



**GREATER NASHVILLE  
REGIONAL COUNCIL**

# **Legal Services for the GNRC Public Guardianship Program**

## **Tennessee Public Guardianship Program for the Elderly**

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### **Request for Qualifications RFQ-2022-11**

**Greater Nashville Regional Council**

220 Athens Way, Suite 200 | Nashville, Tennessee 37228 | Phone: (615) 862-8828 | Fax: (615) 862-8840

**[GNRC.org](http://GNRC.org)**

# RFQ Summary

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## About GNRC

The Greater Nashville Regional Council (GNRC or Regional Council) is a public body corporate and politic created by the Tennessee Development District Act of 1965 and further empowered by Title 64, Chapter 7, Part 1, Tennessee Code Annotated (TCA), as amended (the Act). GNRC's mission is to assist local communities and state agencies in the development of plans and programs that guide growth and development in the most desirable, efficient, and cost-effective manner, while ensuring the continued long-term livability of the region. GNRC is governed by a regional body comprised of city mayors, county mayors/executives, state legislators, appointments representing business/industry, and appointments representing minority populations.

The GNRC is designated by the Tennessee Commission on Aging and Disability (TCAD) as the Area Agency on Aging and Disability (AAAD) for thirteen counties in Middle Tennessee to provide programs, services, advocacy, inter-agency linkages and coordination, and information-sharing opportunities to improve the quality of life for older or disabled Middle Tennesseans. The AAAD delivers a range of federal and state programs through GNRC's professional social workers and counselors who work in partnership with local agencies and private-sector organizations. Find out more at [GNRC.org](http://GNRC.org).

## About this Solicitation

The Greater Nashville Regional Council (GNRC) is seeking qualification statements from interested attorneys or law firms for the provision of legal services relating to the Public Guardianship Program. The resulting contract period will be July 1, 2022, to June 30, 2026.

**The GNRC intends to contract with one or more attorneys or law firms to cover the entire thirteen-county service area.**

## Important Dates and Deadlines

**RFQ issued** 4/7/2022, **Written questions** accepted through 4/22/22, **Responses due** by 2 p.m. CDT, 5/6/22

## Inquiries and Contact Information

All inquiries should be directed in writing to [rfp@gnrc.org](mailto:rfp@gnrc.org) with a subject line that includes the RFQ number.

## Amendments to this Solicitation

Any doubt as to the requirements of this RFQ or any apparent omission or discrepancy should be presented in writing to the contact person identified in section 3.1 of this document. The appropriate action will be taken as necessary, and GNRC may issue a written amendment to the RFQ. Oral statements or instructions will not constitute an amendment to this RFQ. Amendments will be posted online at [GNRC.org/Procurement](http://GNRC.org/Procurement) along with the original RFQ document.

## Non-Discrimination

GNRC does not discriminate on the basis of race, color, national origin, limited English proficiency, gender, gender identity, sexual orientation, age, religion, creed or disability in admission to, access to, or operations of its programs, services, or activities. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline or any other employment practices because of non-merit factors is prohibited. Any person who believes that discrimination has occurred by GNRC, its contractors,

grant sub-recipients, or consultants may file a written complaint with the GNRC Non-Discrimination Coordinator. Complaints may also be filed with the state or federal agency involved, and with the Tennessee Human Rights Commission.

Complaints must be filed within 180 days of the alleged discrimination. Complaints should be directed to Grant Kehler, Title VI and Non-Discrimination Coordinator, 220 Athens Way, Suite 200, Nashville, TN 37228, phone number 615-862-8828.

GNRC adheres firmly to principles of nondiscrimination. Additionally, GNRC is actively seeking services from minority-owned, women-owned, and Tennessee services-disabled owned businesses, as well as small businesses. All such businesses are encouraged to apply, whether or not official designations have been obtained.

### **ADA Accommodations**

The Americans with Disabilities Act of 1990 prohibits discrimination against individuals with disabilities in employment, transportation, public accommodation, communications, and governmental activities. If you need any reasonable accommodation related to this RFQ, please provide our ADA coordinator with as much advance notice as possible. Requests or complaints should be directed to ADA Coordinator Grant Kehler by phone at 615-862-3519 or via mail to 220 Athens Way, Suite 200, Nashville, TN 37225.

### **Limited English Proficiency (LEP) Policy**

It is the policy of the GNRC to take reasonable steps to provide timely and meaningful access for LEP individuals coming in contact with the GNRC and its programs. Individuals needing assistance with translation services may contact Avaza Language Services Corporation at 615-534-3405 or 800-482-8282, 24 hours a day and 7 days a week.

### **Protests**

Controversies or disputes concerning protest of qualifications of bidders, suspension from bidding, the invitation to bid process, and any stay of award prior to the actual award shall be resolved as follows:

Vendors may document their position and protest in writing and request reevaluation within ten days of the bid opening or award, whichever is applicable. The GNRC staff members responsible for superintending the particular procurement shall review the protest and provide a memorandum to the Program Director and Executive Director. All relevant levels of administration shall review the reevaluation and make written comments regarding their thoughts and recommendations. The Executive Director or designee shall review the reevaluation, make a determination, and notify the Vendor of the decision. If the reevaluation does not resolve the disagreement, the Vendor may request evaluation of the record, including the written protest documentation, through a hearing with the Executive Director. The Executive Director shall issue a letter to the bidder as to findings and decisions. The evaluation by the Executive Director shall be submitted to the Executive Committee for review. This process shall constitute the final determination of GNRC. GNRC does not discriminate on the basis of race, color, national origin, limited English proficiency, gender, gender identity, sexual orientation, age, religion, creed or disability in admission to, access to, or operations of its programs, services, or activities. This policy applies to applicants for employment and current employees as well as sub-recipients and subcontractors of the GNRC that receive federal funding. Complaints should be directed to Grant Kehler, Non-Discrimination Coordinator, 220 Athens Way, Suite 200, Nashville, TN 37228, phone number 615-862-8863.

