

**REQUEST**

**FOR**

**BIDS**

***JANITORIAL SUPPLIES***

***RFB NUMBER 24-0012***

**DUE DATE:**

**MARCH 5, 2024**

**TRANSMITTAL LETTER**

February 6, 2024

Dear Respondent,

The Memphis-Shelby County Airport Authority (Authority) is seeking a qualified Respondent to provide a Janitorial Supplies for the Authority. This Request for Bids (RFB) is under the direction of the Procurement Department.

The Procurement Department is responsible for coordinating all communications between the Authority and Respondents. The RFB limits the manner, method, and type of communications that the Authority and Respondents may have once an RFB process is initiated to ensure that the process is fair and impartial. Please review the RFB carefully and abide by all required deadlines, dates, and terms.

All Respondents are hereby notified that all updates, addenda and additional information, if any, shall be posted to the Authority website [www.flymemphis.com](http://www.flymemphis.com), and Respondents are responsible for checking the Authority website up to the time of the RFB submission deadline.

The Authority reserves the right to reject any or all responses to this RFB in whole or in part; to waive any informalities, technicalities, or omissions therein; and/or to cancel this process at any time. The Authority also reserves the right to reject any response when a parent, subsidiary, affiliate, or predecessor in interest of the Respondent has pending litigation or claims with the Authority, or if any response includes a proposed subcontractor or supplier that has pending litigation or claims with the Authority, if the Authority determines, in its sole discretion, such litigation or claims may adversely affect the ability of the parties to work efficiently and effectively under this RFB, or for any other reason as determined by the Authority. Any such responses will be returned to the Respondent. All Respondents must use forms provided by the Authority.

No Respondent may withdraw an opened Response without the Authority's consent.

The Authority shall give a preference to businesses located in or near the County of Shelby, State of Tennessee in awarding contracts and making purchases whenever the application of such a preference is reasonable in light of the valuation points/dollar-value of the proposal/bid received in relation to such valuation points/expenditures and pursuant to the terms and conditions that are outlined in the adopted policy as amended.

Should you have questions regarding this RFB, the RFB sets forth a process by which you may submit your questions and receive answers. Thank you for your participation in this process. We look forward to receiving your response.

Sincerely,

Nathan Luce, P.E.  
Director of Procurement  
Memphis-Shelby County Airport Authority

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## 1 BACKGROUND

The Authority owns and operates Memphis International Airport (MEM), Charles Baker Airport and General DeWitt Spain Airport. Memphis International Airport is located in Shelby County about 13 miles southeast of downtown Memphis. Memphis International Airport is the principal air carrier airport serving west Tennessee, north Mississippi, southeast Missouri, and east Arkansas. Memphis International Airport is also the principal hub for FedEx, making MEM the world’s busiest cargo airport and the single largest economic engine in the Mid-South.

The Airport is primarily an origin and destination (O&D) airport. Approximately **2.27** million passengers were enplaned at the Airport in the Fiscal Year ending June 30, **2023**, an increase of approximately **9%** compared to FY **2022**.

The Airport is located on 4,640 acres of land in the County and includes a terminal complex of approximately one million square feet, and four other buildings containing approximately 100,000 square feet, which are used by air carriers and all-cargo carriers as transfer facilities for cargo. These buildings are adjacent to the terminal complex and are separate from FedEx facilities that contain approximately 3.5 million square feet and occupy approximately 518 acres.

## 2 REQUEST FOR BIDS TIMELINE, COMMUNICATIONS AND PROCESS

### 2.1 RFB Timeline

While this timeline sets forth important dates for this Request for Bids (RFB) process, the entire RFB should be consulted for additional information and requirements concerning these deadlines. The schedule below is subject to change without liability to the Authority.

All times listed are Memphis, Tennessee Local Time (CST).

February 6, 2022	Publication of Legal Notice
February 6, 2024	Release of RFB Documents
February 16, 2024	Site Visit by Request Only
February 21, 2024	Questions Due from Respondents by 4:30 p.m.
February 28, 2024	Questions and Answers posted on Authority website by 4:30 p.m.
March 5, 2024	Response Due to Authority by 2:00 p.m.
March 21, 2024	Anticipated Board Approval of the Award of Contract
May 1, 2024	Anticipated Contract Commencement Date

The terms “Purchase Order” and “Contract” in this RFB shall be interchangeable.

Site visit requests will be by appointment only with a limit of 2 representatives per bidder. To schedule your site visit, please submit an email request to [Bids@flymemphis.com](mailto:Bids@flymemphis.com) by 4:00 pm, Monday, February 12, 2024 to be scheduled for Friday, February 16, 2024 at 10:00 a.m.

## **2.2 Communication with the Authority during this RFB**

The Authority has designated Nathan Luce, Director of Procurement, to be responsible for coordinating communications between the Authority and Respondents. Respondents should direct all communications to the Procurement Department via email at [Bids@flymemphis.com](mailto:Bids@flymemphis.com). Respondents are further advised that any communication, either verbally or in writing, direct or indirect, subsequent to the date of issuance of the RFB by a prospective Respondent or any of its owners, officers, employees, or agents, or any individual or entity acting on its behalf, with any member of the Board of Commissioners or any officer or employee of the Authority, except as provided in this section, is **strictly prohibited** and may be cause for disqualification of the prospective Respondent. The only exception to this requirement is for communications between prospective Respondents and the Authority's in-house and outside legal counsel to further client communications on pending matters that are not related to this RFB. This restriction on communication will govern until the RFB process has been completed and a contract has been fully executed for the for these services. Please note that the Authority prefers all communication to be in writing.

## **2.3 Addenda**

All updates, addenda and other information, if any, shall be posted to the Authority's website, [www.flymemphis.com](http://www.flymemphis.com). Respondents are responsible for checking the Authority's website up to the time of the RFB submission deadline.

## **2.4 Questions Regarding RFB**

Questions regarding this RFB must be submitted in written form via email to Nathan Luce at [Bids@flymemphis.com](mailto:Bids@flymemphis.com). Questions will be accepted until 4:30 PM, February 21, 2024. Answers will be provided by 4:30 p.m., February 28, 2024. Answers will only be posted on the website, [www.flymemphis.com](http://www.flymemphis.com).

## **2.5 RFB and Response Submissions**

A copy of this RFB will be available on the Authority's website, [www.flymemphis.com](http://www.flymemphis.com)

Respondents shall prepare responses in compliance with all the instructions outlined in this RFB, providing the requested information and returning the completed document to the Authority by the submission deadline.

All responses shall be sealed and clearly marked with the Respondent's name and address and the words "Janitorial Supplies" and "RFB Number 24-0012" on the outside of the envelope or container. The Respondent shall allow sufficient time to ensure receipt of the response. It is the sole responsibility of the Respondent to have the response delivered to the Authority at the address below before the closing hour and date given in this RFB.

