

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT is made this 27 day of February 2015, by and between the CITY OF BIRMINGHAM, ALABAMA (the "City") and Bleakly Advisory Group, Inc., a Georgia corporation (the "Consultant").

WITNESSETH:

WHEREAS, Consultant has previously been retained by the City to assist the City of Birmingham's Community Development Department with conducting a comprehensive commercial real estate market analysis for the Pratt City neighborhoods of North Pratt, Central Pratt and South Pratt;

WHEREAS, the City and the Consultant desire to enter into this Agreement under which the Consultant shall provide such professional consulting services for the City as are set forth herein.

NOW THEREFORE, in consideration of the covenants, conditions and agreements expressed herein, the parties hereby agree as follows:

1. **DESCRIPTION OF SERVICES.** Consultant shall perform the Services described in the scope of work set forth in the letter attached as **Exhibit A** to this Agreement.
2. **TIME FOR PERFORMANCE.** Consultant will complete the performance of the Services within two months following the Effective Date of this Agreement.
3. **TERMS OF PAYMENT.**

(a) Consultant shall be paid an amount from the Community Development Block Grant-Disaster Recovery (CDBG-DR) repayment funds or other sources, as may be designated by the Mayor, not to exceed **Twenty-Eight Thousand Seven Hundred and Fifty Dollars (\$28,750.00)**.

(b) Consultant shall be paid a fixed fee to be made monthly on a "percent complete" basis reflecting the separate progress completed for each Task/Deliverable listed in the Bleakly Advisory Group, Inc.'s Project Cost /Scope of Work as outlined in the attached **Exhibit A**. Accordingly, Bleakly Advisory Group, Inc. shall submit monthly billing invoices reflecting the progress and completion for a given month for each Task/Deliverable listed in the Bleakly Advisory Group, Inc.'s Project Cost table as reflected in the attached **Exhibit A**, as well as the project to date percentage completed for each Task/Deliverable, and any direct expenses. The Director of Community Development will approve all pay requests for completion. The City shall remit payment

to Bleakly Advisory Group, Inc. within thirty (30) days of the approved date of invoice. All fees and expenses incurred must be covered within **Twenty-Eight Thousand Seven Hundred and Fifty Dollars (\$28,750.00)** amount as outlined in 3 (a) above.

(c) Consultant's invoices may be rejected, revised and resubmitted, subject to conditions indicated in paragraphs (i) and (ii) below:

(i) Should the City's representative determine, in review of an invoice, that the Services and deliverables for which billing is submitted in required form have not been satisfactorily or completely provided, the City's representative may reject the invoice and return it to the consultant for revision and resubmission, provided that the reason(s) for the rejection or the disputed Services or deliverables are identified in writing to the Consultant.

(ii) Upon receipt of notice of rejection of an invoice, the Consultant may revise and resubmit the invoice, provided that the Consultant also makes, in timely fashion, reasonable efforts to correct or complete the disputed Services or deliverables identified in the City representative's written rejection. If the City Representative determines, in the exercise of his or her sole and reasonable judgment, that satisfactory progress in completing the Services or deliverables so identified has not been made within thirty (30) calendar days of the Consultant's receipt of the rejection, the City representative may direct the Consultant, in writing, to stop further work until the City representative determines that satisfactory progress is being made, at which time the City will inform the Consultant, in writing, that the Consultant may resume work.

(d) If City fails to make timely payment of an invoice that is undisputedly owed and an Event of Default (as defined herein) occurs, Consultant may suspend its provision of the Services until the City pays all undisputed amounts due for the Services. No interest will be paid on late payments. To the extent that the payment terms herein are contrary to the language of your proposal dated August 27, 2014, the provisions herein supersede those contrary provisions.