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# Section 1. Background

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## 1.1 About the GNRC

The Greater Nashville Regional Council (GNRC or Regional Council) is a public body corporate and politic initially created by the Tennessee Development District Act of 1965 and further empowered by Title 64, Chapter 7, Part 1, Tennessee Code Annotated (TCA), as amended (the Act). GNRC is owned by and operated on behalf of its local government membership comprised county governments in the counties of Cheatham, Davidson, Dickson, Houston, Humphreys, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson, and Wilson, Tennessee, and all incorporated municipalities and metropolitan governments located within these counties.

GNRC is governed by a regional body comprised of city mayors, county mayors/ executives, state legislators, appointments representing business/industry, and appointments representing minority populations. The Regional Council's Executive Board convenes monthly to enact the adopted Annual Work Program and Budget on behalf of the membership and oversee the GNRC's programs and services carried out by its staff.

## 1.2 About the Project

GNRC is seeking qualified legal counsel to provide it with representation in its role as District Public Guardian.

The GNRC is designated by the Tennessee Commission on Aging and Disability (TCAD) as the Area Agency on Aging and Disability (AAAD) for thirteen counties in Middle Tennessee to provide programs, services, advocacy, inter-agency linkages and coordination, and information-sharing opportunities to improve the quality of life for older or disabled Middle Tennesseans. The AAAD delivers a range of federal and state programs through GNRC's professional social workers and counselors who work in partnership with local agencies and private-sector organizations. Find out more at [GNRC.org](http://GNRC.org)

### Service Area

The planning and service area for the GNRC AAAD includes Cheatham, Davidson, Dickson, Houston, Humphreys, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson, and Wilson Counties.

### Program Description

Following is a brief description of the program:

- The **Public Guardianship for the Elderly Program** was created under Tenn. Code Ann. § 34-7-103 to provide guardianship services for adults age 60 and over who, due to physical or mental limitations, are unable to make personal decisions regarding their health and safety, manage their resources, or who have become susceptible to fraud or undue influence, and have no one willing and able to act on their behalf. The statutory authority has been extended to apply to certain individuals under age sixty.

The program is administered by the Tennessee Commission on Aging and Disability (TCAD), TCAD contracts with local Area Agencies on Aging and Disability (AAADs) who hire staff to serve as the District Public Guardian. District Public Guardians and their staff are held to the same standards as conservators and guardians as outlined in Tenn. Code Ann. Title 34.

# Section 2. Scope of Project

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## 2.1 Requirements

GNRC intends to award a contract to one or more qualified lawyer or firm to serve in the position of outside counsel to provide the Services described in Section 2.2. The following General Requirements should be considered a minimum set of requirements:

1. Respondents that neglect to accurately fill out and return a complete response by the designated deadline, including required signatures, certifications, and proof of licenses (if requested) shall be disqualified from this process.
2. If the Respondent wishes to provide services to more than one AAAD, the Respondent must submit a signed and dated original, one copy, and an electronic copy via email of the entire response to each AAAD for the county or counties for which services are being proposed, to be received no later than the date specified.
3. During the course of any contract, Respondents must make available for GNRC and/or the state at any time all pertinent documents, reports, procedures, and program policies required for monitoring purposes, provided, however, that acquiescence to monitoring does not operate as a waiver of GNRC's rights to confidentiality.

## 2.2 Scope of Services

The Services under consideration in this Request for Qualifications include:

1. Serving as GNRC's counsel of record in all matters relating to the Public Guardianship Program.
2. Assisting with preparation of filings that the District Public Guardian is required to file.
3. Filing petitions, accountings, motions, and other documents as necessary to further the interests of GNRC and its guardianship clients.
4. Managing and conducting such litigation as is necessary to serve the interest of GNRC's guardianship clients.
5. Preparing required documents such as Powers of Attorney.
6. Assisting GNRC with following Program requirements as established by TCAD, to include participation in audit processes as necessary.
7. Attending meetings and trainings as necessary and generally supporting Program goals.
8. Cooperating with other interested parties to serve the needs of the Program.

# Section 3. Instructions to Respondents

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## 3.1 Pre-Submission Inquiries

All inquiries should be directed in writing to [rfp@gnrc.org](mailto:rfp@gnrc.org) by the end of the day on April 22, 2022. The email must include a subject line that contains the RFQ number. Answers will be provided in writing and made available to all potential Respondents. All questions and answers compiled through April 22 will be posted online at [GNRC.org/Procurement](http://GNRC.org/Procurement) as an addendum to the solicitation. Any correspondence related to the RFQ should refer to the appropriate RFQ number, page, and paragraph number.

