyst-Print  
 DocuSigned by: Antonio Adams Date: 5/8/24 Division Director  
 Chief Administrative Officer Date: 6/28/2024  
 Purchasing Agent/ Date: 6/10/24  
 Purchasing Supervisor

FUNDING/PURCHASING APPROVAL:  
 Funds are available.  
 Funds to be appropriated/transferred.

3 JUN PM 2:35



TENNESSEE

PAUL YOUNG  
MAYOR

DIVISION OF PUBLIC WORKS

To: Kristie Hardy, Purchasing Agent  
From: Robert Knecht, Director of Public Works  
Date: June 4, 2024  
Subject: Peachtree Recovery Services, Inc.

Purchasing Approved  
6-5-24  
*Kristie Hardy*  
*RK*

Public Works would like to enter another Property Damage Recovery Services Contract with Peachtree Recovery Services, Inc. This will be a Professional Service Contract. This is also revenue contract.



**PAUL YOUNG  
MAYOR**

**DIVISION OF PUBLIC WORKS**

To: Kristie Hardy, Purchasing Agent      Purchasing Approved  
5-15-24

From: Robert Knecht, Director of Public Works *UK*

*Kristie Hardy*

Date: May 14, 2024

Subject: Multi Year Revenue Contract with Peachtree Recovery Services, Inc.

Public Works would like to enter another Property Damage Recovery Services Contract with Peachtree Recovery Services, Inc. The contract will be 1 year with 3 additional 1-year periods. The S.O.W. in Exhibit A.1 is attached for review. This is a revenue contract.



June 4, 2024

Rickena R. Patterson  
City of Memphis Public Works  
125 N. Main  
Memphis, TN 38103

RE: PRS' Services Description

Ms. Patterson:

Peachtree Recovery Services, Inc. (PRS), founded in 2015, is a claims management firm solely dedicated to serving the needs of local government with regards to traffic crashes that damage uninsured city assets. PRS provides dedicated teams to each client to review 100% of the traffic crash reports and identify the damages to city assets, such as signs, poles, fences, guardrails and much more. PRS also investigates, estimates and files claims on behalf of the city to recover costs for the damages, cleanup efforts and repairs. Once payments are received from the responsible driver's insurance carrier, PRS retains its contingency fee and remits the remaining funds to the city on a monthly basis, including detailed monthly reporting.

Sincerely,

*Todd Rhoad*

Todd Rhoad  
CFO  
Peachtree Recovery Services, Inc.  
6045 Whitehall Run  
Suwanee, GA 30024  
Todd.rhoad@peachtreers.com  
(m) 678.230.7594



June 4, 2024

Rickena R. Patterson  
City of Memphis Public Works  
125 N. Main  
Memphis, TN 38103

RE: PRS' Services Description

Ms. Patterson:

Peachtree Recovery Services, Inc. (PRS), founded in 2015, is a claims management firm solely dedicated to serving the needs of local government with regards to traffic crashes that damage uninsured city assets. PRS provides dedicated teams to each client to review 100% of the traffic crash reports and identify the damages to city assets, such as signs, poles, fences, guardrails and much more. PRS also investigates, estimates and files claims on behalf of the city to recover costs for the damages, cleanup efforts and repairs. Once payments are received from the responsible driver's insurance carrier, PRS retains its contingency fee and remits the remaining funds to the city on a monthly basis, including detailed monthly reporting.

Sincerely,

*Todd Rhoad*

Todd Rhoad  
CFO  
Peachtree Recovery Services, Inc.  
6045 Whitehall Run  
Suwanee, GA 30024  
Todd.rhoad@peachtreers.com  
(m) 678.230.7594



April 18, 2024

City of Memphis  
Public Works Division  
125 N. Main, Suite 608  
Memphis, TN 38103

RE: No Auto Liability Coverage Required

Peachtree Recovery Services, Inc. has no company owned vehicles and will not be driving on behalf of their contract with the City of Memphis.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Rhoad".