4. RELATIONSHIP OF PARTIES. The City and Consultant agree that nothing contained in this Agreement nor any act of Consultant or of the City shall be deemed or construed by either of the parties hereto or by third persons to create any relationship of third party beneficiary hereof, or of principal and agent, or of a limited or a general partnership, or of a joint venture, or of any association or relationship between Consultant and the City other than as set forth herein. It is understood by the parties that the Consultant is an independent contractor with respect to the City, and not an employee of the City. Neither the City nor any of its agents shall have control over the conduct of the Consultant or any of the Consultant's employees, agents or subcontractors except as herein set forth. The City will not withhold payment for taxes, provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of the Consultant, its agents or employees. The Consultant shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of the City.

5. USE OF AGENTS OR ASSISTANTS. To the extent reasonably necessary to enable the Consultant to perform the duties under this Agreement, the Consultant is authorized to

engage the services of any agents or assistants that the Consultant may deem proper and further to employ, engage, or retain the services of such other persons, businesses, or corporations to aid or assist the Consultant in the proper performance of the Consultant's duties. The Consultant shall assign only competent personnel to the performance of such duties. The Consultant shall ensure that such agents and assistants, if any, who perform services under this Agreement shall comply with the provisions of this Agreement.

6. PERFORMANCE STANDARDS. Consultant agrees that all Services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent for professionals in the industry. The Consultant specifically agrees that its subcontractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform. The Consultant shall prepare all work products required by this Agreement in a professional manner and shall conform to the standards of quality normally observed by a person practicing in the Consultant's profession. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Services required by this Agreement.

7. RECORDKEEPING. The Consultant shall maintain sufficient records to document its use and expenditure of all funds paid to the Consultant pursuant to this Agreement. All pertinent books, accounts, or other records accumulated by the Consultant pursuant to this Agreement must be accessible to representatives of the City and the City may, at reasonable times and places, audit the books and records of the Consultant related to the Services during the term of this Agreement and for three (3) years from the date of final payment of the City funds under the terms of this Agreement. Consultant shall keep the City fully informed as to the progress of the work and shall submit to the City such oral and written reports as the City may reasonably request.

8. LICENSES. Before commencing any of the Services, Consultant, at its expense, will secure and maintain in full force and effect throughout the term of this Agreement all licenses, permits or other governmental authorizations needed to complete its work, including without limitation, a business license issued by the City.

9. OWNERSHIP OF INFORMATION; CONFIDENTIALITY. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request. Consultant shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose. All memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input recorded data, written information, and other documents and data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. Consistent with the professional standard of care and unless otherwise specifically provided

herein, Consultant shall be entitled to rely upon the accuracy of data and information provided by the City or others without independent review or evaluation. These materials shall not, without the City's prior written consent, be used by Consultant for any purposes other than the performance of the services under this Agreement. Nor shall these materials be disclosed to any person or entity not connected with the performance of services under this Agreement. Nothing furnished to Consultant that is otherwise known to Consultant, or is generally known, or has become known to the related profession shall be deemed confidential. Consultant shall not use City's name or insignia, photographs relating to the Project for which Consultant's services are rendered, or any publicity pertaining to the Consultant's series under this Agreement in any magazine, trade paper, newspaper, television or radio production, or other similar medium without the City's prior written consent.

10. OFFSET FOR OVERDUE FEES, TAXES, ETC. Pursuant to Executive Order of the Mayor of Birmingham No. 76-09 (effective as of August 21, 2009), Consultant acknowledges and agrees that the City has the right to deduct from the total amount of consideration to be paid, if any, to Consultant under this Agreement all unpaid, delinquent, or overdue license fees, taxes, fines, penalties and other amounts due the City from Consultant.

11. REPRESENTATION AND WARRANTIES OF CONSULTANT. Consultant makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) Consultant is a corporation organized and existing under the law of the State of Georgia, is qualified to do business in and is in good standing under the laws of the State of Alabama, has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement.

(b) The execution and delivery of this Agreement by or on behalf of Consultant has been duly authorized by a resolution of Consultant's governing body duly adopted and by all other necessary actions.

