


**SHELBY COUNTY GOVERNMENT  
CONTRACTS ADMINISTRATION  
160 N. MAIN, SUITE 950  
MEMPHIS, TN 38103  
(901) 222-2140 (901) 222-2064 FAX**

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**DEPARTMENTAL COMMUNICATION**

**TO:** Edward Kizer  
Public Works

**FROM:** Tonya Blunt   
Contracts Administration

**DATE:** June 7, 2017

**SUBJECT:** Contract- Sasaki Associates, Inc.  
**Contract Number: CA1720591**

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Attached please find *fully executed* copies of the above referenced contract. Please retain a copy for your files and forward a copy to the *Sasaki Associates, Inc.* along with a "Notice to Proceed" for the described services of the contract.

Generally, contracts contain many terms and conditions and, in a number of instances, have provisions that impose duties and conditions on the County which if not followed or violated, will result in a monetary loss or other penalty being imposed on the County. Please insure that the appropriate individual within your department, who is responsible for monitoring and compliance of this agreement, is fully aware of its entire terms and conditions and of any requirements contained therein. If there are any questions that arise as a result of the contents of the attached, please contact Contracts Administration immediately.

Also, on occasion, one contract will affect how another contract is administered. Normally this situation involves either Federal or State grants which require that the funds received be spent under separate contract in a specific manner. Coordination of both contracts is mandatory. If there are any questions that arise as a result of the contents of the attached, please contact Contracts Administration immediately.

Please make sure that the above referenced contract number is shown on all invoices and correspondence pertaining to this contract.

Attachment

*Contract  
P.O. when received, will be forwarded to your office*



## CONTRACT

This contract (the "Contract") is entered into this 7<sup>th</sup> day of June, 2017, by and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and SASAKI ASSOCIATES, INC. hereinafter referred to as "CONSULTANT".

### WITNESSETH:

**WHEREAS**, COUNTY submitted an application for Phase I and Phase II of the National Disaster Resilience Competition which framed a range of unmet needs, threats and hazards directly relating to the 2011 flooding disaster within the County and identified risks and vulnerabilities from future threats of such flooding; and

**WHEREAS**, COUNTY has been successfully awarded funding under Phase II of the Competition and as such invited to participate within Phase III which gives the COUNTY the opportunity to implement projects and activities designed to enhance disaster resilience; and

**WHEREAS**, COUNTY issued its Request for Qualifications RFQ # 15-011-16 seeking a professional to assist in its Phase I and Phase II submittal and provide project management and technical assistance to the COUNTY based on the Phase I framing and Phase II design of optimal choices to improve disaster recovery and resilience in the most impacted and distressed areas of the County; and

**WHEREAS**, COUNTY, pursuant to the Phase III National Disaster Resilience Competition Award and Shelby County Purchasing Policies and Procedures has selected the CONSULTANT to assist with the administration, planning and monitoring of the projects which were approved by HUD; and

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

**WHEREAS**, the parties are desirous of entering into a contract setting forth the terms and conditions under which the CONSULTANT will provide said services.

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

#### **I. SCOPE OF WORK**

The CONSULTANT shall provide the services as outlined within the COUNTY'S RFQ Number 16-005-77, the CONSULTANT'S response thereto and the Scope of Work, Timeline, and Fee Schedule which are attached hereto as Exhibits A, B, and C respectively and incorporated herein by reference as if stated verbatim (the "Services").

#### **II. TERM AND COMPENSATION**

1. The term of this Contract (the "Term") will commence upon the execution of this Contract and continue through June 30, 2019.
2. The COUNTY agrees to compensate the CONSULTANT for the provision of its Services the total sum not to exceed FIVE HUNDRED THOUSAND and no/100 (\$500,000.00) Dollars (the "Fee") during the term of this Contract. This fee includes reimbursable expenses. The Fee will be charged on

an hourly rate basis per Consultant's rate schedule attached hereto as Exhibit A and fully incorporated by reference as if stated verbatim herein.