Respondents should note that FedEx First Overnight® and UPS Next Day Air Early AM® shipments typically arrive before normal Authority business hours of 7:00 AM – 3:30 PM Local Time. Should you choose to ship by one of these methods, and your shipment arrives before the Authority's business hours, FedEx or UPS will not deliver the package until the following day. Any response tendered for delivery to the Authority must be in the Authority's possession prior to the opening date and time. Any delivery received after the submission deadline will be accepted and returned to the Bidder unopened.

Responses must be received at the address below **before 2:00 PM Local Time on March 5, 2024:**

Procurement Department  
Memphis-Shelby County Airport Authority  
4150 Louis Carruthers Drive  
Memphis, Tennessee 38118  
Attn: Request for Bids, Janitorial Supplies,  
RFB Number 24-0012

Responses to all Request for Bids will be opened and publicly read thirty (30) minutes after the response deadline via teams.

Join Team Meeting  
Meeting ID: 262 054 281 099  
Passcode: weS5Ak  
Download Teams | Join on the web  
Or call in (audio only)  
+1 872-242-8851,519145651# United States, Chicago  
Phone Conference ID: 519 145 651#

The Authority reserves the right to extend the opening date or time provided no RFB responses have been previously opened. Late responses will NOT be considered and will be returned to the Respondent unopened.

## **2.6 Rejection of Responses / Cancellation of RFB**

The Authority reserves the right to reject any or all responses to this RFB, including but not limited to, any response that contains exceptions to the minimum requirements and/or specifications or fails to meet the minimum requirements and/or specifications in whole or in part. Responses containing terms and conditions other than those specified herein may be considered nonresponsive. Partial or incomplete responses may be rejected. The Authority reserves the right to reject responses or penalize Respondents who do not follow the requirements of the RFB and, likewise, to waive any informalities, technicalities, or omissions therein. Responses having any erasures or corrections shall be initialed in ink by the Respondent. Unsigned responses will be considered nonresponsive.

The Authority also reserves the right to reject any response when a parent, subsidiary, affiliate, or predecessor in interest of the Respondent has pending litigation or claims with the Authority,

or if any response includes a proposed subcontractor or supplier that has pending litigation or claims with the Authority, if the Authority determines, in its sole discretion, such litigation or claims may adversely affect the ability of the parties to work efficiently and effectively under any contract resulting from this RFB, or for any other reason as determined by the Authority. The Authority further reserves the right to cancel this RFB process at any time.

**2.7 RFB to Bind Bidder**

The response must contain the signature of a duly authorized officer of the Bidder with the legal right to bind the Bidder. All submitted responses shall be binding for a period of one hundred twenty (120) days from the response submission deadline. Further, the successful Bidder will be bound by the Bid prices and terms quoted pursuant to the Contract (Contract) between the successful Bidder and the Authority, in excess of one hundred twenty (120) days.

**2.8 Response Modification or Withdrawal**

Responses may be modified or withdrawn in writing prior to the deadline for RFB submission. After the submission deadline, no modifications will be accepted, and responses may only be withdrawn with the Authority's consent.

**2.9 Response Costs**

All costs incurred in preparing the response to this RFB, participating in this process and negotiating with the Authority, whether or not a contract is awarded, shall be solely the responsibility of the Respondent. All materials and documents submitted by Bidders in response to this RFB become the property of the Authority and shall not be returned to the Bidders.

**2.10 Protest**

Any protest must be filed in writing and received by the Authority within seven (7) calendar days of the date of the occurrence of the event that is the subject of the protest, *e.g.*, the opening of responses, the award, or a determination that a respondent is not responsible or that a response is not responsive.

Any protest must be delivered to the Authority during the business hours of 7:00 AM – 3:30 PM Local Time in order to be deemed to be received by the Authority as required under this Section. A protest must be submitted in hard copy and addressed as follows:

Memphis-Shelby County Airport Authority  
Attention: Director of Procurement  
4150 Louis Carruthers Drive  
Memphis, Tennessee 38118

Any protest sent by telegraphic or facsimile transmission or by email or other electronic means will not meet the filing requirements set forth herein and will not be deemed to be received by the Authority.

No objections with regard to the application, meaning, or interpretation of the specifications contained herein will be considered after the opening of the subject RFB.

### **3 STATE OF TENNESSEE PURCHASING PROVISIONS**

Iran Divestment. By submission of a response, each bidder and each person signing on behalf of any respondent certifies, and in the case of a joint response each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each respondent is not on the list [of persons engaging in investment activities in Iran] created pursuant to T.C.A. § 12-12-106.

No Boycott of Israel. Pursuant to Tennessee Public Chapter No. 775, approved April 8, 2022, by submission of a response, each respondent certifies that their company is not currently engaged in and will not for the duration of services herein engage in, a boycott of Israel.

### **4 BUY LOCAL INITIATIVES**

The Authority shall give a preference to businesses with their principal place of business in the County of Shelby, State of Tennessee in awarding contracts and making purchases whenever the application of such a preference is reasonable in light of the valuation dollar-value of the bid respectively that is received in relation to such valuation expenditures and pursuant to the terms and conditions that are outlined in the adopted policy as amended. If applicable, the Authority may also give a preference to businesses operating in the County of Shelby, State of Tennessee, or to businesses with their principal place of business in the Memphis, TN-MS-AR Metropolitan Statistical Area.

### **5 DBE & BDD PROGRAMS**

The Authority operates a federal Disadvantaged Business Enterprise (DBE) Program and a non-federal Business Diversity Development (BDD) Program to ensure full and fair opportunities are available to businesses owned by socially and economically disadvantaged individuals that desire to do business with the Authority. **However, this RFB is solely for the purchase of goods by the Authority and, accordingly, there are no DBE requirements.** Additional information regarding the Authority's DBE and BDD Programs is available at <https://www.flymemphis.com/do-business-with-mem>.

### **6 TERMS OF PERFORMANCE**

The Authority may contract multiple Respondents to provide services under the direction of the Authority's Maintenance Division as outlined in the Scope of Services in this RFB.

#### **6.1 Contract Negotiations and Contract Form**

Multiple Respondents may be selected for contract negotiations. Realizing that the final basis for agreement between the successful Respondent and the Authority must be a contract, (Contract) Respondents shall indicate their willingness to negotiate a contract acceptable to both Parties. This RFB and specified portions of the successful Respondent's response shall be incorporated into such Contract. The successful Respondent shall be required to execute a written contract with the Authority. The Authority will not execute the successful Respondent's standard contract. A sample contract may be found in Section 12 of this document. Please review the sample contract as it contains the Authority's standard terms and conditions. The Authority intends to negotiate additional terms with the successful Respondent as appropriate and these terms will be incorporated into the Contract. The Authority reserves the right to



change the sample contract; however, if changes are requested to this sample contract by the Respondent, the Respondent must submit those proposed changes as part of their response for review and possible approval by the Authority. The successful Respondent(s) will not be allowed to change the content of the sample contract terms which may be incorporated in the final contract unless those proposed changes are submitted with their response and approved by the Authority. Do not return the sample contract with your response.

