

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ALL  
DOCUMENTS NECESSARY AND PROPER TO APPLY FOR AND  
RECEIVE AN INCUMBENT WORKER TRAINING GRANT FROM  
THE FIRST TENNESSEE DEVELOPMENT DISTRICT

WHEREAS, the city would like to apply for the Incumbent Worker Training Grant from First Tennessee Development District, which focuses on the training and development of current employees.; and

WHEREAS, the grant will provide reimbursement for training of up to 58 city employees in an amount not to exceed \$33,109.00, for which the city will receive reimbursement upon proof of completion, the trainings will include: Building Codes Certifications, Construction and Safety Training, Fundamentals of Water Treatment, Class B CDL, Sanitation Certifications, and Post Certification Training for Police; and

WHEREAS, the grant requires a match of \$16,554.50, which will come from salaries and overall training costs.

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That the mayor, or in his absence, incapacity, or failure to act, the vice mayor, is authorized to execute, in a form approved by the city attorney, and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, all documents necessary and proper to apply for and receive the Worker Training Grant from First Tennessee Development District, which focuses on the training and development of current employees, which requires a match of \$16,554.50, which will come from salaries and overall training costs.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, the Grant Contract with the First Tennessee Development District, to deliver the agreement and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution, said agreement being as follows:

**GRANT CONTRACT BETWEEN  
FIRST TN DEVELOPMENT DISTRICT  
AND CITY OF KINGSFORT**

This Grant Contract, by and between the First TN Development District, Inc., hereinafter referred to as "FTDD" and City of Kingsport, hereinafter referred to as the "Contractor," is for the provision of establishing Incumbent Worker Training (IWT) programs and services as authorized under Public Law 113-128, as further defined in the "SCOPE OF SERVICES."

**CONTRACT #: CBG/IWT 2023 106**

**A. SCOPE OF SERVICES AND DELIVERABLES**

A.1. The Contractor shall provide all services and deliverables ("Scope") as required, described, and detailed in this Grant Contract. Services will be provided in accordance with the provisions of the Workforce Innovation and Opportunity Act (Public Law 113-128) for the purpose of establishing and carrying out Incumbent Worker Training. Such services shall be delivered in accordance with the Act and with federal regulations to prepare program participants for entry into the labor force and

to offer training to those facing serious barriers to employment as defined by such Act. "WIOA" means the Workforce Innovation and Opportunity Act as defined in 29 U.S.C.A. Sec.3101 et.seq. (cited as Public Law 113-128 throughout this Contract). WIOA is a federal law designed to (1) strengthen the United States workforce development system through innovation, alignment, and improvement of employment training and education programs in the United States; and to (2) promote individual and national economic growth.

A.2. The Contractor shall establish programs to participate in the Training Grant in the form of an Incumbent Worker Training (IWT) Grant in regard to upgrading the skills or a process improvement of approximately **58** current workers at **City of Kingsport**, as further explained in Attachment B.

A.3. For an employer to received IWT funds, the individuals receiving training must meet the following eligibility criteria:

- A U.S. citizen or individual entitled to work in the U.S.
- Age 18 or older
- Registered for Selective Service unless an exception is justified (Selective Service requires registration of all males who are 18 or older and born on or after January 1, 1960)
- Employed
- Meet the Fair Standards Act requirements for an employer-employee relationship
- Have an established employment history with the employer receiving the grant for six (6) months or more.

A.4. Contractor Services: All services must comply with the applicable WIOA rules, regulations, directives, instructions, and policies promulgated or issued by the U.S. Government, by the State of Tennessee or by FTDD. These include the One-Stop Comprehensive Financial Management Technical Assistance Guide ("TAG"). The TAG, part I and part II and any subsequent amendments to the TAG, constitutes a part of this agreement and is incorporated into this Grant Contract by reference. The TAG is located at <https://www.tn.gov/workforce/general-resources/program-management/program-management-redirect/workforce-services-redirect/financial-management.html> until it is replaced by WIOA financial guidance issued by the U.S. Department of Labor Employment and Training Administration.

A.5. Use of Jobs4TN: As a partner providing workforce services programs, the Contractor agrees to promote and utilize Jobs4TN as the primary portal (or entry) for job seekers registering for work and/or seeking employment, as well as for employers seeking to post job orders for applicant recruitment/referral. This supports the service goals of the WIOA programs as well as the performance reporting requirements referenced in Section A.6. and A.7. of the contract scope of services and deliverables respectively.