(c) The execution and performance of this Agreement by Consultant do not constitute and will not result in the breach or violation of any contract, lease, mortgage, bond, indenture, franchise, permit or agreement of any nature to which Consultant is a party.

(d) Consultant certifies that it has not employed or retained any company or person to solicit or secure its selection to enter into this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability at its discretion.

(e) There are no outstanding judgments, orders, writs, injunctions, or decrees of any government entity, no pending Legal Proceedings or material threats of Legal Proceedings, against or affecting Consultant before or by any court, board, commission or agency whatsoever which would have a material effect on Consultant's performance of its

obligations under this Agreement. For purposes of this Agreement, "Legal Proceedings" shall mean an action, litigation, arbitration, administrative proceeding, claim and other legal or equitable proceeding of any kind.

(f) Consultant has the expertise and is qualified to perform the Services described in this Agreement. Consultant is familiar with all Federal, State, Local, and Municipal laws, codes, ordinances, rules, and regulations which in any manner affect those engaged or employed in the work, or the materials or equipment used in or upon the Services or in any way affect the Services.

(g) Consultant acknowledges that it is not a debarred Federal contractor.

12. LIABILITY/INDEMNIFICATION. The Consultant shall be responsible for all personal injury or damage to life or property due to its activities and that of its subcontractors, agents, or employees in connection with its services under this Agreement and the Consultant shall hold harmless and indemnify the City from any and all claims and damages arising from such injury or damage in connection with any activity of the Consultant or any of the Consultant's agents, contractors or employees in the performance of this Agreement, from and against any and all claims arising from a material breach or default in the Consultant's performance of any obligation herein and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action against the City, and the Consultant, upon notice from the City, shall defend the same at the Consultant's expense by counsel satisfactory to the City. Neither party to this Agreement shall be liable to the other party or any third party claiming through the other respective party, for any special, punitive, incidental, indirect or consequential damages of any kind including but not limited to lost profits or loss of use, loss of access, that may result from this Agreement, or out of any goods or services furnished hereunder.

13. INSURANCE.

(a) Throughout the term of this Agreement, Consultant shall maintain, keep in force and pay premiums on a policy or policies of comprehensive public liability and property insurance relating to all activities of Consultant allowed under this Agreement hereunder in limits not less than:

- (i) \$1,000,000.00 for any occurrence resulting in bodily or personal injury to, or death of, one person;
- (ii) \$1,000,000.00 for any occurrence resulting in bodily or personal injury to or death of, more than one person;
- (iii) \$1,000,000.00 for any occurrence resulting in damage to, or destruction of, any property;
- (iv) the Alabama statutory limits for Worker's Compensation; and

(v) \$1,000,000 per claim and in the aggregate for professional liability insurance for Consultant's negligence in the rendering of its professional services.

(b) Consultant shall provide the City with a certificate of insurance evidencing such coverage, if requested, and a copy of the actual insurance policy. With respect to each such policy (except for Worker's Compensation) Consultant shall provide at least thirty days (30) notice if the policy is altered or cancelled before the expiration date thereof in advance of such alteration or cancellation. In the event any such policy is canceled or terminated or if the limits are reduced, Consultant shall promptly obtain a new policy or policies in the same limits. Such policy shall name the City of Birmingham as an additional insured. Consultant acknowledges that its obligations under this Section 13 shall survive the termination of this Agreement.

14. GENERAL COMPLIANCE WITH LAWS. The Consultant shall comply, and shall cause its officers, agents, employees and contractors to comply, with the provisions of all State, Federal and Local laws, statutes, ordinances and regulations applicable to the performance of this Agreement.