3. The CONSULTANT shall submit its invoice to the COUNTY on a monthly basis and will include a detailed description of the services rendered that comprise the invoice amount. The invoice shall be submitted in duplicate to the address set forth in Paragraph 31 of this Contract to the attention of John Zeanah, Deputy Director, Shelby County Planning and Development. The COUNTY shall pay such invoice within thirty (30) days of its receipt and approval of said same. The COUNTY is not obligated to pay, and will withhold from payment, any amounts the COUNTY has in dispute with the CONSULTANT based on CONSULTANT'S non-performance or negligent performance of any of the Services under this Contract.
4. CONSULTANT shall not be permitted or authorized to incur costs beyond the extent that purchase orders have been issued on approved contracts prior to the commencement date, during the term of the contract, and/or subsequent to the termination date of County contracts without prior, expressly written, appropriate County authorization pursuant to County Purchasing Policies and Procedures, Rules and Regulations. COUNTY is not obligated to pay nor shall CONSULTANT be entitled to receive payments for contract fees and expenses incurred in violation of this provision.

### **III. GENERAL CONDITIONS**

The parties further agree as follows:

#### **1. CONTROL**

All Services by the CONSULTANT will be performed in a manner satisfactory to the COUNTY, and in accordance with the generally accepted business practices and procedures of the COUNTY. Notwithstanding anything to the contrary within this Contract, the standard of care for all professional services performed or furnished by the CONSULTANT will be the care and skill ordinarily exercised under similar conditions by professional consultants practicing in the same field at the same time in the same or similar locality (hereinafter the "Standard of Care"). No other warranty, express or implied, is made or intended related to the services provided.

#### **2. CONSULTANT'S PERSONNEL**

The CONSULTANT certifies that it presently has adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONSULTANT. The CONSULTANT further certifies that all of its employees assigned to serve the COUNTY have such knowledge and experience as required to perform the duties assigned to them. Any employee of the CONSULTANT who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

#### **3. INDEPENDENT STATUS**

- a. Nothing in this Contract shall be deemed to represent that the CONSULTANT, or any of the CONSULTANT's employees or agents, are the agents, representatives, or employees of the COUNTY. The CONSULTANT will be an independent CONSULTANT over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the CONSULTANT as to the details of

the performance of the Services under this Contract or to exercise a measure of control over the CONSULTANT is solely for purposes of compliance with local, state and federal regulations and means that the CONSULTANT will follow the desires of the COUNTY only as to the intended results of the scope of this Contract.

- b. It is further expressly agreed and understood by CONSULTANT that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that CONSULTANT has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by CONSULTANT for the Services performed shall be on the CONSULTANT's letterhead.

4. REPORTS

CONSULTANT shall prepare and submit the work product funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. Any such reports provided to the COUNTY shall be prepared with the understanding that the COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY. The COUNTY shall have the right to withhold future disbursement of funds under this Contract and any future Contracts until this provision has been met.

5. TERMINATION OR ABANDONMENT

- a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:
  - i) Either the CONSULTANT or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
  - ii) CONSULTANT has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or
  - iii) CONSULTANT has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONSULTANT assets.
- b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the CONSULTANT for CONSULTANT's failure to provide the Services specified under this Contract.
- c. This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, the CONSULTANT shall be paid for all Services rendered prior to the

Termination Date, provided the CONSULTANT shall have delivered to COUNTY such statements, accounts, reports and other materials as required under this Contract; however, CONSULTANT shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by CONSULTANT prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.

- d. Notwithstanding the above or any section herein to the contrary, CONSULTANT shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by CONSULTANT and the COUNTY may withhold any payments to CONSULTANT for the purpose of setoff until such time as the exact amount of damages due the COUNTY from CONSULTANT is determined.

6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CONSULTANT pursuant to this Contract for any CONSULTANT's Services performed by the CONSULTANT in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CONSULTANT to properly fulfill any of his obligations as set forth in this Contract.

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

- a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the CONSULTANT from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONSULTANT's obligations to its transferors or subcontractors.
- b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. CONFLICT OF INTEREST

The CONSULTANT covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of the Services. The CONSULTANT warrants that no part of the total Contract Fee shall be paid directly or indirectly to any officer or employee of the COUNTY as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the CONSULTANT in connection with any work contemplated or performed relative to this Contract.