A.6. Service Goals: Performance Goals for WIOA activities are listed in Public Law 113-128 Section 116(b)(2)(A)(i) for adult and dislocated workers; and Section 116(b)(2)(A)(ii) for youth. The indicators for adult and dislocated workers are entered employment, employment retention and average earnings; youth indicators are placement in employment and education, attainment of a degree or certificate, literacy and numeracy gains and or training program leading to a recognized post-secondary credential.

A.7. Reporting Requirements: The Contractor shall comply with all reporting requirements to include: data entry in the Virtual One-Stop ("VOS") system; and to include any other system or partner system required or vetted under WIOA for measuring performance outcomes, submission of associated monthly expenditure or financial analysis reports, and closeout packages, in the manner specified by FTDD, the State, and under all applicable laws, regulations, and instructions ( in order to account for all funds expended by the Contractor pursuant to this Grant). A "Monthly Status Report" will need to be completed and submitted to FTDD by the 5<sup>th</sup> of each month, see Attachment C.

A.8. The Contractor shall perform all services and comply with all conditions contained in the Contractor's Training Grant Application attached to this Grant Contract, identified as Attachment B. Such attachments are incorporated in and made a part of this Grant Contract by reference, provided that if the provisions of the Training Grant Program Application conflicts with this Grant Contract, the Grant Contract shall control.

## **B. TERM OF GRANT CONTRACT**

This Grant Contract shall be effective on **February 15, 2023** ("Effective Date") and ending on **June 30, 2023** ("End Date"). FTDD and the State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date or after the End Date.

## **C. PAYMENT TERMS AND CONDITIONS**

C.1. Maximum Liability: In no event shall the maximum liability of FTDD under this Grant Contract exceed **Thirty-Three Thousand, One Hundred, and Nine Dollars (\$33,109.00)** ("Maximum Liability"). The Grant Budget, attached and incorporated hereto as Attachment A, shall constitute the maximum amount due the Contractor under this Grant Contract. The Grant Budget

line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

FTDD will closely review expenditure of funds to ensure that the dollars awarded are expended in a timely manner. The Contractor shall notify FTDD immediately if the Contractor anticipates that they may not be able to fully expend all the funds awarded through this Grant Contract. With approval from FTDD, Training Grant funds may be used for other training that meets the intent of the IWT program. A Training Change Request (Attachment G) may be submitted for a new training program and considered for approval by FTDD, see Section D.2. Approved Training Change Requests serve as a modification to the Grant Contract. Funds awarded to the Contractor and not used for training within the contract period (Section B) will return to FTDD for redistribution to other Contractors participating in the Training Grant Program or returned to the State of Tennessee. No modification will be required for this process, all training funds automatically return to FTDD or the State of Tennessee if not used by the Contractor.

C.2. Compensation Firm: The Maximum Liability of FTDD is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the Term and are not subject to escalation for any reason unless amended, except as provided in Section C.6.

C.3. Payment Methodology: The Contractor shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the Maximum Liability established in Section C.1. Upon progress toward the completion of the Scope, as described in Section A of this Grant Contract, the Contractor shall submit invoices prior to any reimbursement of allowable costs.

C.4. Invoice Requirements: The Contractor shall invoice FTDD, with all necessary supporting documentation, to:

**Lisa Evans**

**First TN Development District**

**email: levans@ftdd.org**

**3211 North Roan Street**

**Need additional information, call: 423-547-7500**

**Johnson City, TN 37601**

Contractor should submit an invoice after training is complete with all necessary documentation attached. Payment of an invoice will be made after completion of the training and all paperwork obligations have been met for that training. Payments will not be made if there is any outstanding or incorrect paperwork. Paperwork needed for payment of each training project:

a. Monthly Status Report must be submitted each month until training is complete TDLWD at <https://www.tn.gov/content/tn/workforce/employers/training-redirect/grants-for-training/on-the-job-training-grants/consolidated-business-grant.html> and to Lisa Evans at levans@ftdd.org. (Attachment C – Example of Monthly Status Report)

b. Proof of Liability Insurance – due at beginning of training. (Attachment D – Example of Certificate of Liability Insurance Form)

c. Training Form for each employee attending training – due at beginning of training, correct and complete. The bottom of this form must be signed by an authorized company representative or the Human Resource Manager to verify that the I-9 Verification documentation verifying an Employment Eligibility Verification Form I-9 is on file with the employer. (Attachment E)

d. Class Attendance List with trainee signatures of who attended training – Class Attendance List due at beginning of training. (Attachment F)

e. Invoice with backup documentation. Backup documentation could be documentation of payment made to the training provider and documentation used by Contractor to justify payment to the training provider.