Todd Rhoad  
CFO  
Peachtree Recovery Services, Inc.  
7778 McGinnis Ferry Road, #306  
Suwanee, GA 30024  
Todd.rhoad@peachtreers.com  
(m) 678.230.7594



7778 McGinnis Ferry Road, #306  
Suwanee, GA 30024



(770) 897-9000  
(678) 230-7594



info@peachtreers.com  
todd.rhoad@peachtreers.com



April 18, 2024

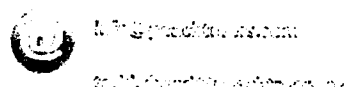
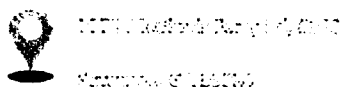
City of Memphis  
Public Works Division  
125 N. Main, Suite 608  
Memphis, TN 38103

**RE: Workers' Compensation Insurance Requirement**

We affirm Peachtree Recovery Services, Inc. has fewer than five (5) employees and is not required to maintain Workers' Compensation insurance pursuant to Tennessee Statute and further recognizes Peachtree Recovery Services, Inc. is financially responsible for any and all of their employees on the job injuries. Should Peachtree Recovery Services, Inc. ever employ five (5) or more employees we affirm that we will notify the City and provide a certificate of insurance confirming that Peachtree Recovery Services, Inc. maintains Workers' Compensation insurance in compliance with Tennessee law.

Sincerely,

Todd Rhoad  
CFO  
Peachtree Recovery Services, Inc.  
7778 McGinnis Ferry Road, #306  
Suwanee, GA 30024  
Todd.rhoad@peachtreers.com  
(m) 678.230.7594







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

**PARTIES TO THE AGREEMENT.** This Agreement is made and entered into as of the date of execution by and between Peachtree Recovery Services, Inc., ("Contractor") and the City of Memphis, a municipal corporation of the State of Tennessee ("City").

**WITNESSETH**

**WHEREAS,** City, by and through its Division of Public Works has the need for property damage (third party responsible) recovery services; and

**WHEREAS,** Contractor has the knowledge and expertise to provide such services; and

**WHEREAS,** the parties desire to enter into an agreement setting forth the terms and conditions under which Contractor shall provide said services;

**NOW THEREFORE,** for and in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties hereby agree as follows:

**PAYMENT TERMS AND CONDITIONS**

**SCOPE OF SERVICES.** The services to be provided in connection with this Agreement will include, but not be limited to, those items listed in **Exhibit A.1, A.2 and A.3** attached hereto and incorporated herein as if stated verbatim.

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

The Initial Term of this Agreement shall commence beginning **DATE OF EXECUTION** and shall end on the earlier of **ONE YEAR FROM DATE OF EXECUTION** or until all services herein have been provided to City ("Initial Term"), subject to the availability and appropriation of funds to finance the same and the successful operation of the program.

City shall have the option to extend the Initial Term for three (3) additional one (1) year period(s) (the "Option Periods"), subject to the appropriation of funds by the Memphis City Council and mutual agreement of the parties, evidenced in writing. The Initial Term and the exercised Option Periods are collectively referred to hereinafter as the "Term."

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

**INVOICES. N/A**

**COMPENSATION.** Peachtree Recovery Services, Inc. will perform the services described in the Statement of Work attached as **Exhibit A.1** for the compensation described below. **Peachtree Recovery Services, Inc. does not provide any form of legal or tax services pursuant to this Agreement.**

- a. Peachtree Recovery Services, Inc. shall retain eighteen and one-half per cent (18.5%) of all amounts recovered for each claim after deduction of any Paid Administrative Fee, any PRS Reimbursed Expenses, and any City Litigation Costs (each defined in **Exhibit A.1**). Peachtree Recovery Services, Inc. shall forward the remaining eight-one and one-half percent (81.5%) for each claim to the City.
- b. Peachtree Recovery Services, Inc. shall pay the City thirty (30) days in arrears of a monthly basis for damage claims recovered during the previous month. Such payments shall be accompanied by an emailed or other electronic progress report in a form similar to the form included in **Exhibit A.2**. Peachtree Recovery Services, Inc. always will include the Agreement number on such reports.
- c. Peachtree Recovery Services, Inc. shall provide such payments and reports to the primary contact at the City set forth in "Notices" below, and the City shall notify Peachtree Recovery Services, Inc. promptly of any changes to the primary contact or the primary contact's information.
- d. Peachtree Recovery Services, Inc. shall not perform services for the City except those listed in **Exhibit A.1**.