9. CONTINGENT FEES

The CONSULTANT warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, brokerage fee, gift, or any other

consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

10. EMPLOYMENT OF COUNTY WORKERS

The CONSULTANT will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONSULTANT agrees to permit duly authorized agents and employees of the COUNTY to enter CONSULTANT's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CONSULTANT will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request.

12. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the CONSULTANT and the COUNTY will be referred to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise.

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

- a. The CONSULTANT agrees to the fullest extent permitted by law, to indemnify, save and hold harmless the COUNTY, and its elected officials, officers, employees, assigns, and instrumentalities from and against any losses or damages (including reasonable attorneys' fees)—including but not limited to Title VII and 42 USC 1983 prohibited acts arising from the negligent acts, error or omissions; of the CONSULTANT or its subcontractors, employees or assigns in the performance of professional services under this Contract to the extent that the CONSULTANT is responsible for such damages or losses on a comparative basis of fault and responsibility between the CONSULTANT and the COUNTY. The CONSULTANT is not obligated to indemnify the COUNTY for the County's own negligence. This indemnification shall survive the termination or conclusion of this Contract.
- b. The CONSULTANT expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the CONSULTANT shall in no way limit the responsibility to indemnify, save and hold harmless the COUNTY or its elected officials, officers, employees, assigns, and instrumentalities as herein provided.

- c. The COUNTY has no obligation to provide legal counsel or defense to the CONSULTANT or its sub-CONSULTANTS in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the CONSULTANT as a result of or relating to Services under this Contract.
- d. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against the CONSULTANT as a result of or relating to Services under this Contract.
- e. The CONSULTANT shall immediately notify the COUNTY, c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 950, Memphis, TN 38103, of any claim or suit made or filed against the CONSULTANT or its sub-CONSULTANTS regarding any matter resulting from or relating to CONSULTANT's Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.
- f. The CONSULTANT shall immediately notify the COUNTY, c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 950, Memphis, TN 38103, of cancellation or material changes in any of the insurance coverage required which would cause such insurance to be out of compliance with the insurance requirements in this Agreement.

14. GENERAL COMPLIANCE WITH LAWS

- a. The CONSULTANT certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of the Services under this Contract.
- b. The CONSULTANT is assumed to be familiar with and agrees that at all times it will observe and, consistent with the Standard of Care, comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the performance of the Services. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements and the Americans with Disabilities Act (ADA).
- c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the CONSULTANT agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

15. NON-DISCRIMINATION

- a. The CONSULTANT hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or



provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the CONSULTANT on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONSULTANT shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

- b. Any recipient entity shall be subject to the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and regulations promulgated pursuant thereto. It shall develop a Title VI implementation plan with participation by protected beneficiaries as may be required by such law or regulations. To the extent applicable, such plan shall include Title VI implementation plans for sub-recipients of federal funds through the entity. The CONSULTANT shall produce the plan upon request of Shelby County Government. Failure to provide same shall constitute a material breach of contract.

16. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

17. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

18. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

19. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

20. MATTERS TO BE DISREGARDED

The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Contract.

21. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. Should any of the Services provided not be approved or paid according to the grant, Shelby County will not be responsible for expenses incurred. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the Term hereof, then this Contract will be terminated. In the event of such termination, the CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the Termination Date.

22. EXPENSES

- a. Expenses shall be charged in accordance with Exhibit C attached hereto. Reimbursable expenses are included within the total fee for this Service.
- b. All Travel expensed payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written authorization, submission of travel claims, documentation requirements and reimbursement rates. No travel advances will be made by the COUNTY.

23. NON-LIABILITY FOR CONSULTANT EMPLOYEE TAXES

Neither CONSULTANT nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide CONSULTANT's personnel with any benefits and shall have no liability for the following:

- a. Withholding FICA (Social Security) from CONSULTANT's payments;
- b. Making state or federal unemployment insurance contributions on behalf of CONSULTANT or its personnel;
- c. Withholding state and federal income tax from payment to CONSULTANT;
- d. Making disability insurance contributions on behalf of CONSULTANT;
- e. Obtaining workers' compensation insurance on behalf of CONSULTANT or CONSULTANT's personnel.