f. Proof of Contractor Match - when requesting reimbursement the Contractor **must provide proof of required match**. See C.6 for examples of acceptable Contractor match percentage and contributions.

g. Contractor must provide a quotable statement with specific information about how the training has benefited City of Kingsport, their trainees and address the projected outcomes in the Training Grant Program Application (Attachment B). FTDD may request additional information as needed.

h. Invoices submitted for final payment must reach FTDD within ten (10) days of the Contract end date and in form and substance acceptable to FTDD.

i. The Contractor understands and agrees to all of the following:

(1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.

(2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.

(3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only

when FTDD is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.4.

C.5. Budget Line-items: Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. Reimbursable expenditures may NOT vary from the Grant Budget line-item amount(s) detailed.

C.6. Contractor Match Funding: The Contractor **must provide proof of required match** when requesting reimbursement. The Contractor match amount is based on the size of the workforce as follows:

- a. At least 10% of the cost for employers with 50 or fewer employees
- b. At least 25% of the cost for employers with 51 to 100 employees
- c. At least 50% of the cost for employers with more than 100 employees

Examples of Contractor match contribution include, but are not limited to expenses associated with: Instruction/tuition; materials/supplies; the use of space and equipment during the training project (please show calculation used to assign a \$ value); and trainees' wages (including benefits) of employees during training. All match contributions must be approved by FTDD.

C.7. Disbursement Reconciliation and Close Out: The Contractor shall submit any final invoice within ten (10) days of the Grant Contract end date, in form and substance acceptable to FTDD.

a. If total disbursements by FTDD pursuant to this Grant Contract exceed the amounts permitted by Section C.1 of this Grant Contract, the Contractor shall refund the difference to FTDD. The Contractor shall submit said refund within ten (10) days of the Contract end date.

b. FTDD shall not be responsible for the payment of any invoice submitted to FTDD after ten days of the Contract end date. FTDD will not deem any Contractor costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by FTDD, and such invoices will NOT be paid.

c. The Contractor's failure to provide the Monthly Status Reports to FTDD and the State as requested could result in the Contractor being deemed ineligible for reimbursement under this Contract. (See A.5 for more information on this process.)

d. The Contractor must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.

C.8. Payment of Invoice: A payment by FTDD shall not prejudice FTDD's right to object to or question any reimbursement, invoice, or matter in relation thereto. A payment by FTDD shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.

C.9. Non-allowable Costs: Any amounts payable to the Contractor shall be subject to reduction for amounts included in any invoice or payment that are determined by FTDD and/or the State, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, to constitute non-allowable costs.

C.10. FTDD's Right to Set Off: FTDD reserves the right to deduct from amounts that are or shall become due and payable to the Contractor under this Grant Contract or any other contract between the Contractor and the First TN Development District under which the Contractor has a right to receive payment from FTDD.

#### **D. STANDARD TERMS AND CONDITIONS:**

D.1. Required Approvals: FTDD is not bound by this Grant Contract until it is signed by the parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations.

D.2. Modification and Amendment: This Grant Contract may be modified only by a written amendment signed by all parties and approved by the officials who approved the Grant Contract and, depending upon the specifics of the Grant Contract as amended, any additional officials required by Tennessee laws and regulations.

D.3. Termination for Convenience: FTDD may terminate this Grant Contract without cause for any reason. A termination for convenience shall not be a breach of this Grant Contract by FTDD. FTDD shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall FTDD be liable to the Contractor for compensation for any service that has not been rendered. The final decision as to the amount for which FTDD is liable shall be determined by FTDD. The Contractor shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount for FTDD's exercise of its right to terminate for convenience.