**6.2 Cancellation**

Should the successful Respondent fail to meet the requirements of the Contract after it is executed, the Authority may cancel the Contract at once and award the remainder of the Contract term to the next qualified Respondent. If the Contract is cancelled, all materials provided to Contractor shall be returned to the Authority.

**6.3 Term of Contract**

The initial term of this Contract shall be for a period of two (2) years commencing on the start date of the Contract (Contract Term). The Authority, in its sole discretion, reserves the option to extend the Contract Term for two (2) additional periods of one (1) year each (Renewal Terms) by giving written notice to the Company at least ninety (90) days before the expiration of the Contract Term or any Renewal Term. At the sole option of the Authority, the Contract may be extended beyond the four Renewal Terms. The Contract shall be amended to reflect any negotiated and agreed upon Compensation for any such extension of this Contract.

**6.4 Convenience Termination of Contract**

Authority may, at any time upon thirty (30) days written notice to successful Respondent specifying the effective date of termination, terminate the Contract, in whole or in part, when the Authority deems it to be in Authority's best interests.

**6.5 Payment and Billing Requirements**

**6.5.1 Invoice Submittal**

Invoices for payments related to the services rendered under the Contract shall be presented after delivery of product to the Authority. Payment will be made only for correct invoices presented with a complete itemization of the services rendered. Incorrect invoices will be returned for correction, unpaid. The successful Respondent must mail the original and one copy of the invoice to the address below:

Manager of Accounting  
Finance Division  
Memphis-Shelby County Airport Authority  
2491 Winchester Road, Suite 113  
Memphis, Tennessee 38116-3856

**6.5.2 Payment Terms**

Authority shall use its best efforts to pay invoices within net thirty (30) days from the receipt of a correct invoice.

**6.5.3 Taxes**

The Authority is exempt from local, State, and Federal taxes. Tax certificates will be issued to the successful Respondent.

**7 SCOPE OF SERVICES**

Purchase of janitorial supplier for use at Memphis Airport to include the following items listed below. Supplier must be able to warehouse inventory and deliver on a Just In Time (JIT) schedule. Purchase orders will be issued for each delivery.

**7.1 Samples**

The Authority may request samples of items for the Bidder to provide at a later date.

Description	Part number Manufacturer	Unit of Measure (UOM)	Each per UOM	Yearly Usage by UOM	Yearly Usage by Each
Brown Roll Towel	88012-N Vondrehle	Case	12 rolls Per case	476 Cases	5712 Each
Multifold Towel	548-K Vondrehle	Case	4000 Per case	82 Cases	328,000 Each
Toilet Seat Cover	320006	Case	5000 Per case	140 Cases	700,000 Each
Baby Changing Liner	KB150-99 Koala Kare	Case	500 Per case	178 Cases	89,000 Each
Toilet Tissue 4.3" x 3.6"	5022 Vondrehle	Case	96 Per case	754 Cases	72,384 Each
Light n Foamy Soap Citrus	330804 Spartan	Case	4 Per case	298 Cases	1,192 Each
Scott Jumbo Tissue 2 ply	KCC07006 Kimberly Clark	Case	12 Per case	962 Cases	11,544 Each
Enmotion Hardwound Roll White Towel 1 ply 8.25" x 700ft	89420 Georgia-Pacific	Case	6 Per case	694 cases	4,164 Each

Purell Professional Advance hand Sanitizer	6463-02 Gojo	Case	2 Per case	120 cases	240 Each
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## 8 RESPONSE STRUCTURE

It is not the intent of the Authority to restrict response preparation; however, to enable the Authority to evaluate each response in a uniform manner, all Bidders shall structure their response by submitting the response using the forms provided in Section 11 below and submitting data as requested in the following sections:

### 8.1 Bidder Information Form

Bidders must submit the Bidder Information Form provided in Section 11 below.

### 8.2 Exceptions

The bidder must state in detail, on the Exception to Specifications form provided in Section 11.3 below and referencing the specified item, any proposed equivalent item including Manufacturer, Item Number, and brief description.

### 8.3 Price Schedule

Using the Price Schedule form provided in Section 11.2 below, Bidder must furnish a bid price for the specified item(s). Bidder must state in detail, referencing the specified item, any proposed equivalent item including Manufacturer, Item Number and brief description.

In the event of an equivalent part number, The Authority has the sole discretion of determining equivalency.

In the event of a discrepancy between a unit price bid and an extended total in the bid proposal, the unit price shall govern.

## 9 AWARD

### 9.1 Authority's Right to No Award or Partial Award

Award will be made to the Bidder(s) with the lowest and most responsive Bid, if awarded. The Authority reserves the right to reject all responses, reject portions of any response, or accept the response(s) deemed most advantageous to the Authority.

### 9.2 Anticipated Award Date

The Authority anticipates the commencement date of the Contract to be May 1, 2024.

## **10 PAYMENT TERMS**

### **10.1 *Payment and Billing Requirements***

#### **10.1.1 Invoice Submittal**

Invoices for payments related to Equipment received under the Contract shall be presented as described below. Payment will be made only for correct invoices presented with a complete itemization of the charges related to the Equipment delivered. Incorrect invoices will be returned for correction, unpaid. All invoices must include the contract number and/or the purchase order number. The successful Bidder must email the invoice to the email address below:

Finance Department – [acctpayable@flymemphis.com](mailto:acctpayable@flymemphis.com)

#### **10.1.2 Payment Terms**

Authority shall use its best efforts to pay invoices within thirty (30) days from the receipt of a correct invoice.

#### **10.1.3 Taxes**

The Authority is exempt from local, State, and Federal taxes. Tax certificates will be issued to the successful Bidder upon request.

**This space intentionally left blank.**

**11 REQUEST FOR BIDS FORMS**

**11.1 Respondent Information Form (Required)**

If Respondent is an INDIVIDUAL, fill out the following:

Individual's name: \_\_\_\_\_

If Respondent is a PARTNERSHIP, fill out the following:

<u>Partner Name:</u>	<u>Partner Address:</u>
_____	_____
_____	_____
_____	_____
_____	_____

If Respondent is a CORPORATION, fill out the following:

NAME OF CORPORATION PRESIDENT: \_\_\_\_\_

NAME OF CORPORATION SECRETARY: \_\_\_\_\_

**All Respondents fill out the following:**

NAME OF COMPANY: \_\_\_\_\_

PRINCIPAL BUSINESS ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP CODE: \_\_\_\_\_

LOCAL STREET ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP CODE: \_\_\_\_\_

FEDERAL TAX ID #: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ CELL NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

SIGNATURE OF RESPONDENT: \_\_\_\_\_

**11.2 Pricing Schedule (Required)**

The Company shall provide Janitorial Supplies in accordance with the Specifications included in Section 7 for the prices shown in the tables below.