24. INCORPORATION OF OTHER DOCUMENTS

It is understood and agreed between the parties that in the event of a variance between any written document and the terms and conditions of this Contract as well as any written amendment hereto, the terms of this Contract or written amendment shall take precedence and control the relationship and understanding of the parties.

25. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

construction and services.

26. SECTION 3 EMPLOYMENT OPPORTUNITIES

- a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. The CONSULTANT agrees to send to each labor organizations or representative of workers with which the CONSULTANT has a collective bargaining agreement or other understanding; if any, a notice advising the labor organization or workers' representative of the CONSULTANT commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The CONSULTANT agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR parts 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The CONSULTANT will not subcontract with any subcontractor where the CONSULTANT has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- e. The CONSULTANT will certify that any vacant employment positions, including training positions, that are filled (1) after the CONSULTANT is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the CONSULTANT'S obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and

subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogations of compliance with Section 7(b).

- h. The CONSULTANT agrees to provide Shelby County with quarterly reports documenting all activities relevant to Section 3 compliance including positions filled by the consultant, all efforts to hire individuals and/or subcontracting firms meeting the Section 3 requirement, and evidence of all actions taken to secure Section 3 employees and/or contractors in compliance with Section 3.

27. RIGHT TO REQUEST REMOVAL OF CONSULTANT’S EMPLOYEES

The COUNTY may interview the personnel CONSULTANT assigns to COUNTY’s work. COUNTY shall have the right, at any time, to request removal of any employee(s) of CONSULTANT, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, CONSULTANT shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

28. INCORPORATION OF WHEREAS CLAUSES

The foregoing “WHEREAS” clauses are hereby incorporated into this Contract and made a part hereof.

29. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONSULTANT, CONSULTANT understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CONSULTANT due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

30. WARRANTY

CONSULTANT warrants to COUNTY that all Services shall be in strict compliance with the terms of this Contract, and all applicable government laws, rules and regulations. In addition to the above warrants, the CONSULTANT has certified its current and continued compliance with Subpart C of 2 CFR Part 1326, “Government Debarment and Suspension (Nonprocurement)” as well as 31 U.S.C. § 1352, as implemented at 15 CFR Part 28 “New Restrictions on Lobbying.”

31. CONFIDENTIAL INFORMATION

- a. CONSULTANT acknowledges that, in dealing with individuals in the provision of the Services for COUNTY, any information gathered for the provision of the Services is confidential information. CONSULTANT agrees to hold all confidential information in strict confidence, and except as expressly set forth herein, will not disclose such confidential information to any third party(s), including but not limited to any corporation, company, group, partnership, agency or individual. CONSULTANT shall:

- i) use the confidential information only in connection with the provision of the Services;
  - ii) disclose the confidential information only to its officers, directors, and employees who need to know the confidential information to accomplish the preparation of the audits and/or auditing process; and
  - iii) safeguard the confidential information with the same or greater degree of care to avoid unauthorized disclosure as the CONSULTANT uses to protect its own confidential information.
- b. In the event that the CONSULTANT or anyone to whom it transmits confidential information becomes legally compelled to disclose any of the confidential information, the CONSULTANT will provide the COUNTY with prompt written notice before such confidential information is disclosed so that the COUNTY can seek a protective order or other appropriate remedy. Unauthorized disclosure of confidential information by the CONSULTANT shall result in immediate termination of the Contract.
- c. Notwithstanding the foregoing, Confidential information shall not include information which:
  - 1. Is known or open to the public or otherwise in the public domain at the time of disclosure.
  - 2. Becomes part of the public domain disclosure by any means except breach of this Agreement by CONSULTANT.
  - 3. Is already known to CONSULTANT at the time of disclosure.
  - 4. Is obtained by CONSULTANT from any third party who has a lawful right to disclose it and who obtained it from some source other than, directly or indirectly, the COUNTY.
  - 5. Has been in the possession of CONSULTANT as a result of the disclosure under this Agreement for the period of five (5) years following execution of this Contract.