## 3.2 Submission Requirements

One electronic copy (PDF format) and one hard copy of the response with an original, authorized signature must be received at GNRC, 220 Athens Way, Suite 200, Nashville, TN, 37228 on or before 2 p.m. CDT, May 6, 2022. The response must be clearly marked "Attention: RFQ 2022-11" on the outside surface of the package. A copy should be maintained for the Respondent's records.

Responses should include all typed, completed forms included with this RFQ. There are no page limits or specific formatting requirements, but Respondents are encouraged to be mindful of the level of effort involved in reviewing responses.

## 3.3 Statement Contents

The Statement of Qualifications must address the following criteria and be submitted in this order:

### Cover Letter

1. Please provide a cover page that includes the attorney or firm name and contact information. Please state the contact person title and contact information, which must include an email address.
2. Please place a copy of this certification on your cover page and ensure that a duly authorized representative signs it.

#### Certification:

I certify that the above information is correct and complete to the best of my knowledge. I also certify that to the best of its knowledge or belief, no GNRC staff person or board member or employee of the State of Tennessee is financially interested, directly or indirectly, with my firm or in the purchase of services as described in the RFQ.

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Name & Title

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Date

### Qualifications, Experience, References, and Conflicts

1. Introduce yourself or your firm. If applicable, provide a summary of the structure of administration, organization, and staffing, including multiple offices, if applicable. Describe for us your approach to advancing principles of nondiscrimination.
2. Identify the Tennessee law license numbers and date of relevant court admissions for each person who will be providing services. If any person who would be providing services has any public discipline from the Tennessee Board of Professional Responsibility or the equivalent entity in any other jurisdiction, please disclose and provide an explanation.
3. Provide a statement certifying that you have the financial solvency and capacity to undertake the work.

4. Include a chronology of company history, along with any mergers, acquisitions, or divestitures in the last ten years.
5. If your company has been indicted for any reason in the last five years or has ever filed for reorganization or bankruptcy, please provide dates and resolution.
6. Provide a general description of the experience of the firm in the last 36 months in performing services of similar kind and scope, including project schedule and budget, where applicable.
7. Submit a reference list, providing three references who can speak to your work on matters similar to the scope of services described in this RFQ. Where possible, please include at least one reference who can speak to your work with a public entity.
8. Provide information if your firm has been involved in litigation or other legal action against the Greater Nashville Regional Council, any of its member counties or cities or the Mid-Cumberland Area Development Company.
9. For conflicts or potential conflicts that are waivable, please provide appropriate information.

### **Response to Scope of Services**

1. Provide a summary of your understanding of the requirements of this RFQ, with particular attention to your understanding of Tennessee's conservatorship laws and the Public Guardianship Program as well as an overview of your experience in the courts that have jurisdiction over the Program. It might be helpful for you to review the portion of TCAD's Program and Policy Manual that relates to the Public Guardianship Program. It is located here:  
<https://www.tn.gov/content/dam/tn/aging/documents/PGChapter%2010-9-3-20.pdf>
2. Provide your expectations of GNRC as a client. What do you need from GNRC in order to facilitate your work?
3. Describe any potential constraints on your representation and your approach to mitigation. For example, if you do not work in our entire 13-county region, which counties do you cover? Are you in a position to associate counsel in other counties? If so, please provide information about that firm that is responsive to the Scope of Services.
4. Provide names, titles, and statements of qualifications and specific areas of experience for all personnel who will work on this project and the relevance of similar assignments completed by key staff. An organizational chart would be helpful.

### **Description of Work Methodology**

1. Describe your delegation approach as it relates to assignment of attorneys, support staff, and general matters.
2. Describe your client communication plan and your capacity and capability to perform work on short notice and in a timely manner.
3. Describe your general approach to managing a case file and, if applicable, your transition plan for assuming representation.
4. If applicable, describe how the firm will manage the performance of services provided by subcontractors (such as title companies).
5. Describe your billing fee assessment and process.
6. Describe how you incorporate technology (such as videoconference, e-signature, online notaries, etc.) to streamline work processes.

7. If you are a sole proprietor or single-member entity, please provide a brief (1-2 sentence) description of any contingency plans for your organization in the event you are unable to work.
8. If your office address is a virtual office, please identify the physical location where your files are kept. This is the location that must be made available for audit purposes.

### **Cost and Terms**

Please provide an estimate of the costs for providing the services. This should include your hourly rate. Since this is anticipated to be a multi-year contract, you may indicate proposed rates on a calendar year basis. Note that, in some circumstances, attorney fees are recoverable through the assets of the ward, based upon a sliding scale established by TCAD. Please provide your proposed engagement letter, and please identify whether the engagement letter is for review purposes only. Please note that successful attorneys or firms will be required to show proof of professional liability insurance.

### **DBE Form**

Required only to the extent that you wish to be considered as a DBE or that you anticipate associating counsel to fulfill the Scope. DBE Form is provided as Attachment A to this RFQ.

### **Corrections, Amendments, and Clarifications**

Include signed copies of all corrections, amendments, and clarifications to this RFQ. Such corrections, amendments, and clarifications will be posted to [GNRC.org/Procurement](http://GNRC.org/Procurement) alongside the original RFQ document.

## **3.4 Terms and Conditions**

### **Accuracy of Information**

Failure to provide complete and accurate information in an offer to this solicitation may result in your response being deemed non-responsive. GNRC may institute debarment proceedings against the Respondent and/or terminate any contract or purchase order that has been awarded based on inaccurate information.