Description	Part number Manufacturer	Unit Cost	Year One Total Unit Cost
Brown Roll Towel	88012-N Vondrehle		
Multifold Towel	548-K Vondrehle		
Toilet Seat Cover	320006		
Baby Changing Liner	KB150-99 Koala Kare		
Toilet Tissue 4.3" x 3.6"	5022 Vondrehle		
Light n Foamy Soap Citrus	330804 Spartan		
Scott Jumbo Tissue 2 ply	KCC07006 Kimberly Clark		
Hardwound Roll White Towel 1 ply 8.25" x 700ft	89420 Georgia-Pacific		
Purell Professional Advance hand Sanitizer	6463-02 Gojo		

Yearly cost \$ \_\_\_\_\_

**This space intentionally left blank.**

**11.3 Exception to Specifications (Required)**

**Must be returned with response**

Exceptions must be stated on this form in addition to providing reference literature and other relevant data.

The undersigned Bidder hereby certifies that its response is fully compliant with the specifications except for the following:

Description	Part Number Manufacturer	Unit of Measure (UOM)	Each per UOM	Cost / UOM	Yearly Cost
Brown Roll Towel					
Multifold Towel					
Toilet Seat Cover					
Baby Changing Liner					
Toilet Tissue 4.3" x 3.6"					
Light n Foamy Soap Citrus					
Scott Jumbo Tissue 2 ply					
Enmotion Hardwound Roll White Towel					
Purell Professional Advance Hand Sanitizer					

Yearly cost for equivalent items \$ \_\_\_\_\_

Combined both tables for the Total yearly cost \$ \_\_\_\_\_

(Use additional pages if needed)

Except as noted above, the undersigned certifies full compliance with the specification stated in the RFB. It is understood and agreed that in the event the items delivered upon award are not compliant, the Bidder will be required to take whatever steps necessary to insure full compliance at no additional cost to the Authority.

F.O.B.: Delivered, 4150 Louis Carruthers Drive, Memphis, TN 38118

Proposed Delivery Date : \_\_\_\_\_

By signing this RFB response and participating in this process, the undersigned warrants that he/she has read, understands and agrees to the terms and conditions contained in this RFB document and has full authority to submit the written and verbal responses on behalf of the entity for whom they are acting herein and that the information submitted to the Authority in Bidder's response is true, accurate and complete to the fullest extent possible and to the best of his/her knowledge and abilities.

Bidder: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_



**11.4 Information on All Firms Providing Responses (Required)**

**Information on All Firms that Provided Bids or Quotes**

This requirement applies to all firms, regardless of whether they are subs or primes, regardless of the gender or race of their owners, and regardless of whether they are ultimately chosen to participate in the contract. Please list below the name, address, phone number and contact person for every firm that provided you a bid or a quote on this RFB – even if you ultimately decided not to use the firm in preparing your final response. The first line should be used for the **Respondent** of this RFB. All sections must be completed to the best of your ability.

Authority RFB No.: **24-0012 – JANITORIAL SUPPLIES**

Name of Firm	Full Address of Firm	Point of Contact	Phone No.	DMWBE? Y/N	Firm Age Years	AGRR*

\*Footnote: Please enter the letter for the category that best identifies your annual gross revenue.  
 AGRR =Annual Gross Revenue Ranges: **A** = Less than \$500,000 **B** = \$500,000 - \$1 Million **C** = \$1 - \$2 Million **D** = \$2 - \$5 Million **E** = Over \$5 Million

**11.5 Voluntary Disclosure of Respondent Data (Voluntary)**

Do **not** submit this form on company letterhead

<b><u>VOLUNTARY DISCLOSURE OF RESPONDENT DATA</u></b>	
For Title VI Compliance, the Authority asks for <b><u>voluntary disclosure</u></b> of the following information:	
_____	Gender: Male
_____	Female
_____	Race: Caucasian
_____	Black American
_____	Hispanic American
_____	Native American
_____	Subcontinent Asian American
_____	Asian-Pacific American
_____	Other (please specify)
_____	

**12 SAMPLE CONTRACT**

**CONTRACT  
FOR  
(VENDOR)  
BY AND BETWEEN  
THE MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY  
AND**

**THIS CONTRACT**, made and entered into this [day] day of [month], [year], (the “Contract” or “Agreement”), by and between [VENDOR NAME] (“Company” or “Contractor”) and **Memphis-Shelby County Airport Authority**, a body politic and corporate organized and existing under and by virtue of the laws of the State of Tennessee, (“Authority” or “Sponsor” or “Owner”). The Authority and the Company may be referred to herein individually as a “Party” and collectively as the “Parties”.

**WITNESSETH THAT:**

For and in consideration of the mutual promises, covenants, and stipulations of each Party to the other, the Company agrees to provide the Authority with services on the terms and conditions set forth herein as follows:

**1 PERFORMANCE**

Company shall provide [Janitorial Supplies] (“Supplies”) to the Authority in accordance with the Scope of Services (“Scope of Services”), which is attached hereto as Exhibit A and incorporated herein by reference. The Authority and the Company agree that from time to time it may be necessary to add to, delete from, or amend the Scope of Services in order to better meet the needs of the Authority, as determined by the Authority in its sole discretion. In such event, the Parties shall, in writing, amend this Contract if the Parties reach an agreement on modifications of the Scope of Services and Compensation, which is defined in the “Compensation” section below.

**2 COMPENSATION**

For satisfactory performance, the Authority agrees to pay the Company in accordance with the Schedule of Compensation (“Compensation”) which is attached hereto as Exhibit B and incorporated herein by reference. The Authority agrees to remit payment to Company within thirty (30) days of receipt of a properly submitted and approved invoice with a complete itemization of the charges, including any and all supporting documentation. However, if Company has an outstanding debt with the Authority for any fees or expenses related to this Contract, and the debt is over thirty (30) days past due, the Authority reserves the right to deduct the amount owed from the Company’s submitted invoice.

### **3 TERM AND RENEWAL**

The initial term of this Contract shall be for a period of two (2) years commencing on the start date of the Contract (Contract Term). The Authority, in its sole discretion, reserves the option to extend the Contract Term for two (2) additional periods of one (1) year each (Renewal Terms) by giving written notice to the Company at least ninety (90) days before the expiration of the Contract Term or any Renewal Term. At the sole option of the Authority, the Contract may be extended beyond the four (4) Renewal Terms. The Contract shall be amended to reflect any negotiated and agreed upon Compensation for any such extension of this Contract.

