

**SERVICES AGREEMENT
WORKFORCE INNOVATION & OPPORTUNITIES AREA FUNDS
LWDA 13**

This Services Agreement is entered into by and between the City of Memphis as administrative entity for the Consortium of Local Governments and Workforce Investment Network (WIN), LWIA 13, a proud partner of the American Job Center network, hereinafter called "WIN" or the "City," and _____, hereinafter referred to as the "Contractor."

WITNESSETH

WHEREAS, the Workforce Investment Network (WIN), a joint agency of the City of Memphis, Shelby County and Fayette County, has the need for _____; and

WHEREAS, the Contractor agrees to _____; and

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

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

SCOPE OF SERVICES

1. SERVICES PROVIDED. The Services to be provided in connection with this Agreement shall include the items specified in the "Scope of Work" that is attached hereto as Attachment A, hereinafter referred to as the "Services". Contractor shall perform all Services in a manner satisfactory to WIN and pursuant to the governing rules and regulations of the related industry.

2. COMPLIANCE WITH LAWS. All services hereunder shall comply with the Workforce Innovation & Opportunities Act and all applicable rules, regulations, directives, instructions, and policies promulgated and issued pursuant thereto; all applicable Federal, State and local laws, ordinances, rules and regulations in effect or promulgated during the term of this Agreement, including those dealing with employment, discrimination, safety, health, the Fair Labor Standards Act, as amended, and Drug Free Workplace Act; the WIN Financial Guide Book; and any future amendments made to any of the above.

3. REPORTING. The Contractor agrees to comply with all reporting requirements in the manner specified by WIN and under all applicable laws, regulations, and instructions, and to account for all funds expended by the Contractor pursuant to this Agreement. Upon request, the Contractor shall prepare and submit reports of its activities funded under this Agreement in the manner specified by WIN.

4. PLACE OF PERFORMANCE. Contractor shall render Services primarily at WIN's facilities or such other places as reasonably approve by both WIN and Contractor.

5. TOOLS AND SUPPLIES. Unless otherwise agreed to by WIN in advance, Contractor shall provide all instruction, materials, equipment and supplies necessary for the Contractor's provision of the Services.

CONTRACT TERM

6. TERM. This Agreement shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the City in accordance with applicable ordinances, laws and regulations. The Initial Term of this Agreement shall commence beginning _____ and shall end on _____ ("Initial Term"). WIN shall have no obligation for services rendered by the Contractor that are not performed within the specified period. The parties shall have the option to extend the Initial Term for two (2) additional one year periods, subject to the appropriation of funds by the Memphis City Council and mutual agreement of the parties. The Initial Term and any extensions are collectively referred to hereinafter as the "Term."

7. TERMINATION.

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

- i. 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
- ii. the Contractor has subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without WIN's consent or approval.

B. WIN may cancel/terminate this Agreement, in whole or in part, upon providing written notice to the Contractor of WIN's intention to terminate the Agreement as a result of Contractor's breach of any of the terms herein, and the Contractor fails to cure such breach within five (5) business days after such notice.

C. WIN may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving thirty (30) calendar 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 WIN, for any satisfactory work authorized and performed in accordance herewith up to the termination date; but in no event is WIN liable to the Contractor for expenses incurred after the termination date.

D. This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event sufficient funds for this Agreement are not appropriated or are otherwise unavailable, WIN 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 WIN shall not be deemed a breach of contract by WIN, and the Contractor shall have no right to any actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount.

E. The Contractor shall deliver to WIN all hard copy and electronic files maintained on behalf of WIN within thirty (30) calendar days of termination of this Agreement.

PAYMENT TERMS AND CONDITIONS

8. COMPENSATION. Pursuant to the Budget attached hereto as Attachment B and unless WIN has good faith and reasonable objections to the Contractor's invoice(s), WIN agrees to compensate the Contractor the sum total not to exceed _____ dollars (\$X,XXX) (USD) (the "Fee") for Services rendered during the term of this Agreement, which shall include all reimbursable expenses. The Contractor acknowledges that this is a reimbursement Agreement only. WIN will make payments for the Services in accordance with the WIN Financial Guide Book, which is incorporated herein by this reference. WIN will use its best efforts to remit payment within thirty (30) days after receipt of properly supported invoices and approval by WIN. WIN is not obligated to pay, and may withhold from payment, any amounts WIN has in dispute with the Contractor based on the Contractor's non-performance, unsatisfactory performance or negligent performance of any Services.