### **Validity of Responses**

All responses shall be valid for a period of 120 days from the closing date of the solicitation unless another timeframe is agreed to by all parties. Submission of a response does not afford rights to the Respondent nor obligate GNRC in any manner.

### **Preparation Costs**

GNRC will not be liable for any costs incurred by a Respondent in the preparation of its response to a solicitation, nor for the presentation of its response and/or participation in any clarifications, discussions, negotiations, or protests.

### **Ambiguity, Conflicts, and Irregularities**

Respondent is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in this solicitation prior to submitting their offer, or it shall be waived. Claims of ambiguity after submission of the offer shall not serve as grounds for a protest.

If a Respondent discovers any ambiguity, conflict, discrepancy, omission, or other error in the solicitation, they shall immediately request modification or clarification in writing via email to the address of the person identified on the cover page. Required modifications or clarifications will be issued by solicitation amendment.

GNRC reserves the right to waive minor irregularities in responses provided that such action is in the best interest of GNRC. Any such waiver shall not modify any remaining solicitation requirements or excuse the Respondent from full compliance with the solicitation specifications and other contract requirements if the Respondent is awarded a contract.

## **Standard Contracting Terms**

GNRC's sample contract terms for legal services (which are subject to change in GNRC's discretion) are attached to this solicitation as Attachment B. The Respondent must be willing to accept the standard terms and conditions. Any desired exceptions to the terms and conditions must be identified in the cover letter. If no exceptions to the contract are stated, they might not be granted after the contract is awarded. Contract exceptions may result in the rejection of the response as non-responsive; if, in the sole evaluation of GNRC, the requested changes are unacceptable.

## **Respondent's Rights**

All materials submitted in response to this RFQ become the property of GNRC upon delivery and are to be appended to any formal documentation, which would further define or expand the contractual relationship between the GNRC and the Respondent.

# Section 4. Selection Process

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## 4.1 Opening

Responses will be opened at 2:30 p.m. on May 6, 2022, by the GNRC executive director or his/her designee at the primary office location of GNRC (220 Athens Way, Suite 200, Nashville, TN 37228).

## 4.2 Evaluation

Please note that the selection of an attorney or firm to provide the described scope of services will not be made on cost alone and will be made based on the consideration of qualifications-related factors contained in this Request for Qualifications. If necessary to fulfill the scope, one or more attorneys or firms may be selected.

## 4.3 Oral Interviews

Based upon the evaluation of the written responses, the GNRC may request representatives from the highest-ranking responses to participate in an in-person or telephone interview in order to answer questions.

## 4.4 Solicitation Outcomes

GNRC is not obligated to contract with anyone as a result of this solicitation.

Notwithstanding any other provision of this RFQ, the GNRC, expressly reserves the right to:

- Waive any immaterial defect or informality,
- Reject any or all responses, or portions thereof,
- Make changes to or reissue this Request for Qualifications,
- Modify the number and types of data to be collected to meet budgetary limitations, or
- Cancel the Solicitation.

# Attachment A. DBE Form

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## DISADVANTAGED BUSINESS ENTERPRISE OUTREACH AND PARTICIPATION FORM

<b>Solicitation Number:</b>					
Name of DBE Firm	Type of DBE	Certifying Entity	Date of Contact	Form of Contact	Anticipated Participation
<b>Reason for no contact:</b>					
<p><b>Instructions</b></p> <ul style="list-style-type: none"> <li>• <i>Type of DBE:</i> Minority-Owned, Woman-Owned</li> <li>• <i>Certifying Entity:</i> List at least one local or state agency within Tennessee who has recognized the firm as a MWBE</li> <li>• <i>Date of Contact:</i> Most recent date that the Offeror requested participation from the firm</li> <li>• <i>Form of Contact:</i> Email, written letter, etc.</li> <li>• <i>Anticipated Participation:</i> Indicate if the firm has a formal role in the Proposal as a prime contractor, subcontractor, or third-party vendor</li> <li>• <i>Reason for no contact:</i> If no outreach was conducted to recruit the participation of MWBE. Offerors who fail to conduct outreach may be deemed non-responsive.</li> <li>• <i>Use multiple copies of this sheet to include additional firms</i></li> <li>• <i>Complete and attach the "Good Faith Efforts" form</i></li> </ul>					

# Attachment B. Sample Contract Terms

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**PROFESSIONAL SERVICES CONTRACT  
BETWEEN  
GREATER NASHVILLE REGIONAL COUNCIL  
AND  
<Contractor>**

This Professional Services Contract, by and between the Greater Nashville Regional Council, hereinafter referred to as the "GNRC", and <Contractor> hereinafter referred to as the "Contractor," is entered into on July 1, 2022.

**BACKGROUND**

GNRC serves as the Area Agency on Aging and Disability for the 13-county and 52-city region of the upper middle Tennessee Area. GNRC desires to retain legal counsel to provide services for the Public Guardianship Program for the Elderly. Contractor has agreed to provide services to the Public Guardianship Program for the Elderly of the GNRC service area. GNRC and Contractor intend for this Contract to govern each of their rights and obligations with respect to such engagement.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties contract and agree as follows:

**A. SCOPE OF SERVICES:**

A.1. <Contractor> agrees to provide legal services to the Public Guardianship Program for the Elderly of the GNRC service district with the following overall duties and responsibilities:

- a) Prepare petitions, motions, orders, and pleadings related to clients of the Program;
- b) Provide legal advice to Program staff regarding Tennessee law as it relates to Conservatorships, including but not limited to, authority and responsibility of the Fiduciary, individual rights, and rights of interested parties;
- c) Make Court appearances on behalf of the Program in its thirteen (13) county district service area.