Any violation or breach of the terms of this Contract on the part of the Company or their subcontractors may result in the termination of this Contract or such other action that may be necessary to enforce the rights of the Parties to this Contract. The duties and obligations imposed by the Contract Documents, as defined in the "Contract Documents" section below, and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

### **4 TERMINATION OF CONTRACT**

The Authority may, at any time upon thirty (30) days written notice, terminate this Contract in whole or in part at any time, either for the Authority's convenience or because of failure by Company to fulfill the Contract obligations. Upon receipt of such notice, services shall be discontinued on the effective date of termination (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Contract, whether completed or in progress, delivered to the Authority.

If the Authority terminates this Contract, the Authority shall be liable under the payment provisions of this Contract only for payment for services rendered and expenses incurred before the effective date of termination.

Company may terminate this Contract upon thirty (30) days written notice to Authority if Authority is in material breach of this Contract and fails to cure the breach before the end of the thirty (30) day notice period.

If, after notice of termination for failure to fulfill contract obligations, it is determined that the Company had not so failed, the termination shall be deemed to have been affected for the convenience of the Authority.

The rights and remedies of the Authority provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

### **5 UPON TERMINATION**

If this Contract is terminated prior to Company's completion of the services to be performed hereunder, then all finished or unfinished documents or other materials prepared or obtained by Company pursuant to this Contract shall become the Authority's property to the extent allowable by law and accounting standards. If this Contract is terminated prior to Company's completion of the services to be performed hereunder, Company shall return to Authority any sums paid in advance by Authority for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the Contract. Company shall prepare an accounting of the services performed and money spent by Company up

to the effective date of termination and shall return to Authority any remaining sums within thirty (30) days of such date.

## **6 DEFAULTS AND REMEDIES**

### **6.1 DEFAULTS**

Company shall be in default of this Contract upon the occurrence of any of the following events:

- a. If Company fails to comply with any of the provisions required of Company under this Contract, and such failure continues for a period of twenty-four (24) hours after written notice thereof is given to Company by the Authority; or
- b. If, by operation of law or otherwise, the right, title, or interest of Company in this Contract is transferred to, passes to, or devolves upon any other person, firm, or corporation without prior written consent of the Authority; or
- c. Upon the levy of any attachment or execution of any process of a court of competent jurisdiction which does or will interfere with Company's performance under this Contract, and which attachment, execution, or other process of such court is not enjoined, vacated, dismissed, or set aside within a period of thirty (30) days; or
- d. Upon the suspension, revocation, or termination of any power, license, permit, or authority that has the effect of preventing Company from performing under this Contract.

### **6.2 REMEDIES**

Upon the occurrence of any one or more of the events as set forth above, or upon any other default or breach of this Contract by Company, the Authority may, at the Authority's sole option, exercise concurrently or successively, any one or more of the following rights and remedies without waiving such default or breach:

- a. Interplead funds to a court or pay any sum required to be paid by Company to parties other than the Authority, and which Company has incurred in connection with this Contract and failed to pay. Any amount so paid in good faith by the Authority, together with interest thereon at the maximum rate provided by law from the date of such payment, and all expenses connected therewith shall be repaid by Company to the Authority on demand; or
- b. Enjoin any breach or threatened breach by Company of any covenants, sections, terms, provisions, or conditions hereof; or
- c. Bring suit for the performance of any covenant devolving upon Company for performance or damage thereof, all without terminating this Contract; or
- d. Terminate this Contract upon ten (10) days written notice to Company, specifying date of termination and upon payment of all fees and expenses incurred prior to termination.

## **7 RIGHTS AND REMEDIES CUMULATIVE AND NOT EXCLUSIVE**

All rights and remedies granted to Authority herein and any other rights and remedies which Authority may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that Authority may have exercised any remedy without terminating this Contract shall not impair Authority's rights thereafter to terminate or to exercise any other remedy herein granted or to which Authority may be otherwise entitled.

## **8 RECOVERY OF FEES AND EXPENSES**

In the event of any claim or other matter in question between the Authority and Company arising out of, or relating to, this Contract or the breach thereof and in addition to any other remedies or recoveries provided herein, the Company shall be liable for and shall promptly reimburse the Authority for any cost or expense incurred by the Authority, including fees and expenses of its attorneys, consultants, and experts, as a result of (i) Company's failure to perform in accordance with the terms of this Contract; (ii) breach of the warranties and guaranties set forth in this Contract; or (iii) any successful action taken by the Authority to enforce the terms of this Contract.

## **9 WAIVER**

Waiver by the Authority of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant, or condition. No term, covenant, or condition of this Contract can be waived except by written consent of Authority, and forbearance or indulgence by Authority in any regard whatsoever shall not constitute a waiver of same to be performed by Company to which the same may apply and, until complete performance by Company of the term, covenant, or condition, Authority shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

## **10 FORCE MAJEURE**

Neither Party shall be liable for any failure or delay in performance under this Contract (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused (i) by causes beyond that Party's reasonable control and (ii) occurring without its fault or negligence, including, without limitation, failure of suppliers, subcontractors, and carriers, or Party to substantially meet its performance obligations under this Contract, provided that, as a condition to the claim of non-liability, the Party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused; however, such delays shall not be grounds for an adjustment in Compensation.

## **11 ASSIGNMENT**

The Company shall not assign the Contract or any part hereof or any monies due or to become due hereunder without the prior written approval of the Authority.

## **12 SUCCESSORS AND ASSIGNS**

The Authority and the Company each binds itself and its partners, successors, executors, administrators and assigns, to the other Party of this Contract and to the partners, successors, executors, administrators, and assigns of such other Party with respect to all covenants, terms, provisions, and conditions of this Contract. Neither the Authority nor the Company shall assign, sublet, or transfer its interest in this Contract without the prior written consent of the other; provided, however, that claims for money due, or to become due the Company from the Authority under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of such assignment or transfer shall be furnished promptly in writing to the Authority. Except as provided for above, if Company should subcontract, assign, or transfer any part of Company's interests or obligations under this Contract without the prior written approval of Authority, it shall constitute a material breach of this Contract.

## **13 INDEPENDENT COMPANY**

Company is an independent contractor with respect to all services performed under this Contract. Company accepts full and exclusive liability for the payment of any and all premiums, contributions, or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the wages, salaries, or other remuneration paid to persons employed by Company on work performed under the terms of this Contract. Company shall defend, indemnify, save, and hold harmless the Authority from any claims or liability for such contributions, benefits or taxes. Nothing contained in this Contract, nor any act of the Authority or Company, shall be deemed or construed to create any third-party beneficiary or principal and agent association or relationship with the Authority. The Company is not the Authority's agent and the Company has no authority, express, apparent or otherwise, to take any action or execute any documents on behalf of the Authority.