Expenditures, reimbursements, and payments under this Agreement shall adhere to the Agreement budget. The Contractor may request revisions of budget line-items by letter, giving full details supporting such request, provided that such revisions do not increase the total budget amount. Budget line-item revisions may not be made without prior, written approval of the WIN in which the terms of the approved revisions are explicitly set forth. Any increase in the total budget amount shall require a contract amendment.

If total disbursements by WIN pursuant to this Agreement exceed the amounts permitted herein, the Contractor shall refund the difference to WIN.

9. INVOICES. The Contractor shall submit monthly invoices on the Contractor's letterhead and in form and substance acceptable by WIN and with all necessary supporting documentation, to the WIN. The

invoices shall describe the services and show the contract number to which it relates. Invoices shall be submitted to: Workforce Investment Network, 480 Beale Street Memphis, TN 38103, Attn: Operations Department no more than ten (10) days after the end of the reporting month. The invoice must indicate at a minimum the line item budget, the amount charged by line item for the period invoiced, the amount charged to date by line item, the total amount charged under this Agreement for the period invoiced, and the total amount charged to date. In no event shall WIN have any obligation to reimburse Contractor for invoices submitted more than forty-five (45) days after the end of the billing period.

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

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

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

13. INACCURATE INVOICES. The Contractor shall ensure that every officer, director, agent or employee authorized to act on its behalf in receiving or depositing funds into program accounts or in issuing financial documents, invoices for payment, checks or other instruments of payment for program costs submits accurate and properly supported invoices for payment. In the event that the City makes overpayments or payment to the Contractor based on inaccurate or improperly supported invoices, Contractor shall reimburse City for any payments/overpayments made based on improperly supported invoices or expended in violation of this Agreement or any applicable local, state or federal laws, rules or regulations.

14. COST ALLOCATION PRINCIPLES. If any part of the costs to be reimbursed hereunder are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of the Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to said Policy Statement during the term hereof.

15. FINAL CONTRACT INVOICE. The Contractor shall submit to WIN a final contract invoice within forty-five (45) calendar days from the contract termination date or completion of services hereunder, whichever occurs first. The Contractor further acknowledges and agrees that WIN will not be responsible for any related invoices submitted to WIN after the final contract invoice. The Contractor shall close out its accounting records at the end of the Agreement period in such a manner that reimbursable expenditures and revenue collections are NOT carried forward.

16. CONTRACT CLOSEOUT. Upon expiration or termination of the Agreement, Contractor shall provide WIN with a complete closeout package within the time period specified by WIN. A closeout accomplishes the performance and financial end of the Agreement services and must comply with WIN requirements and follow the prescribed formats. The City shall not be responsible for payment of any

invoice submitted to WIN after the submission of the final expenditure accounting report. Pursuant to the Agreement, if total reimbursements by the City exceed the contract payment amount and/or is determined to be unallowable cost, the Contractor shall refund the City within thirty (30) calendar days of notification.

GENERAL TERMS AND CONDITIONS

17. ENTIRE AGREEMENT. This Agreement, with any attachments hereto, 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. In the event of any conflict between the terms contained within this Agreement and any attachments hereto, the terms of this Agreement shall control and take precedence.

18. 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.

19. MODIFICATION AND AMENDMENT. Any changes, modifications or amendments to this Agreement shall be in writing and approved by both parties.

20. 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 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 shall hold confidential information obtained from the City in confidence at all times during and after termination of this Agreement. The Contractor shall neither use, disclose nor communicate such confidential information without the prior written consent of the City, except as required by law and only to those employees who have a right to know. Contractor shall require its employees to comply with the requirements of this provision and the requirements of the provision titled "Rights in Data" below.

The Company shall report to the City any instances of unauthorized disclosure of personally identifiable information that comes to the Company's attention. The Company shall make any such report within twenty-four (24) hours after the instance has come to the Company's attention. The Company, at the sole discretion of the City, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Company shall bear the cost of notification to individuals having personally identifiable information involved in a potential disclosure event, including individual letters or public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to the City under this Agreement or otherwise available at law.