32. ORGANIZATION STATUS AND AUTHORITY

- a. CONSULTANT represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.
- b. The execution, delivery and performance of this Contract by the CONSULTANT has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of CONSULTANT, any provision of any indenture, agreement or other instrument to which CONSULTANT is a party, or by which CONSULTANT's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

33. INSURANCE REQUIREMENTS

- a. The CONSULTANT shall purchase and maintain, in a company or companies authorized to do business in the State of Tennessee, such insurance as will protect the COUNTY from claims which

may arise out of or result from the CONSULTANT's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the CONSULTANT or sub-Consultants may be liable.

- b. The insurance required shall be written for not less than any limits of liability specified below or required by law, whichever is greater. The CONSULTANT will maintain throughout the life of this Contract insurance, through insurers rated A- X or better by A. M. BEST, in the following minimum requirements:
  - i.) Errors and Omissions or Professional Liability Insurance - coverage with minimum limits of \$1,000,000.00 per occurrence/\$3,000,000.00 annual aggregate. Coverage is to include the CONSULTANT and all its employed or contracted professionals.
  - ii) Commercial General Liability Insurance - \$1,000,000 limit per occurrence bodily injury and property damage/\$1,000,000 personal and advertising injury/\$2,000,000 General Aggregate/\$2,000,000 Products-Completed Operations Aggregate. The County Government, its elected officials, appointees, employees and members of boards, agencies, and commissions shall be named as additional insureds. The insurance shall include coverage for the following:
    - a. Premises/Operations
    - b. XCU coverage, where applicable
    - c. Products/Completed Operations
    - d. Contractual Liability
    - e. Independent Contractors
    - f. Broad Form Property Damage
    - g. Personal Injury and Advertising Liability.
  - iii) Workers Compensation and Employers' Liability Insurance – Per Tennessee statutes; CONSULTANT waives its right of subrogation against the COUNTY for any and all workers' compensation claims.
  - iv) Business Automobile Liability Insurance – minimum \$1,000,000 single limit each accident for property damage and bodily injury. Coverage is to be provided on all Owned/Leased Autos, Non-Owned Autos and Hired Autos. Shelby County Government, its elected officials, appointees, employees and members of boards, agencies, and commissions shall be named as additional insureds.
- c. All policies will provide for 30 days written notice to the COUNTY of cancellation of coverage provided. Ten (10) days' notice applicable to non-payment of premium. If the insurer is not required by the policy terms and conditions to provide written notice of cancellation to the County, the CONSULTANT shall provide immediate notice to COUNTY and provide evidence of replacement coverage with no lapse.
- d. All insurance policies maintained by the CONSULTANT shall provide that insurance as applying to the County shall be primary and non-contributing irrespective of such insurance or self-insurance as the COUNTY may maintain in its own name and on its own behalf.

- e. CONSULTANT shall submit a current Certificate of Insurance in its response at the time of contracting provide a Certificate of Insurance with the additional insured requirements. CONSULTANT shall maintain said insurance during the entire Contract period as well as provide renewal copies on each anniversary date. The certificate holder is to read:

Shelby County Government  
c/o Purchasing Department  
160 North Main Street Suite 900  
Memphis, Tennessee 38103

34. RIGHTS IN DATA

The COUNTY shall become the owner, and the CONSULTANT shall be required to grant to the COUNTY, or its successors, a perpetual, non-exclusive non-transferable, royalty-free right, in the COUNTY'S name, to use any deliverables provided by the CONSULTANT under this Contract, regardless of whether they are proprietary to the CONSULTANT or to any third parties.

35. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Government  
John Zeanah, Deputy Director  
Division of Planning and Development  
4<sup>th</sup> Floor /125 N. Main  
Memphis, Tennessee 38103

*And*

Shelby County Government  
Contract Administration  
160 N. Main Street, Suite 950  
Memphis, Tennessee 38103

CONSULTANT: Sasaki Associates Inc.  
Attn.: Steven Roscoe, CFO  
64 Pleasant Street  
Watertown, Massachusetts 02472

36. LOBBYING

The CONSULTANT 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 Shelby County Government, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into 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 Congress, or an employee of a Member of Congress in connection with its grant, loan, or cooperative agreement, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The CONSULTANT shall require that the language of this certification be included in the award documents for all sub-awards at all tiers) including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub recipients of federally appropriated funds shall certify and disclose accordingly.