## **14 NO FINANCIAL INTEREST**

Company understands and agrees that no Authority employee or member of the Board of Commissioners of the Authority, Memphis City Council, or Shelby County Board of Commissioners shall receive any financial benefit arising out of this Contract, either directly or indirectly. Further, any fees paid to any person or entity by the Company for assistance in obtaining this Contract with the Authority have been fully disclosed to the Authority in Company's Response, as defined in the "Incorporation of Company's Response" section below and supplemented in writing as necessary throughout this process.

## **15 INDEMNIFICATION**

- a. Company shall defend, indemnify, and hold harmless the Authority and its commissioners, officers, agents and employees, from and against all claims, damages, demands, liability, losses, acts of God, costs, fines, and expenses of any nature whatsoever, including reasonable attorneys' fees, arising out of or resulting from any negligent acts or omissions in connection with Company's performance of this Contract, to the extent caused in whole or in part by Company or its employees, officers, agents, or subcontractors, or caused by others for whom Company is liable except to the extent of intentional misconduct of the Authority. The indemnity set forth in this section shall survive the expiration or earlier termination of this Contract.
- b. When the Company is obligated to provide the Authority a defense hereunder, it shall do so with qualified counsel that is selected by the Company and approved by the Authority. Such approval shall not be

unreasonably withheld. In light of the Authority and the Company's continuing relationship, however, the potential for conflicts of interests exists if the same counsel represents both the Authority and the Company when the Company accepts the Authority's tender of defense under the indemnity provision of this Agreement. Therefore, the Authority retains the right to select its own counsel from a list of qualified attorneys provided by the Company or the Company's insurer. The selected counsel's fees and expenses shall be paid for by the Company or its insurer, and the counsel shall be different from that selected by the Company to represent it in the same matter.

## **16 LAWS, PERMITS AND LICENSES**

Company shall abide by and observe all laws, ordinances, and regulations relating to the work to be done pursuant to this Contract. Company shall secure all permits and pay all license fees required by law before beginning the services.

## **17 INSURANCE REQUIREMENTS**

See Exhibit C for Insurance Requirements.

## **18 DAMAGE TO AUTHORITY PROPERTY**

Company agrees to promptly notify Authority of any damage caused to Airport property arising from Company's activities at the Airport. Company also agrees to comply with any request made by the Authority for reimbursement of costs associated with any damage to Airport property arising from the use of the Airport by Company or any of Company's representatives, managers, employees, agents, contractors, subcontractors, licensees or invitees or from the conduct of same. This provision shall survive the termination of this Contract.

## **19 AUDIT**

The Authority shall have the right to audit this Contract along with any and all books, documents, and records relating thereto, as deemed necessary by the Authority, in its sole discretion. The books, documents, and records of Company in connection with this Contract shall be made available to the Authority in the Authority's offices or other locations in Memphis, Tennessee, acceptable to the Authority, within ten (10) days after a written request is made. The Authority may audit the Company's records at any time within three (3) years of each year ended June 30. The provisions of this section shall survive the expiration or earlier termination of the Contract by a period of no less than three (3) years.

## **20 GOVERNING LAW**

This Contract shall be interpreted, construed and performance shall be governed by and in accordance with the laws of the State of Tennessee. Authority and Company irrevocably agree that should any litigation arise out of this Contract, it shall be brought in the state or federal courts in Shelby County, Tennessee.

## **21 SURVIVAL OF OBLIGATIONS**

All obligations of the Parties that either expressly or by their nature survive the expiration or termination of this Contract shall continue in full force and effect subsequent to, and regardless of, this Contract's expiration or termination and until they are fully satisfied or by their nature expire.



## **22 INCORPORATION OF AUTHORITY’S REQUEST FOR PROPOSALS**

The Authority’s Request for Proposal, 24-0002, shall be incorporated in its entirety herein by reference. Accordingly, the Company shall be obligated to meet all requirements including, but not limited to, DBE requirements and Performance Bonds as described in the Proposals; provided, however, that where an express provision of this Contract conflicts with any provision of the Request for Proposals, this Contract shall control.

## **23 INCORPORATION OF COMPANY’S RESPONSE**

Company’s timely response to the Authority’s Request for Proposals (“Company’s Response”) shall be incorporated in its entirety herein by reference. The Company and Authority acknowledge that Company’s Response was a valuable consideration in the award of this Contract to the Company and is an authoritative reference for understanding the intention of the Parties to this Contract. Accordingly, Company shall be obligated to meet all specifications described in Company’s Response; provided, however, that any conflict between an express provision of this Contract and any provision of Company’s Response shall be resolved in the following order: (1) the provisions of this Contract, (2) Scope of Services, and (3) Schedule of Compensation.

## **24 UNCONDITIONAL OBLIGATION TO PROCEED**

Notwithstanding anything herein to the contrary, when the Authority has requested work for which time is of the essence, the Company will proceed with the work even if it has a dispute with the Authority concerning the amount to be paid.

## **25 CONTRACT DOCUMENTS**

The documents which comprise the entire Contract between the Authority and the Company (“Contract Documents”) consist of the following:

- a. This Contract
- b. Exhibit A – Scope of Services
- c. Exhibit B – Schedule of Compensation
- d. Exhibit C – Insurance Requirements

## **26 SEVERABILITY**

In the event any provisions of this Contract shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either Party of any provision, term, condition or covenant shall not be construed by the other Party as a waiver of a subsequent breach of the same by the other Party.

## **27 BONDS**

The Company is required to furnish a Performance Bond and a Labor and Material Payment Bond at the time of Contract execution and prior to the start date of the Contract, in an amount equal to contract price, to guarantee the Company’s performance of the Contract. The bonds shall be made payable to the Memphis-Shelby County Airport Authority and shall remain in force for the duration of the Contract.

The bonds submitted by Company must include an original or certified copy of the Power of Attorney authorizing the Attorney-in-Fact to execute the bonds on behalf of the Surety. The bonds provided to the Authority in connection with this Contract shall be executed by the Company and Surety, and duly issued by an insurer or corporate surety which:

- a. Is authorized to conduct insurance business and provide surety bonds in the State of Tennessee; and
- b. Is otherwise in compliance with the provisions of the Tennessee Insurance Code; and
- c. Is authorized by the United States Department of Treasury pursuant to 31 U.S.C. § 9304-9308; and
- d. Has an A- or better rating and a Financial Size Category of "Class VII" or higher according to the most current edition of Best's Key Rating Guide; and
- e. Notwithstanding the provisions of (d) above, an insurer or corporate surety that is not rated by Best's Key Rating Guide may be accepted by the Authority following a review or investigation of the insurer's or corporate surety's financial and performance standing, including without limitation, its capital adequacy, assets, earnings, liquidity, and such other factors as the Authority may deem appropriate.

## **28 GENERAL WARRANTY AND CORRECTION OF WORK**

The Company warrants to the Authority that all materials and equipment furnished in performance of the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective.

The Company shall promptly correct all defective Work whether observed before or after the substantial completion date and whether or not fabricated, installed or completed. The Company shall bear all costs of correcting defective Work.