21. 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 ("Data"), whether or not the same is accepted or rejected by the City, shall be considered a work for hire and remain the exclusive property of WIN. The signing of this Agreement shall constitute a complete transfer of ownership, intellectual property and copyright of all Data upon the Contractor's delivery of such Data to the

City or upon completion of the services hereunder, whichever occurs first. The Contractor shall not construe such transfer as a grant for usage nor can the Contractor revoke transfer.

22. CONTRACTOR'S FACILITIES AND PERSONNEL. If applicable, Contractor hereby represents and agrees that it has and will continue to have adequate and proper facilities and personnel to perform the services hereunder. If applicable, 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, benefits, taxes, etc. 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.

23. INDEPENDENT CONTRACTORS. The parties are independent contractors for the purpose of carrying out the terms of this Agreement. Anything in this Agreement which may appear to give WIN the right to direct the Contractor or to exercise a measure of control over the Contractor is solely for purposes of compliance with local, state and federal regulations. It is further expressly agreed and understood by the Contractor that neither it nor its employees, agents or representatives shall hold itself out contrary to the terms of this paragraph, and WIN shall not be liable for any representation, act or omission of the Contractor contrary to the provisions hereof.

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

25. 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 WIN. However, any approved subcontracting or assignment shall not relieve the Contractor from performance of its duties hereunder, and WIN shall not be responsible for the fulfillment of the Contractor's obligations to its transferors or subcontractors.

26. WIN LIABILITY. WIN shall have no liability except as specifically provided in this Agreement.

27. Performance Standards. The Contractor shall meet applicable local, state, and/ or national performance standards prescribed by the Local Workforce Development Board (LWDB) policies and/or Workforce Investment Network staff.

28. 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 hereunder. 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.

29. License. The Contractor shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules and regulations and shall upon request provide proof of all licenses.

30. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Agreement shall be subject to monitoring and evaluation by WIN, the Federal government, the State government or their duly appointed representatives.

31. COVENANT AGAINST CONTINGENT FEES. The Contractor warrants that it has not employed or retained any Contractor 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 Contractor 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.

32. Workers Compensation/Tax Payments. The Contractor shall be responsible for payment of income, federal tax and social security taxes for employees. Employees shall be covered under the Contractor's on-the-job injury policy during the duration of the Agreement.

33. LOBBYING. The Contractor certifies, to the best of its knowledge and belief, that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

34. HIPAA COMPLIANCE. The Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Agreement.

35. ENVIRONMENTAL TOBACCO SMOKE. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines.

36. DRUG FREE WORKPLACE. Pursuant to the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F, the regulations, published in the January 31, 1989 Federal Register, require

certification by grantees, prior to award, that they will maintain a drug-free workplace.

Contractor certifies that it will provide a drug-free workplace by:

- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's/Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- B. Establishing a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The grantee's/Contractor's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed on employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the Grant/Agreement be given a copy of the statement required by paragraph (a);
- D. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the Grant/Agreement, the employee will:
 - a. Abide by the terms of the statement, and
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such a conviction;
- E. Notifying the agency, in writing, within ten (10) calendar days after receiving notice under subparagraph (D) (b) from an employee or otherwise receiving actual notice of such conviction;
- F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph (D) (b), with respect to any employee who is so convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;
- G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A – F.

37. Patent Indemnification. The Contractor shall defend all suits that may arise with respect to Infringement or violation of any patent, trademark, copyright, trade secret, or any other proprietary right of any third party. Further, the Contractor shall indemnify, defend, save and hold harmless the City, its officials, employees, agents, successors and assigns, from and against all liabilities, suits, claims, damages, costs or expenses, including without limitation attorney and expert witness fees, for or by reason of any actual or alleged claim of infringement or violation of any patent, copyright, trademark, trade secret or any other proprietary right of any third party, whether by reason of the Contractor's purchase or otherwise. This indemnification obligation shall survive the expiration or termination of this Agreement.

38. WIOA PROPERTY PROCUREMENT AND ACCOUNTABILITY. If the terms of this

Agreement allow for the reimbursement of costs for goods, materials, supplies, equipment, and/or services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practicable.

Within five (5) days of termination or cancellation of this Agreement, Contractor shall return all property and equipment to the WIN office in as good order and condition as when received, except for reasonable use and wear. In no event shall Contractor retain any property without the express written consent of City. In the event Contractor fails to return said property, City shall have the right to withhold from Contractor's compensation the purchase price of said property.