37. SUSPENSION AND DEBARMENT

The CONSULTANT warrants that no part of the total Contract Amount shall be paid directly or indirectly to entities who are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 of February 18, 1986 (3 CFR, 1986 Comp., p. 189).

38. ENVIRONMENTAL TOBACCO SMOKE

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

39. DATA SECURITY

CONTRACTOR warrants to the COUNTY and State that it agrees to meet the spirit and intent of all compliance requirements relating to the content of data accessed. This includes but is not limited to Payment Card Industry (PCI) data, as defined by PCI Security Standard v3.1, Protected Health Information (PHI), as defined under the in Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 160, Subpart A, §160.103 (45 C.F.R. §160.103), and Personally Identifiable Information (PII), as defined in the National Institute of Standards and Technology Special Publication 800-122 sections 2.1 and 2.2, in electronic and/or paper format. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance, including, but not limited to, Data Security - Vendor Acknowledgement agreement and Acceptable Use Policy, and to abide by SCG ITS security policies including, but not limited to, the SCG Network Security and Information Security policies.



CONTRACTOR shall apply all vendor-issued security updates for system hardware and software components maintained by the CONTRACTOR within 30 days of issuance.

Upon notification by the COUNTY, the CONTRACTOR shall assure that all vulnerabilities specific to the systems maintained and identified by the COUNTY Approved Scanning Vendor (ASV), using the common vulnerability scoring system (CVSS), as not meeting compliance requirements, including but not limited to PCI Data Security Standards (DSS) and Health Insurance Portability and Accountability Act (HIPAA), are patched, updated, or otherwise modified to assure they meet said compliance requirements.

The Contractor shall promptly report to Information Technology Security Officer any breaches of Shelby County Government data and will implement immediate, appropriate corrective actions to contain and prevent recurrence.

- i) HIPAA -CONTRACTOR warrants to the COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract. CONTRACTOR warrants that it will cooperate with the COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.
- ii) PCI-DSS-CONTRACTOR warrants to the COUNTY that it is familiar with the requirements established by the Payment Card Industry Security Standards Council for PCI Data Security Standards (PCI-DSS) and will comply with all applicable PCI-DSS requirements in the course of this Contract. CONTRACTOR agrees to indemnify and hold the COUNTY, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any breach of COUNTY or COUNTY customer credit card or identity information due to the CONTRACTOR's actions.
- iii) Personally Identifiable Information (PII) -CONTRACTOR warrants to the COUNTY that it will protect any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

40. ORDER OF APPLICATION OF CONTRACT AND SUPPORT EXHIBITS

In the event of a discrepancy or conflict between the terms of this Contract, the Request for Qualifications (Exhibit A) and/or the Response to the Request and Fee Schedule (Exhibits B and C), the terms of this Contract shall control followed by the Request for Qualifications (Exhibit A) and lastly, the Response to the Request and Fee Schedule (Exhibits B and C).

**IN WITNESS WHEREOF**, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

**APPROVED AS TO FORM AND LEGALITY:**

**SHELBY COUNTY GOVERNMENT**

BY: [Signature]  
Contract Administrator/  
Assistant County Attorney

BY: [Signature]  
for Mark H. Luttrell, Jr., Mayor

**SASAKI ASSOCIATES, INC.**  
BY: [Signature]  
TITLE: CFO

**CORPORATE ACKNOWLEDGMENT**

STATE OF Commonwealth of Massachusetts  
COUNTY OF Middlesex County

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared Steven Roscoe with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the Sasaki Associates the within named bargainor, a corporation, and that he as such CFO, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as Steven Roscoe

WITNESS my hand and official seal at office this 22<sup>nd</sup> day of March, ~~2015~~ 2017.

[Signature]  
Notary Public

MY COMMISSION EXPIRES: 05/16/2019



**KATHLEEN A. HUNT**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
May 16, 2019