If, within one (1) year after the substantial completion date, any of the Work is found to be defective, the Company shall correct it promptly after receipt of a written notice from the Authority to do so.

All defective or non-conforming Work shall be removed from the site of the Work if necessary, and the Work shall be corrected to comply without cost to the Authority. The Company also shall bear the cost of making good all work of other contractors destroyed or damaged by removal or correction of the defective Work of Company.

If the Company fails to timely and properly correct defective Work, the Authority may correct it and hold the Company liable for all costs, expenses and damages, including attorney's fees and litigation costs incurred by Authority in correcting it.

In addition to the foregoing warranty, a warranty period of one (1) year shall apply under the same terms and conditions as the original warranty, to any work, supplied in correction of defective work under warranty and the Company shall assign to the Authority any warranties, including extended warranties, which are available in connection with the performance of such correction of defective Work. The warranty period shall commence on the date the Authority accepts the corrective Work of the Company.

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## 29 NOTIFICATION

All written notices, demands or requests of any kind that either Party desires to serve on the other Party in connection with this Contract may be served by hand-delivery or by mail at the addresses below or such other addresses as may be provided in writing. Any such notice or demand so served by mail shall be mailed or delivered by certified or registered mail with postage or fees thereon fully prepaid, and addressed to the Parties as follows:

If to Authority: Memphis-Shelby County Airport Authority  
Director of Procurement  
2491 Winchester Road, Suite 113  
Memphis, TN 38116-3856

Memphis-Shelby County Airport Authority  
General Counsel  
2491 Winchester Road, Suite 113  
Memphis, TN 38116-3856

If to Company: [VENDOR NAME]  
[POINT OF CONTACT]  
[ADDRESS]  
[CITY, STATE ZIP]

Any notice to either Party relative to any part of the Contract shall be considered delivered and the service thereof completed when said notice is posted by certified or registered mail to the other Party at its last given address or delivered in person to the other Party or to its authorized representative.

## 30 ENTIRE AGREEMENT

This Contract constitutes the complete agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations, stipulations, representations, or agreements, whether written or oral. The provisions of this Contract may only be modified, amended or waived by a written instrument executed by the Parties. If any provision or term of this Contract shall be determined to be illegal, invalid or unenforceable, the remainder shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

## 31 EXECUTION OF CONTRACT

The parties hereby agree and express their intent to execute this Contract electronically if Authority has a designated information processing system. The parties also hereby agree that this Contract may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**IN WITNESS WHEREOF**, the signatures of the respective Parties by their duly authorized officers on the date first above written.

**MEMPHIS-SHELBY COUNTY AIRPORT AUTHORITY**

**[VENDOR NAME]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: President and CEO

Title: \_\_\_\_\_

**Approved as to Content:**

By: \_\_\_\_\_

Title: Director of Procurement

**Approved as to Form and Legality**

By: \_\_\_\_\_

Title: General Counsel

**EXHIBIT A**

**SCOPE OF SERVICES**

**INSERT SCOPE OF SERVICES**

**EXHIBIT B**

**SCHEDULE OF COMPENSATION**

**INSERT SCHEDULE OF COMPENSATION**

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

Prior to commencing work, the Company and its Subcontractor, if any (hereinafter collectively called Company) shall procure and continuously maintain, at its sole cost and expense, with insurers' financially acceptable and lawfully authorized to do business in Tennessee and any other states where work or operations are performed on behalf of the Authority, the insurance coverage required herein. The minimum limits for the insurance coverage required herein are listed below unless higher limits are required by law.

**C.1 MINIMUM SCOPE AND LIMITS OF INSURANCE**

All General Liability policies of insurance with respect to work to be performed under the Contract and submitted by the Company, whether it be separate policies or on a combined form, must be written on an occurrence basis. Acceptance by Authority of insurance submitted by the Company does not relieve or decrease in any manner the liability of the Company for performance of the work required under the Contract, nor alter Company's indemnification obligations under the Contract. The Company shall increase such minimum limits upon written request from the Authority. The Company is responsible for any losses, claims, and costs of any kind which the Company's insurance does not cover.

**C.1.1 COMMERCIAL GENERAL LIABILITY**

Company's insurance coverage shall be on an occurrence coverage form, with coverage at least as broad as that provided under the current edition of the *Insurance Services Office Commercial General Liability Policy, CG 00 01 @*, and shall provide coverage for bodily injury, property damage, personal injury, advertising injury, premises and operations, products and completed operations. There shall be no limitations or exclusions beyond those contained in CG 00 01 04 13 which apply to property damage, products and completed operations, or contractual liability.

Company shall maintain Commercial General Liability with limits not less than:

**\$1,000.000** bodily injury and property damage per occurrence  
**\$1,000,000** products and completed operations aggregate  
**\$2,000,000** general aggregate

**C.1.2 AUTOMOBILE LIABILITY**

Company shall maintain coverage for liability with respect to the use or operation of any auto, including those owned, hired or otherwise operated or used by or on behalf of the Company. The coverage shall be at least as broad as the current edition of the *Insurance Services Office Business Automobile Policy, CA 00 01 @* and include Symbol 1 'any auto'. If Company's scope of services includes the transportation of hazardous materials to or from Airport premises, as determined by the Authority, company shall also include pollution coverage by procuring and

continuously maintaining current editions of standard endorsements **MCS-90** and **CA 99 48**, or their equivalents.

**\$1,000,000** combined single limit each accident

If Company's scope of services is mandated by State and/or Federal DOT regulations, Company will be in compliance with all applicable mandates at all times.

**C.1.3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY**

Company shall maintain Workers' Compensation coverage in accordance with the statutory requirements and regulations of the State of Tennessee, and shall voluntarily provide workers' compensation coverage for proprietors, partners or others not statutorily required to maintain workers compensation insurance. Coverage shall endorse the Authority as an Alternate Employer and provide a copy of such endorsement to the Authority.

Company shall maintain Employer's Liability insurance of not less than:

**\$500,000** for bodily injury by accident

**\$500,000** for bodily injury by disease

**\$500,000** policy aggregate

**C.1.4 UMBRELLA LIABILITY**

Company shall maintain umbrella liability coverage on an occurrence coverage form, with coverage following form to the coverages provided by the current editions of the **Insurance Services Office Commercial General Liability Policy, CG 00 01 ©**, the **Insurance Services Office Business Automobile Policy, CA 00 01** and **Insurance Service Office Workers' Compensation and Employers Liability Policy WC 00 00** in accordance with the statutory regulations of the State of Tennessee with coverage not less than

**\$2,000,000** per occurrence

**\$2,000,000** annual aggregate

**C.1.5 POLLUTION (ENVIRONMENTAL) LIABILITY OR POLLUTION LEGAL LIABILITY INSURANCE**

Coverage will respond to bodily injury or property damage liability and clean up associated with spills, discharges, emissions, transportation, storage, treatment, or disposal of any substance that is or becomes a hazard to the environment and contaminates the air, soil, or ground waters.