All property and equipment purchased by WIN shall be deemed WIN property and shall be for the exclusive use and benefit of Workforce Innovation & Opportunities Act participants and approved programs. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable tangible personal property and equipment furnished by the WIN for the temporary use under this Agreement until relieved by the Tennessee Department of Labor & Workforce Development and the City or WIN.

The following procedures must be followed:

- a. Types of Property for Which Accountability Must Be Maintained
 - i. Non-expendable property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit (Examples include furniture, machinery, education equipment, office operational equipment, etc.)
 - ii. Sensitive equipment having a unit cost of \$100 or more (Examples include computers, scanners, computer software, calculators, tape recorders, weed eaters, lawn mowers, televisions, typewriters, cameras, cellular phones, fax machines, printers, all communications and amplifying equipment, etc.)
 - iii. Tool "kits" and sets
 - iv. All tools and equipment carrying a manufacturer's serial number
- b. Acquisition of Property
Purchases of sensitive equipment or non-expendable property with an acquisition cost of \$5,000 or more using WIOA funds must be approved by WIN and stated in the Agreement prior to purchase.
- c. Transfer of WIOA Property Between Locations
Property may not be moved from one location to another without prior written consent from WIN.
- d. Lost/Stolen Property
Contractor shall immediately notify WIN in the event that property purchased with WIOA funds is discovered to be missing, stolen, destroyed or damaged.
- e. Inventory of Property
All WIOA-acquired property shall be regularly inventoried and updated. All property shall be readily available to City representatives upon request for inventory purposes. Upon termination of the Agreement, a property inventory list shall be submitted to the City.
- f. Property Maintenance
Contractor shall maintain all property and equipment in good condition and repair.

g. Security Interest

The City shall take legal title to all property and equipment purchased totally or in part with funds provided under the Agreement. It is the intent of this Agreement and the parties to create and acknowledge a security interest and to continue the security interest in favor of WIN in the property and equipment acquired by the Contractor pursuant to the provisions of this Agreement.

39. DEBARMENT/SUSPENSION. By entering into this Agreement, the Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

A. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;

B. Have within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph B. of this certification; and

D. Have within a 3-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

Contractor shall provide immediate written notice to the City if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals are excluded or disqualified.

40. 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 local law. The Contractor shall, upon request, show proof of such nondiscrimination, and shall post notices of nondiscrimination in conspicuous places available to all employees and applicants. 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.

41. POLITICAL ACTIVITIES. The Contractor shall not use financial assistance received under WIOA or participants funded under WIOA to support political activities.

42. RELIGIOUS/SECTARIAN ACTIVITIES. The Contractor shall ensure that funds made available under the Agreement will not be used for religious purposes consistent with Federal and State law. Contractor hereby understands and agrees that there shall be no religious worship, instruction or proselytizing by or in the presence of participants, as part of or in connection with activities herein.

43. UNION AGREEMENT. The Contractor shall not use funding provided herein to directly or indirectly assist, promote or deter union organizing. If the Contractor is unionized, it shall discuss this agreement with the union's representatives and nothing in this Agreement shall violate the collective bargaining agreement. The union shall be given no less than five (5) days to inform the Contractor, in writing, which section(s) of the collective bargaining agreement that this Agreement violates. By entering into this Agreement, Contractor certifies that this Agreement does not violate any applicable collective bargaining Agreement.

44. Grievances. Complaints or grievances arising out of this Agreement shall be resolved in accordance with the grievance procedures established by the Workforce Investment Network, which are incorporated herein by this reference. Contractor must notify the IWT Employees of the grievance procedures to follow.

45. Prior Agreements. All other oral and written agreements related to the subject matter of this Agreement and which were made prior to the date of commencement have been reduced to writing and are contained herein, which shall be the sole measure of the liability and duty of each party.

46. Strict Performance. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement is not a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by a written amendment signed by the parties.

47. INVESTIGATIONS. In the event that City becomes aware of an investigation conducted by City officials, state officials, Federal officials or other officials concerning matters of which City has an interest (i.e., misappropriation of funds, abuse, etc.), City has the right to cease all referrals to Contractor until the matter has been resolved to City's satisfaction and/or the investigation has been officially closed by the investigating party. In the event that Contractor is found guilty of the allegations/charges, City shall immediately terminate this Agreement.

48. 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.