A.2. For <Contractor> to perform her obligations under this Contract, GNRC agrees to provide the following:

- a) All Program information, licenses and bonds necessary to properly and adequately represent the Program;
- b) All client file information necessary to properly and adequately represent the client, including but not limited to, Order of Appointment, Inventory, Accountings, client statistical data, and time and cost data in file ready format.

A.3. GNRC, as part of this Contract and this Scope and Limitation of GNRC Services, will not:

- a) Provide instruction, training, supervision, oversight, control or direction in the modes, ways, methods, details, manner, or means of how <Contractor> is to do the work or perform the services under this Contract. <Contractor>'s means of performance of this Contract are within <Contractor>'s exclusive control.
- b) Require schedule or routine of work except a final completion date.

- c) Infringe or inhibit <Contractor>'s right and ability to employ others in assisting <Contractor> in the performance of this Contract except that <Contractor> must warrant to GNRC that she will adhere to the provisions as outlined in this contract.
- d) Require that <Contractor> work exclusively for GNRC.
- e) Hold out, present, or imply to others that <Contractor> is an agent, representative, or employee of GNRC.
- f) Provide office space, desks, equipment or supplies except as noted in Section 3 (A) above.

**B. TERM OF CONTRACT:**

This Contract will be effective for the period beginning on July 1, 2022, and ending on June 30, 2026. GNRC will have no obligation to the Contractor for fulfillment of the Scope outside the Term.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event will the maximum liability of GNRC under this Contract exceed <AMOUNT> DOLLARS (\$#####.##). This Contract does not grant the Contractor any exclusive rights. GNRC does not guarantee that it will buy any minimum quantity of services under this Contract.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not authorized by GNRC. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless GNRC requests work and the Contractor performs said work This Contract does not grant the Contractor any exclusive rights.

- C.2. Compensation Firm. The maximum liability provided in Section C.1 of this Contract will constitute the entire compensation due the Contractor for work performed under this Contract for all services performed under this Contract regardless of the difficulty. The maximum liability of GNRC under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended. The payment maximum liability includes all applicable taxes, fees, overhead, costs of insurance, and all other direct or indirect costs incurred or to be incurred by the Contractor.
- C.3. Travel Compensation. The Contractor will not be compensated or reimbursed for travel, meals, or lodging.
- C.4. Invoice Procedure. The Contractor will submit to GNRC for payment an invoice along with a report of work undertaken, accomplished or progress made in fulfilling the Contractor's work under the "Scope of Services." The amount of payment requested in each invoice can be based on an estimate of the percentage of work accomplished under the "Scope of Services" or upon a payment schedule agreed to by both parties. Starting from the effective date of this Contract, invoices and progress reports made by the Contractor to GNRC must be submitted no more often than monthly or no less than quarterly. Invoices will be submitted to:

Greater Nashville Regional Council, 220 Athens Way, Suite 200, Nashville, TN 37228.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. GNRC is not bound by this Contract until it is signed by the contracting parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations, and GNRC bylaws.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this 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, will be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

GNRC:

Michael Skipper, Executive Director  
Greater Nashville Regional Council  
220 Athens Way, Suite 200  
Nashville, TN 37228  
[mkipper@gnrc.org](mailto:mkipper@gnrc.org)  
Phone # 615-862-8828  
Fax # 615-862-8840

The Contractor:

Contractor Contact Name & Title  
Contractor Name  
Address  
Email Address  
Telephone # Number  
FAX # Number

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties to this Contract and approved by appropriate officials in accordance with applicable Tennessee laws and regulations, and GNRC bylaws.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the GNRC reserves the right to terminate the Contract upon written notice to the Contractor. Said termination will not be deemed a breach of Contract by GNRC. Upon receipt of the written notice, the Contractor will cease all work associated with the Contract. If the GNRC terminates this Contract due to a lack of funds availability, the Contractor will be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should GNRC exercise its right to terminate this Contract due to unavailability of funds, the Contractor will have no right to recover from GNRC any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5. Termination for Convenience. GNRC may terminate this Contract for convenience without cause for any reason. A termination for convenience will not be deemed a breach of contract by GNRC. GNRC will give the Contractor at least thirty (30) days written notice before the termination date. The Contractor will be entitled to compensation for satisfactory, authorized service completed as of the termination date. In no event will GNRC be liable to the Contractor for compensation for any service which has not been satisfactorily performed by the Contractor. In no event will the

GNRC's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the GNRC for any damages or claims arising under this Contract.

- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract ('Breach Condition'), GNRC will have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services. Notwithstanding the above, the Contractor will not be relieved of liability to GNRC for damages sustained by virtue of any Breach Condition and GNRC may seek other remedies allowed by law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor will not assign this Contract or enter into a subcontract for any of the services provided under this Contract without the prior written approval of GNRC. Notwithstanding any use of the approved subcontractors, the Contractor will be the prime contractor and responsible for compliance with all terms and conditions of this Contract. GNRC reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation will be paid directly or indirectly to an employee or official of GNRC 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 under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract will be null and void if the Contractor is, or within the past six (6) months has been, an employee of GNRC or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of GNRC.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person will be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this 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 or state law. The Contractor will, upon request, show proof of nondiscrimination and will post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-3-309, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee or other state entities, will be a material provision of this Contract, a breach of which will be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor will not knowingly utilize the services of an illegal immigrant in the performance of this Contract and will not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor will reaffirm this attestation, in writing, by submitting to GNRC a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the term of this Contract. All Contractor attestations will be maintained by the Contractor and made available to GNRC officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the term of this Contract, the Contractor will obtain and retain a current, written attestation that the subcontractor will not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and will not knowingly utilize the services of any subcontractor who will utilize the services of an illegal

immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors will be maintained by the Contractor and made available to GNRC officials upon request.

- c. The Contractor will maintain records for all personnel used in the performance of this Contract. Contractor's records will be subject to review and random inspection at any reasonable time upon reasonable notice by GNRC.
  - d. The Contractor understands and agrees that failure to comply with this Section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" will be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor will maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, will be maintained for a period of five (5) full years from the date of the final payment and will be subject to audit at any reasonable time and upon reasonable notice by GNRC, Tennessee Commission on Aging and Disability, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements will be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract will be subject to monitoring and evaluation by the Council, the Tennessee Commission on Aging and Disability, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor will submit brief, periodic, progress reports to the Council as requested.
- D.14. Strict Performance. Failure by any party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract will not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract will be held to be waived, modified, or deleted except by a written amendment signed by the parties to this Contract.
- D.15. Independent Contractor. The parties to this Contract will not act as employees, partners, joint venturers, or associates of one another. The parties to this Contract are independent contracting entities. Nothing in this Contract will be construed to create an employer/employee relationship or to allow either party 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 are not the employees or agents of the other party. GNRC will not provide Contractor with office space, desks, equipment or supplies.

The Contractor, being an independent contractor and not an employee of GNRC, agrees to carry adequate public liability and other appropriate forms of insurance, including worker's compensation insurance on its employees when required by law, and to pay all applicable taxes incident to this Contract. The Contractor will indemnify GNRC and hold it harmless for any costs to GNRC arising from Contractor's failure to fulfill its responsibilities as an independent contractor.

- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act (“PPACA”), or any other federal and state mandated requirements, with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the GNRC and hold it harmless for any costs to the GNRC arising from Contractor’s failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of GNRC’s Liability. GNRC will have no liability except as specifically provided in this Contract. In no event will GNRC be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. GNRC’s total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise will under no circumstances exceed the Maximum Liability as specified in Section C. 1, herein. This limitation of liability is cumulative and not per incident.
- D.18. Hold Harmless. The Contractor agrees to indemnify and hold harmless GNRC as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it will be liable for the reasonable cost of attorney’s fees for GNRC to enforce the terms of this Contract.

In the event of any suit or claim, the Parties to this Contract will give each other immediate notice and provide all necessary assistance to respond. The failure of GNRC to give notice will only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section will not grant the Contractor, through its attorneys, the right to represent GNRC in any legal matter.

- D.19. HIPAA Compliance. The Council and Contractor will 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 will survive the termination of this Contract.
- a. Contractor warrants to GNRC that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with GNRC including cooperation and coordination with GNRC privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The GNRC and the Contractor will sign documents required by the Privacy Rules and that are reasonably necessary to keep GNRC and Contractor in compliance with the Privacy Rules. This provision will not apply if information received or delivered by the parties under this 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. The Business Associate Agreement between the parties to this Contract attached to this Contract as Attachment 2, is deemed a part of this Contract and is incorporated therein, and upon the Parties signing this Contract, the Parties will also be

bound by the attached Business Associate Agreement as fully as if signed as a separate document.

- d. The Contractor will indemnify GNRC 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 GNRC because of the violation.
- D.20. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and GNRC under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.21. Tennessee Department of Revenue Registration. The Contractor will comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.22. 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 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 any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor will provide immediate written notice to the Council 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.

- D.23. 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 Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this 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 Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the Council of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the Council 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, the Council may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this 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 Contract or charge the Council any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.24. State and Federal Compliance. The Contractor will comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.25. Governing Law. This Contract will 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 Contract.
- D.26. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.27. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract will not be affected and will remain in full force and effect. The terms and conditions of this Contract are severable.
- D.28. Headings. Section headings of this Contract are for reference purposes only and will not be construed as part of this Contract.
- D.29. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items will govern in order of precedence below:
  - a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with attachments.

**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 Contract, the special terms and conditions will be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information will 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 GNRC or

acquired by the Contractor on behalf of GNRC that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section will permit 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 the Council or third parties. Confidential Information will not be disclosed except as required or permitted under state or federal law. Contractor will 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 will survive the termination of this Contract.

- E.3. Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the Council, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor will also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

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

The sign will be of the form prescribed by the Comptroller of the Treasury. The Contractor will request copies of the sign from GNRC and the GNRC will provide signs to contractors.

- E.4. 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 will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - c. The Contractor will 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 subrecipients will 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 Section 1352, title 31, *U.S. Code*.

- E.5. Insurance. The Contractor will carry adequate liability and other appropriate forms of insurance, including worker compensation insurance when required by law.