15. DEFAULT. Each of the following shall be an "Event of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

(a) Failure by either Party to perform or observe any agreement, covenant or condition required by this Agreement to be performed or observed by said Party, which failure shall have continued for a period of thirty (30) days after written notice specifying, in reasonable detail, the nature of such failure and requiring it to perform or observe the agreement, covenant or condition with respect to which it is delinquent, shall have been given to the Party in alleged default by the aggrieved Party unless (i) the aggrieved Party shall agree in writing to an extension of such period prior to its expiration, or (ii) during such thirty (30) day period or any extension thereof, the Party in alleged default has commenced and is diligently pursuing appropriate corrective action, or (iii) the Party in alleged default is time prevented from performing or observing the agreement, covenant or condition with respect to which it is delinquent by reason of acts of God or the public enemy, strikes, lockouts, work slowdowns or stoppages or other labor disputes, insurrections, riots or other civil disturbances, orders of the government of the United States of America or of any state of the United States of America or of any of the departments, agencies, political subdivision or officials of the United States of America or of any state thereof, or orders of any other civil or military authority, or partial or entire failure of public utilities, adverse economic conditions or any other condition or event beyond the reasonable control of said Party;

(b) Any material warranty, representation by or on behalf of Consultant contained in this Agreement, or in any other document furnished by Consultant in connection with this Agreement or the Services being false or misleading in any material respect at the time made;

(c) Institution by Consultant of proceedings for Consultant to be adjudicated bankrupt or insolvent, or consent by Consultant to the filing of a bankruptcy or insolvency

proceeding against it, or the filing by Consultant of a petition or answer or consent seeking relief under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, or consent by Consultant to the institution of proceeding thereunder or to the filing of any such petition, or consent by Consultant to the appointment of, or the taking of possession of any of its property by, a receiver, trustee, custodian or assignee in bankruptcy or insolvency of Consultant of an interest in all or a major part of its property, or an assignment by Consultant for the benefit of its creditors, or a written admission by Consultant of its inability to pay its debts generally as they become due, or the taking of any corporate action by Consultant in furtherance of any of the foregoing events or actions;

(d) The entry of a decree or order by a court of competent jurisdiction for relief in respect of Consultant or adjudging Consultant to be a bankrupt or insolvent or approving as properly filed a petition seeking the arrangement, adjustment or composition of its obligations under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, which decree or order shall have continued undischarged or unstayed for a period of sixty (60) days; or the entry of a decree or order of a court of competent jurisdiction for the appointment of a receiver, trustee, custodian or assignee in bankruptcy or insolvency for Consultant or for all or a major part of its property, which decree or order shall have remained in force undischarged or unstayed for a period of sixty (60) days; or

(e) The City's nonpayment of Consultant's compensation or other amounts due after thirty (30) days written demand for payment.

16. REMEDIES. If an Event of Default by Consultant is not cured within the period of time set forth in this Agreement, or such additional time as the City shall allow, the City may terminate this Agreement. In the case of an Event of Default by the City, the Consultant may terminate this Agreement and, in the event of any such termination, Consultant shall be entitled to payment for services satisfactorily performed and expenses reasonably incurred prior to the date of termination.

17. TERMINATION FOR CONVENIENCE. Notwithstanding any provision in this Agreement, either party may terminate this Agreement by giving the other party thirty days written notice. In the event of such termination for convenience, Consultant agrees that (i) City shall not be obligated to pay for any Services performed after the date of receipt of such notice; and (ii) the City's sole liability and responsibility, and Consultant's sole remedy for such termination, is limited to the City paying Consultant for Services performed before termination.

18. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

19. WAIVER OF CONTRACTUAL RIGHT. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

20. ASSIGNMENT. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Accordingly, Consultant may not assign this Agreement or any portion thereof to any other party without the prior written consent of the City. In the event the City gives such consent, the terms and conditions of this Agreement shall apply to and bind the party or parties to whom such work is assigned as fully and completely as the Consultant is hereby bound and obligated.