D.4. Termination for Cause: If the Contractor fails to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Contractor violates any terms of this Grant Contract ("Breach Condition"), FTDD shall have the right to immediately terminate the Grant Contract and withhold payments in excess of compensation for completed services or provided goods.

Notwithstanding the above, the Contractor shall not be relieved of liability to FTDD for damages sustained by virtue of any Breach Condition and FTDD may seek other remedies allowed at law or in equity for breach of this Grant Contract.

D.5. Subcontracting: The Contractor shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of FTDD. If such subcontracts are approved by FTDD, each shall contain, at a minimum, Sections of this Grant Contract pertaining to "Conflicts of Interest," "Lobbying," "Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the Section headings). Notwithstanding any use of approved subcontractors, the Contractor shall remain responsible for all work performed.

D.6. Conflicts of Interest: The Contractor warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the First TN Development District as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Grant Contract.

The Contractor acknowledges, understands, and agrees that this Grant Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the First TN Development District or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the First TN Development District.

D.7. 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 undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of 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, the 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 contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," 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 subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors/subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

D.8. Nondiscrimination: The Contractor agrees that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.9. Public Accountability: If the Contractor is subject to Tennessee Code Annotated § 8-4-401 *et seq.*, or if this Grant Contract involves the provision of services to citizens by the Contractor on behalf of FTDD, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Contractor, provide Contractor with any necessary signs.

D.10. Public Notice: All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor in relation to this Grant Contract shall include the statement, "This project is funded under a Grant Contract with the State of Tennessee through the First TN Development District." All notices by the Contractor in relation to this Grant Contract shall be approved by FTDD.

D.11. Records: The Contractor and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Contractor and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by FTDD, the Granter State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification, Public Company Accounting Oversight Board (PCAOB) Accounting Standards Codification, or Governmental Accounting Standards Board (GASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting Guides. In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with the U.S. Office of Management and Budget's *Uniform Administrative Requirements, Audit Requirements, and Cost Principles for Federal Awards*. The Contractor shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Contractor shall establish a system of internal controls that utilize the COSO Internal Control-Integrated Framework model as the basic foundation for the internal control system. The Contractor shall incorporate any additional Comptroller of the Treasury directives into its internal control system. Any other required records or reports which are not contemplated in the above standards shall follow the format designated by FTDD, the head of the Granter State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

D.12. Communications and Contacts: All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first-class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective party as set out below:

**FTDD:**

Lisa Evans, WIOA Program Director

FTDD

3211 N. Roan Street

Johnson City, TN 37601

Phone: (423) 547-7500

Email: [levans@ftdd.org](mailto:levans@ftdd.org)

**Contractor:**

Tyra Copas

City of Kingsport

415 Broad Street

Kingsport, TN 37760

Phone: (423) 224-2448

Email: [tyracopas@kingsporttn.gov](mailto:tyracopas@kingsporttn.gov)

A change to the above contact information requires written notice to the person designated by the other party to receive notice.

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

D.13. Subject to Funds Availability: This Grant Contract is subject to the appropriation and availability of State or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, FTDD reserves the right to terminate this Grant Contract upon written notice to the Contractor. FTDD's right to terminate this Grant Contract due to lack of funds is not a breach of this Grant Contract by FTDD. Upon receipt of the written notice, the Contractor shall cease all work associated with the Grant Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from FTDD any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.14. HIPAA Compliance: The State, FTDD and 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 ("HITECH") Act 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 Grant Contract.

a. The Contractor warrants to FTDD that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Grant Contract.

b. The Contractor warrants that it will cooperate with FTDD, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Grant Contract so that both parties will be in compliance with the

Privacy Rules.

c. FTDD and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep FTDD and the Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Grant Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

d. The Contractor will indemnify FTDD and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by FTDD because of the violation.

D.15. Licensure: The Contractor and its employees and all sub-Contractors 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.

D.16. Monitoring: The Contractor's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by FTDD, the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.17. Progress Reports: The Contractor shall submit brief, monthly, progress report to FTDD and the State as requested. On or before the 5<sup>th</sup> of the month after the contract has been signed, and every month thereafter, the Contractor has to fill out a Monthly Status Report. After the contract ends a final status report must be submitted by the 5<sup>th</sup> of the following month. A Monthly Status Report must be completed for each program the Contractor receives funding: Rural Initiative Grant (RIG), Apprenticeship Training Grant (ATG), Incumbent Worker Training (IWT), and On-the-Job Training (OJT). (Attachment C)

D.18. Procurement: If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or contracted services, such procurement(s) shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for the decision and for use of a non-competitive procurement. If the Contractor is a subrecipient, the Contractor shall comply with 2 C.F.R. §§ 200.318-300.326 when procuring property and services under a federal award.