- E.6. Personal Information. In addition to the requirements of Section E.2, the Contractor will not sell or disclose information obtained from persons served under this Contract, including but not limited to names, addresses, social security numbers and other personally identifiable information, to third parties without the express written consent of the GNRC. Additionally, the Contractor will not obtain the social security numbers of persons served under this Contract. If the Contractor violates this section, the violation will constitute a Breach Condition, and GNRC will have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services.
- E.7. Ownership of Work Product/Assignment of Product Rights. All work performed by Contractor under this Contract is work made for hire and is the property of GNRC. All work products including but not limited to forms, legal documents, information materials, reports, background check documentation, text, and exhibits produced by Contractor in the performance of this Contract are owned by GNRC, and, on completion or termination of the Contract, Contractor must deliver these materials to GNRC.
- E.8. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the GNRC as required.

The Contractor will comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
- (1) The Contractor will report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
- i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or Section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).
- As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.
- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with

respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to GNRC by the end of the month during which this Contract is awarded.
  - c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to GNRC by the end of the month in which the amendment to this Contract becomes effective.
  - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the Council may terminate this Contract for cause. GNRC will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

**AGREED:**

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<Contractor>, <TITLE>

DATE

**GREATER NASHVILLE REGIONAL COUNCIL:**

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**MICHAEL SKIPPER, EXECUTIVE DIRECTOR**

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<b>SUBJECT CONTRACT NUMBER:</b>	<CONTRACT NUMBER>
<b>GRANTEE LEGAL ENTITY NAME:</b>	<CONTRACTOR>
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b>	<EIN>

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

\_\_\_\_\_  
**SIGNATURE**

Name and Title  
\_\_\_\_\_  
**PRINTED NAME**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

\_\_\_\_\_  
**DATE OF ATTESTATION**

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT of 1996 (HIPAA)  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (Agreement) is a part of and is incorporated into the Contract between the Greater Nashville Regional Council (Council) and <Contractor> (Contractor) in accordance with Section D.19. of the Contract. This Agreement shall be effective as of the date of the last of the Parties to sign on the signature page of the Contract. This Business Associate Agreement is entered into by and between the **Greater Nashville Regional Council** (hereinafter referred to as "GNRC") and <Contractor> (hereinafter referred to as "Business Associate").

In the course of executing the Contract, Business Associate may come into contact with, use, or disclose "protected health information" as that term is used in the federal Health Insurance Portability and Accountability Act of 1996, as amended, hereinafter referred to as "HIPAA". In accordance with the federal privacy regulations set forth at 45 C.F.R. Part 160, Part 162 and Part 164, which require GNRC, to have a written contract known as a Business Associate Agreement with persons or entities that help GNRC (as a covered entity under HIPAA) carry out its health care activities and functions, the Parties to the Contract wish to establish satisfactory assurances that will appropriately safeguard "protected health information" and comply with all relevant HIPAA rules and regulations. Therefore the Parties to the Contract and this Agreement, GNRC and Business Associate, agree as follows:

**1. Definitions:**

Terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501. Specially defined terms in this Agreement are as follows:

(a) Agreement. "Agreement" shall mean the Business Associate Agreement between GNRC and the Business Associate contained in this Agreement between GNRC and the Business Associate.

(b) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to the Agreement, shall mean <Contractor>, whose principal address is <Address>.

(c) Contract. "Contract" shall mean the Contract between GNRC and the Business Associate of which this Agreement is made a part of.

(d) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.13, and in reference to the party to this Agreement, shall mean GNRC, whose principal address is 220 Athens Way, Suite 200, Nashville, TN 3228.

(e) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 in effect and as amended. The "HIPAA Privacy Rule" is at 45 CFR, part 160 and part 164, subparts A and E. The "HIPAA Security Rule" is at 45 CFR Parts 160 and 164. The "HIPAA Breach Notification Rule" is at 45 CFR Part 164, Subpart D.

(f) Parties. "Parties" shall mean the parties to the Contract and Agreement, both Business Associate and Covered Entity. "Party" shall mean one of the two Parties.

**2. Obligations of Business Associate**

Business Associate Agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by this Agreement or as required by law, and to fully comply with all the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Rules.
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement, and to use appropriate procedural, physical, and electronic safeguards to prevent use or disclosure of protected health information other than as provided for by this Agreement. Said safeguards shall include, but are not limited to, requiring employees to agree to use or disclose protected health information only as permitted or required by this Agreement and taking related disciplinary actions for inappropriate use or disclosure as necessary.
- (c) Notify GNRC of any use or disclosure of protected health information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware as soon as practicable, but not exceeding five (5) business days. Additionally, business associate shall notify GNRC in the same manner of any suspected or potential breach of its obligation to not disclose protected health information in violation of this Agreement and the HIPAA Rules. Any notification under this subsection shall include, to the extent possible, the identification of each individual whose protected health information has been or is reasonably believed by the business associate to have been accessed, acquired, used, or disclosed during the breach and shall include all available information that is required to be in the notification to the individual under 45 CFR 164.404(c).
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree by written contract to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Require its employees, agents, and sub-contractors to immediately report, to the business associate, any use or disclosure of protected health information in violation of this Agreement and to report to GNRC any use or disclosure of the protected health information not provided for by this Agreement.
- (f) If business associate receives protected health information from GNRC in a designated record set, then business associate agrees to provide access, at the request of GNRC, to protected health information in a designated record set, to GNRC or, as directed by GNRC, to an individual in order to meet the requirements under 45 CFR 164.524, provided that business associate shall have at least thirty (30) days from GNRC's notice to provide access to or deliver such information.
- (g) If business associate receives a request from an individual for a copy of the individual's protected health information, and the protected health information is in the sole possession of the business associate, business associate will provide the requested copies to the individual and notify GNRC of such action. If business associate receives a request for protected health information in the possession of GNRC, or receives a request to exercise other individual rights as set forth in the privacy rule, business associate shall notify GNRC of such request and forward the request to GNRC. Business associate shall then assist GNRC in responding to the request.
- (h) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by GNRC pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;