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

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

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

**TAX PAYMENTS.** The City of Memphis is exempt from federal excise, state and local taxes on all purchases and upon request will issue tax exemption certificates to Contractor. Contractor shall be solely responsible and liable for any taxes and business license fees assessed or imposed by any government having jurisdiction over the services to be provided herein.

**PAYMENT DOES NOT IMPLY ACCEPTANCE OF SERVICE.** The payment of an invoice shall not prejudice City's right to object to or question any invoice or matter in relation thereto. Such payment by City shall neither be construed as acceptance of the service nor as final approval of any of the costs invoiced therein, and City's payment shall not relieve Contractor from its obligation to fulfill its obligation under this Agreement, even if the unsatisfactory character of such

service may have been apparent or detected at the time such payment was made. Service, data or components that do not conform to the requirements of this Agreement shall be rejected by City and fulfilled by Contractor, without delay or additional cost to City.

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

## **FINAL CONTRACT INVOICE. N/A**

### **GENERAL TERMS AND CONDITIONS**

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

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

**ASSIGNS.** See **SUCCESSORS.**

**AUDITS.** See **RECORDS.**

**BOYCOTT OF ISRAEL.** In connection with Tennessee Code Annotated Section 12-4-119, Contractor certifies that it is not currently engaged in nor will it engage in a boycott of Israel. For this purpose, a "boycott of Israel" shall mean engaging in refusals to deal, terminating business activities, or other commercial actions that are intended to limit commercial relations with Israel,

or companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or persons or entities doing business in Israel, when such actions are taken (i) in compliance with, or adherence to, calls for a boycott of Israel, or (ii) in a manner that discriminates on the basis of nationality, national origin, religion, or other unreasonable basis, and is not based on a valid business reason. This provision is not applicable to contracts with a value less than \$250,000 or to companies with less than 10 employees.

**CITY FACILITIES.** Not Applicable

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

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

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

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

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

Subject to the open record laws of the State of Tennessee, each party acknowledges and agrees that a breach of this section may cause the affected party irreparable injury and damage; therefore, each party expressly agrees that the affected party shall be entitled to seek injunctive or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement. Each party agrees that it will disclose confidential information only to those employees who have a right and need to know, and shall require its employees, agents, and subcontractors to comply with the requirements of this provision and the requirements of the provisions herein titled "Public Statements" and "Rights in Data."

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

**COUNTERPARTS.** This Agreement may be signed in multiple counterparts and/or counterpart signature pages, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument.

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

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

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

**DISPUTE RESOLUTION.** In the event of any dispute, controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations involving themselves or their representatives as they each deem appropriate. Any dispute concerning a question of fact in connection with this Agreement between Contractor and City shall be referred in successive order for resolution, first to City's Purchasing Agent, second to City's Chief Legal Officer/City Attorney, and thirdly to the Mayor of the City of Memphis, whose decision regarding City's position as to the same shall be final.

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

**DUE DILIGENCE AND NON-RELIANCE.** Contractor represents that it has had opportunity to conduct, and has conducted, due diligence with respect to this Agreement, and all other items and conditions it deems necessary to conclude this Agreement, and Contractor represents that it has not relied upon any written or oral statement of City or its employees, directors, officers, consultants, attorneys or any elected or appointed officials in executing this Agreement.

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

**EMPLOYMENT OF ILLEGAL IMMIGRANTS.** Contractor hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally

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

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

**FORCE MAJEURE.** Neither City nor Contractor shall be deemed in default hereunder, nor shall either be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any *force majeure* event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, acts, governmental authorities or acts of nature or other similar cause beyond its control. Both shall put forward its best efforts to mitigate any delay, interruption, or cessation in the performance of its obligations under this Agreement related to said *force majeure* event.

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

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

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