This Grant Contract does not allow for reimbursement of the purchase of any equipment by the Contractor.

D.19. Strict Performance: Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.20. Independent Contractor: The parties shall not act as employees, partners, joint venturers, or associates of one another in the performance of this Grant Contract. The parties acknowledge that they are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

D.21. Liability Insurance: The Contractor, being an independent contractor and not an employee of FTDD or the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Grant Contract.

D.22. FTDD Liability: FTDD shall have no liability except as specifically provided in this Grant Contract.

D.23. State Liability: The State shall have no liability except as specifically provided in this Grant Contract.

D.24. Force Majeure: "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either



Party from its obligations under this Grant Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Grant Contract arising from a Force Majeure Event is not a default under this Grant Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Grant Contract is not a Force Majeure Event under this Grant Contract. Contractor will promptly notify FTDD of any delay caused by a Force Majeure Event (to be confirmed in a written notice to FTDD within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, FTDD may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Grant Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Grant Contract or charge FTDD any fees other than those provided for in this Grant Contract as the result of a Force Majeure Event.

D.25. Tennessee Department of Revenue Registration: The Contractor shall comply with all applicable registration requirements contained in Tennessee Code Annotated §§ 67-6-601 - 608. Compliance with applicable registration requirements is a material requirement of this Grant Contract.

D.26. Charges to Service Recipients Prohibited: The Contractor shall not collect any amount in the form of fees or reimbursements from the recipients of any service provided pursuant to this Grant Contract.

D.27. State and Federal Compliance: The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract.

D.28. Governing Law: This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated §§ 9-8-101 through 9-8-407.

D.29. Completeness: This Grant Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.30. Severability: If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.

D.31. Headings: Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

#### **E. SPECIAL TERMS AND CONDITIONS:**

E.1. Conflicting Terms and Conditions: Should any of these special terms and conditions conflict with any other terms and conditions of this Grant Contract, the special terms and conditions shall be subordinate to the Grant Contract's other terms and conditions.

E.2. Debarment and Suspension: 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 not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant 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 not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of and of the offenses detailed in Section b. of this certification; and

d. have not within a three (3) year period preceding this Grant Contract had one or more public



transactions (federal, state, or local) terminated for cause or default.

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

E.3. Confidentiality of Records: Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by FTDD or acquired by the Contractor on behalf of FTDD that is regarded as confidential information under state or federal law shall be considered "Confidential Information." Nothing in this Section shall permit the Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of FTDD or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. The Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law. The obligations set forth in this Section shall survive the termination of this Grant Contract.

E.4. Printing Authorization: The Contractor agrees that no publication coming within the jurisdiction of Tennessee Code Annotated (T.C.A.) §§ 12-7-101, *et seq.*, shall be printed pursuant to this Grant Contract unless a printing authorization number has been obtained and affixed as required by T.C.A. § 12-7-103(d).

E.5. Work Papers Subject to Review: The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documents available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Grant Contract.

E.6. Disclosure of Personal Identity Information: The Contractor shall report to FTDD any instances of unauthorized disclosure of personally identifiable information that comes to the Contractor's attention. The Contractor shall make any such report within twenty-four (24) hours after the instance has come to the Contractor's attention. The Contractor, at the sole discretion of FTDD, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor 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 FTDD under this Grant Contract or otherwise available at law.

E.7. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of 29 CFR 97.36(i)(1-13) are met and that the Contractor provides information to FTDD and the State as required.

The Contractor (and any subcontractor) shall comply with the following:

a. Subsection (12) - Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

b. Subsection (13) - Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the mayor is authorized to execute any and all documents including those necessary and proper to demonstrate the city's compliance with the grant requirements or its provisions necessary to effectuate the purpose of the grant or this resolution.

SECTION V. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the public.

SECTION VI. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 2nd day of May, 2023.

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PATRICK W. SHULL, MAYOR

ATTEST:

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ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

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RODNEY B. ROWLETT, III, CITY ATTORNEY