Company shall maintain Pollution (Environmental) Liability in an amount not less than:

**\$ 1,000,000** per incident



\$ 1,000,000 policy aggregate

**C.2 DEDUCTIBLES, SELF-INSURED RETENTIONS OR SELF-INSURED PROGRAMS**

Any deductibles, self-insured retentions or self-insured programs must be declared to and approved in advance by the Authority and shall be fully disclosed and identified within the Certificate of Insurance. At the option of the Authority, Company shall reduce the deductible or self-insured retention to a maximum of \$10,000 or eliminate such deductibles or self-insured retentions applicable to claims involving the Authority, its officials and employees, or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention amount.

The self-insured retention or deductible amount on the policy shall not reduce the amount of collectible limits of liability. Any policy of insurance that either specifies self-insurance or a self-insured retention or that is maintained by Company shall contain a provision to the effect that the insolvency or bankruptcy of the insured shall not relieve the insurance company of any obligation under the policy.

**C.3 OTHER INSURANCE PROVISIONS**

The required insurance shall contain the following additional provisions:

**C.3.1 ADDITIONAL INSURED**

The Memphis-Shelby County Airport Authority, including the Authority's commissioners, officers, employees, and agents, shall each be included as additional insured on Company's Commercial General Liability, Pollution Liability, Auto Liability, and Umbrella Liability policies with respect to claims or liabilities arising from, or connected with Company's work or operations. The additional insured endorsements shall be at least as broad as the current edition of the Insurance Services Offices forms *CG 20 10@* and *CG 20 37@*.

**C.3.2 PRIMARY COVERAGE**

Company's required insurance coverage, including umbrella liability, shall be primary insurance, and any insurance or self-insurance maintained by the Authority shall be in excess of and non-contributory with Company's insurance.

**C.3.3 SEVERABILITY OF INTEREST**

Except with respect to the limits of insurance, Company's required insurance shall apply separately to each insured or additional insured.

**C.3.4 WAIVER OF SUBROGATION**

To the fullest extent permitted by law, Company agrees to waive all rights of subrogation against the Authority, including the Authority's commissioners, officers, employees, and agents and shall cause each of its contractors and subcontractors to waive their rights of subrogation against the Authority, including

the Authority's commissioners, officers, employees and agents for all costs or expenses, losses, damages, claims, suits or demands, howsoever caused:

- a. To real or personal property, including but not limited to vehicles, equipment, and tools owned, leased, or used by the Company or the Company's employees, agents, or subcontractors; and
- b. To the extent such loss, damage, claims, suits, or demands are covered, or would have been covered, by the required or any other insurance, except professional liability to which this requirement does not apply, maintained by the Company.

This waiver shall apply to all first party property, equipment, vehicle, and workers compensation claims, unless prohibited under applicable state statutes, and all third-party liability claims. This waiver shall also apply to all deductibles, retentions, or self-insured layers applicable to the required or any other insurance, except professional liability to which this requirement does not apply, maintained by the Company. If necessary, the Company agrees to secure endorsements to the required insurance policies to permit waivers of subrogation in favor of the Authority as required hereunder. The Company further agrees to hold harmless and indemnify the Authority for any loss or expense incurred as a result of the Company's failure to obtain such waivers of subrogation from the Company's insurers.

**C.3.5 NOTICE OF CANCELLATION**

Should the Company cancel, fail to renew, or make changes to any insurance policy required herein, and/or receive advance written notice from the insurer prior to the cancellation, termination, revocation of or any adverse material change to any insurance coverage required hereunder, the Company shall immediately notify the Authority in writing of same. If any of the insurance is cancelled, the Company shall cease operations until such insurance can be provided.

**C.3.6 ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers authorized to do business in the State of Tennessee having an A- or better rating and a Financial Size Category of "Class VII" or higher according to the most current edition of Best's Key Rating Guide.

**C.3.7 VERIFICATION OF COVERAGE**

The Company shall furnish the Authority with a certificate of insurance evidencing the required coverage prior to the commencement of work or operations. The Company agrees to submit an insurance certificate(s) such that the Authority has a certificate evidencing current required coverage at all times. The certificates are to be signed by a person authorized by the insurer(s) to bind coverage on Company's behalf. **Copies of endorsements providing coverage for additional insureds, primary, non-contributory coverage, permitting waiver of subrogation, and earlier notice of cancellation shall also be provided to the Authority.** Renewal

certificates shall also be provided to the Authority prior to the expiration of the required insurance policies.

If required by the Authority's legal counsel, the Company agrees to provide true and certified copies of the required insurance policies within fifteen (15) days of receipt of written request from the Authority. In the event renewal policies have not been issued by insurer(s), the Company agrees to provide complete copies of insurance binders issued to evidence coverage required by this Contract until such time as the actual policies are received from insurer(s).

Failure of the Authority to request such certificates or other evidence of Company's compliance with insurance requirements, or failure of the Authority to identify deficiencies from evidence that is provided, shall in no way limit or relieve Company of its obligations to maintain such insurance.

**C.3.8 SUBCONTRACTORS**

The Company shall require their contractors and subcontractors to maintain same insurance coverage and minimum limits as is herein required of the Company, as well as provide proof of subcontractors' insurance coverage to the Authority.

**C.3.9 LEASED EMPLOYEES**

Use of leased employees by Company is expressly prohibited without the Authority's prior written permission. If permitted by the Authority, Company shall:

- a. Provide the Lessor with a complete copy of agreement with employee leasing company;
- b. Require leasing company to provide workers' compensation and employers liability insurance with limits in amounts not less than required of Company;
- c. Require leasing company to provide standard Alternate Employer Endorsement WC 00 03 naming the Authority as alternate employer on leasing company's workers' compensation and employers liability policy;
- d. Require leasing company to provide waiver of subrogation in favor of Lessor on leasing company's workers' compensation insurance policy; and
- e. Provide the Lessor with a copy of leasing company's certificate of insurance, with endorsements, evidencing the required coverage.

**C.3.10 NO REPRESENTATION OF COVERAGE ADEQUACY**

In specifying minimum Company insurance requirements, the Authority does not represent that such insurance is adequate to protect Company for loss, damage or liability arising from its work. Company agrees that it is Company's responsibility to identify its own risks and protect itself accordingly and understands that the Authority accepts no liability for any such uninsured risks howsoever arising.

The insurance requirements set forth in minimum amounts shall not be construed to relieve Company for liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as is available to it under any other provision of the Contract. Any acceptance of certificates of insurance by the Authority shall in no way limit or relieve Company of its duties and responsibilities under the Contract, including the duty to indemnify and hold harmless the Authority.

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