- (i) Provide to GNRC or an individual, in time and manner designated by GNRC, information collected and maintained in accordance with this Contract, to permit GNRC to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528, provided that business associate shall have at least thirty (30) days from GNRC's notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the protected health information was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure.
- (j) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- (k) Make its internal practices, books, and records available to GNRC and the Secretary of the U.S. Department of Health and Human Services, or the Secretary's designee, for purposes of determining compliance with the HIPAA Rules.
- (l) Mitigate, to the extent practicable, any harmful effect that is known to the business associate of a use or disclosure of protected health information by the business associate in violation of the requirements of this Agreement.
- (m) Document disclosures of protected health information and information related to such disclosures as would be required for GNRC to respond to a request by an individual for an accounting of disclosure of protected health information in accordance with 45 CFR 164.528.
- (n) Limit any use, disclosure, or request for use or disclosure of protected health information to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the privacy rule and other HIPAA Rules.

### **3. Permitted Uses and Disclosures by Business Associate**

- (a) Business associate may only use or disclose protected health information as necessary to perform the services set forth in the Contract.
- (b) Business associate may use or disclose protected health information as required by law.
- (c) Except as otherwise limited herein, business associate may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, GNRC as specified in the Contract, provided that such use or disclosure would not violate the privacy rule or other HIPAA Rules if done by GNRC.
- (d) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.
- (e) Except for the specific uses and disclosures set forth herein, business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity.
- (f) Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business

associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- (g) Except as otherwise limited herein, business associate may use protected health information to provide Data Aggregation services to GNRC as permitted by 42 CFR 164.504(e)(2)(i)(B).
- (h) Limit any use, disclosure, or request for use or disclosure of protected health information to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the privacy rule.

#### **4. Term and Termination**

- (a) Term. This Agreement shall be effective as of the date on which this Agreement is signed by the last of the two parties to sign the Contract to which this Agreement is attached and made a part of, and shall terminate when all of the protected health information provided by GNRC to business associate or created or received by business associate on behalf of GNRC, is destroyed or returned to GNRC, or, if it is infeasible to return or destroy protected health information, Section 6 herein shall apply.
- (b) Termination for Cause. The Contract authorizes and business associate acknowledges and agrees GNRC shall have the right to immediately terminate the Contract in the event business associate fails to comply with, or violates a material provision of, requirements of the HIPAA Rules or this Agreement. Upon GNRC's knowledge of a material breach by business associate, GNRC shall, whenever practicable, provide a reasonable opportunity for business associate to cure the breach or end the violation. If business associate has breached a material term of this Agreement and cure is not possible or if business associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, GNRC, GNRC may immediately terminate the Contract.
- (c) Reporting. If neither cure nor termination is feasible, GNRC shall report the violation to the Secretary of the United States Department of Health and Human Services or the Secretary's designee.

#### **5. Obligations of GNRC.**

GNRC Agrees to:

- (a) Provide business associate with the notice of privacy practices that GNRC produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (b) Provide business associate with any changes in, or revocation of, permission by an Individual to use or disclose protected health information, if such changes affect business associate's permitted or required uses.
- (c) Notify business associate of any restriction to the use or disclosure of protected health information that GNRC has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect business associate's use of protected health information.
- (d) Not request business associate to use or disclose protected health information in any manner that would not be permissible under the privacy rule if done by GNRC.

## 6. **Obligations of Business Associate Upon Termination.**

- (a) Except as provided in subsection (b) below, upon termination of the Contract, for any reason, business associate shall, at direction of the GNRC, return or destroy all protected health information received from GNRC, or created or received by business associate on behalf of GNRC. This provision shall apply to protected health information that is in the possession of sub-contractors or agents of business associate. Business associate shall retain no copies of the protected health information.
- (b) In the event that business associate determines that returning or destroying the protected health information is not feasible, business associate shall provide to GNRC notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of protected health information is unfeasible, business associate shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction unfeasible, for so long as business associate maintains such protected health information.
- (c) In the event that business associate continues to maintain protected health information after termination of this Contract, business associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Agreement, for as long as business associate retains the protected health information;
- (d) The obligations of business associate under this Section shall survive the termination of this Agreement.

## 7. **Miscellaneous**

- (a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. Nevertheless, business associate and GNRC shall comply with any amendment to the Health Insurance Portability and Accountability Act, Public Law 104-191, and amendment to the HIPAA Rules upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- (c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- (d) Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth in Section D.2. (Communications and Contacts) of the Contract, or to such other party, facsimile number, or address as may be hereafter specified by written notice.
- (e) Effective Date of Notices. All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after

the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

- (f) Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.
- (g) Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- (h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee and of the United States of America.