21. NOTICES. All notices, reports, documents and invoices related to this Agreement provided hereunder shall be mailed by regular, registered or certified mail, postage prepaid, delivered by hand or by , addressed as follows:

If to the City:

City of Birmingham
Community Development Department
10th Floor, City Hall, Room 1000
710 North 20th Street
Birmingham, Alabama 35203
Attention: John Colon, Director

With a copy to:

City of Birmingham
City Attorney
710 North 20th Street, Room 600
Birmingham, Alabama 35203
Attention: James C. Stanley

If to the Consultant:

Bleakly Advisory Group, Inc.
6000 Lake Forrest Drive, Suite 108
Atlanta, Georgia 30328
Attention: Kenneth D. Bleakly, Jr., President

22. EFFECTIVE DATE. This Agreement shall become effective on the date upon which it is executed by the last party to sign (the "Effective Date").

23. APPLICABLE LAW. The laws of the State of Alabama shall govern this Agreement. The parties agree that venue concerning any dispute regarding the terms and

enforcement of this Agreement shall be in a court of competent jurisdiction in Jefferson County (Birmingham Division).

24. IMMIGRATION ACT COMPLIANCE. Consultant represents and warrants that it does not knowingly employ, hire for employment, or continue to employ an “unauthorized alien,” as defined by the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56) of the Alabama Legislature, as amended from time to time (the “Act”) and that, during the performance of this Agreement, Consultant shall participate in the E-Verify program as required under the terms of the Act.

By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

Furthermore a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

25. NONDISCRIMINATION.

(a) Consultant (and its employees, agents and subcontractors) shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Services. Failure to perform these requirements is a material breach of this Agreement and may result in its termination as the City deems appropriate.

(b) During the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or disability. The Consultant shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or disability.

26. PERFORMANCE OF GOVERNMENT FUNCTIONS. Nothing contained in this Agreement shall be deemed or construed so as to in any way stop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

27. PARTICIPATION OF HISTORICALLY UNDERUTILIZED BUSINESS ENTERPRISES. Consultant acknowledges and agrees that the City, as a matter of public policy, encourages participation of minority-and women-owned and other disadvantaged business enterprises to the maximum extent possible. This policy includes historically under-utilized business enterprises such as architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of the City’s business, economic and community revitalization programs.

28. SECTION TITLES AND HEADINGS. The section titles and headings in this Agreement are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

29. AMENDMENT. This Agreement may be modified or amended only by a written instrument signed by both parties.

30. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first set forth above.

CITY

ATTEST:

CITY OF BIRMINGHAM, ALABAMA

By: _____
Lee Frazier, City Clerk

By: _____
William A. Bell, Sr., Mayor

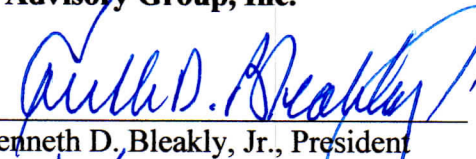
Date: _____

Approved as to Form by Law Department:

Assistant City Attorney/Date

CONSULTANT

Bleakly Advisory Group, Inc.

By:  _____
Kenneth D. Bleakly, Jr., President

Date: 2/21/15

EXHIBIT A
PROJECT COST / SCOPE OF WORK

Bleakly Advisory Group, Inc. will be responsible for the following Tasks/Deliverables which will result in a comprehensive commercial real estate market analysis for the Pratt City neighborhoods of North Pratt, Central Pratt and South Pratt, as outlined below:

Fee Schedule-

Task	Hours	Total
Demographic Analysis	40	\$5,800
Real Estate Market Characteristics	20	\$2,900
Commercial Real Estate Demand Analysis	16	\$2,320
Catalyst Projects	24	\$3,480
Public Participation/ Report	50	\$7,250
Public Participation/ Report*	50	\$6,000
Travel and Data Acquisition	N/A	\$1,000
TOTAL		\$28,750

*Subcontractor's public participation/ report fee. Billed at rate of \$120/ hr.

Projected Cost:

Bleakly Advisory Group, Inc.'s standard hourly rates are as follows:
\$145 per hour

All fees and expenses not to exceed **Twenty-Eight Thousand Seven Hundred and Fifty Dollars (\$28,750.00).**