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

50. CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISE. If applicable, the Contractor shall take affirmative action to ensure that small, women and minority-owned businesses, which have been certified by the City, are utilized when possible as sources of supplies, equipment, construction and services herein.

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

52. PUBLIC ACCOUNTABILITY. If this Agreement involves the provision of services to citizens

by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor agrees to display a sign stating: "NOTICE: This Contractor is a recipient of taxpayer funding. If you observe an employee engaging in any activity which you consider to be illegal or improper, please call the State Comptroller's toll free hotline: 1-800-232-5454."

Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public enters in order to receive grant supported services.

53. PUBLIC NOTICE. All notices, informational pamphlets, press releases, reports, signs and similar public notices prepared and released by the Contractor shall include the statement: "This project is funded under an agreement with the Department of Labor and Workforce Development."

The Contractor agrees to include statements in all advertisements that assure that qualified applicants will receive consideration for employment and/or participation without regard to race, color, sex, religion or national origin. Any such notices by the Contractor shall be approved by the State.

54. RECORDS AND AUDITS. 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 Agreement ("Records") for a period of three (3) years after completion of the contract obligations or the final payment hereunder, whichever is later ("Records Retention Period"). Such Records shall be open to examination during regular business hours by WIN, the state government, the federal government or any duly authorized representatives during the Records Retention Period. If any litigation, audit or other action involving this Agreement or records pertaining to this Agreement has been started prior to the expiration of the Records Retention Period, Contractor shall retain such Records until the litigation, audit findings or other action is completed and all issues are resolved. Should the Contractor cease to do business within the Records Retention Period, Contractor agrees to forward all Records to WIN.

55. Organization Status and Authority. The Contractor represents and warrants that it is an 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. 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 the execution, delivery and performance of this Agreement 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.

56. DISPUTE RESOLUTION. In the event of any dispute(s) or claim arising out of or relating to this Agreement, 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 shall be referred to the Mayor, City Attorney, Purchasing Agent or a duly authorized representative, whose decision regarding same shall be final.

57. FORCE MAJEURE. WIN shall not be deemed in default hereunder, nor shall WIN 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.

58. NOTICES. All notices and other communications required or permitted to be given hereunder shall be written and hand delivered with signed receipt; delivered by facsimile; delivered by a nationally recognized overnight courier; or mailed via certified U.S. mail, postage prepaid and return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand delivery,

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

To WIN:	To the CONTRACTOR:
Kevin D. Woods, Executive Director	Name, Title
Workforce Investment Network	Name of Contractor
480 Beale Street	Address
Memphis, Tennessee 38103	City, State, Zip Code
Ofc: 901-636-6811	Ofc:
Fax: 901-636-6844	Fax:

59. INDEMNIFICATION. The Contractor shall indemnify, defend, save and hold harmless the City and its officers, agents and employees from and against any and all suits, claims, liabilities, damages of any kind and character, arising out of or connection with the performance of this Agreement by Contractor, excepting those losses or damages directly caused solely by the acts, errors, or omissions of the City or any of its officers, agents or employees. This indemnification shall survive the expiration or termination of this Agreement.

The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, defend, save and hold harmless the City or its elected or appointed officials, officers, employees, agents, assigns, and instrumentalities as herein required. The Contractor shall immediately notify WIN c/o Contracts Manager; 22 North Front Street, Suite 1050; Memphis, TN 38103, of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under this Agreement and agrees to cooperate, assist and consult with the City in the defense or investigation thereof.

60. EMPLOYMENT OF ILLEGAL IMMIGRANTS. Contractor shall comply with all federal, state and local laws, rules and regulations prohibiting the employment of individuals who are not legally authorized to work in the United States.

61. Federal Funding Accountability and Transparency Act (FFATA). This Agreement requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements of FFATA are met and that the Contractor provides information to the City as required. The City must report each action that obligates \$25,000 or more in Federal funds. See more information regarding requirements at: <https://www.usaspending.gov/about/usaspending/Pages/default.aspx>.

The Contractor shall comply with the following:

- A. Reporting of Total Compensation of the Contractor's Executives.
 - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and sub awards); and

- ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

As defined in 2 C.F.R. § 170.315, “Executive” means officers, managing partners, or any other employees in management positions.

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 § C.F.R. 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

- B. The Contractor must report executive total compensation described above to the City by the end of the month during which this Agreement is established.
- C. If this Agreement is amended to extend the Term, the Contractor must submit an executive total compensation report to the City by the end of the month in which the amendment to this Agreement becomes effective.
- D. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Agreement. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

62. Whistleblower Protection. Contractor, Subcontractor, or Subgrantee shall comply with the requirements set forth in 41 U.S.C. §4712 and hereby agrees to:

- A. Inform its employees working on any federal award they are subject to the whistleblower rights and remedies of the pilot program;

B. Inform its employees in writing of employee whistleblower protections under 41 U.S.C. §4712 in the predominant native language of the workforce; and,

C. Include such requirements in any agreement made with a subcontractor or subgrantee.

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

64. INSURANCE/HOLD HARMLESS. Contractor shall not commence any work under this Agreement until it has obtained and caused its subcontractors to procure and keep in force all insurance required herein. The Contractor shall furnish WIN a Certificate of Insurance and/or policies, upon request, attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in force and effect. All insurance companies must be acceptable to the City of Memphis and licensed in the State of Tennessee. Insurance shall be evidenced by certificates and/or policies, as determined by the City. Failure of the Contractor to maintain or renew coverage or to provide evidence of renewal may result in termination of the contract by City. Failure of the City to identify any deficiency in the evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance. The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

If any of the insurance requirements are non-renewed at the expiration dates, payment to the Contractor 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. The Contractor shall have and maintain property insurance on its equipment and the following insurance coverage during the term of this Agreement and any extensions.

A. **Commercial General Liability:** Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage with minimum limits as follows:

General Aggregate	\$2,000,000
Products – Completed Operations	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence (bodily injury and property damage)	\$1,000,000
Fire Damage (any one fire)	\$50,000
Medical Expenses (any one person)	\$5,000

B. **Fidelity Bond** (Employee Dishonesty/Theft Crime Coverage) in an amount not less than \$1,000,000 Each Occurrence

C. **Automobile Liability** covering owned, non-owned, and hired vehicles with minimum limits of:

Each Occurrence – Combined Single Limits	\$1,000,000
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D. **Professional Liability** with a minimum limit of \$2,000,000 Each Occurrence/Aggregate

This insurance is required only if the training provided is of a nature to be taught by a licensed professional for whom this coverage is available. When required, such coverage shall be maintained for at least three (3) years from the termination or expiration of this agreement.

E. **Worker's Compensation:** Employer's Liability in accordance with the statutory requirements and minimum limits of the State of Tennessee:

Employer's Liability (each accident)	\$100,000
Each Employee (per disease)	\$100,000
Policy Limit (per disease)	\$500,000

F. **Umbrella Liability** with a minimum limit of \$2,000,000 Each Occurrence/Aggregate

Note: Contractor shall be responsible for maintaining any and all Property Insurance on its own equipment.

G. **Insurance Cancellation or Material Change**

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

City of Memphis	Workforce Investment Network
Attn: Risk Management	Attn: Contract Services Unit
170 N. Main, 5 th Floor	480 Beale Street
Memphis, Tennessee 38103	Memphis, Tennessee 38103

H. **Additional Insured**

Each Certificate of Insurance shall name the City of Memphis, its officials, agents, employees, and representatives as an Additional Insured. This should be indicated on each Certificate of Insurance. **See note below.**

Note: The additional insured endorsements shall be attached to the Certificate of Insurance, and the Certificate of Insurance shall also state: "The additional insured endorsement is attached to the Certificate of Insurance."

I. **Hold Harmless/Indemnification**

To the extent permitted by applicable law, Contractor shall, at its own expense, save, hold harmless, protect, indemnify and defend the City, WIN and their officers, agents and employees from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by Contractor, its employees, agents or servants or any negligent act or omission to act of the Contractor, its employees, agents or servants which occurs pursuant to performance 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 WIN, its officers, employees and agents. This indemnification obligation shall survive the expiration or earlier termination of this Agreement.

Contractor expressly understands and agrees that any insurance protection required hereunder or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, defend, save and hold harmless the City as required herein.

The City of Memphis, as administrative entity for the Consortium of Local Governments and Workforce Investment Network (WIN), LWDA 13, a proud partner of the American Job Center network, is an Equal Opportunity Employer. The Career Center System is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. TTY: 1-800-848-0299

ATTACHMENT A: SCOPE OF SERVICES

ATTACHMENT B: BUDGET