

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 7th day of February 2017, by and between the CITY OF BIRMINGHAM, ALABAMA (the "City") and DYNAMIC CIVIL SOLUTIONS, INC. ("Firm"), a corporation.

WITNESSETH

WHEREAS, the City of Birmingham obtained price quotations from an adequate number of qualified sources pursuant to 24 CFR Part 85 and 41 U.S.C. 403(11); and

WHEREAS, Firm submitted a proposal in response to the City's solicitation thereof and the City has decided to retain the services of Firm; and

WHEREAS, the City and Firm desire to enter into this Agreement under which Firm shall provide such professional topographical and survey boundary 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.** Firm 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.** Firm will complete the performance of the Services within twenty-four (24) months following the Effective Date of this Agreement.

3. **TERMS OF PAYMENT.**

(a) Firm 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 **Eleven Thousand Eight Hundred Dollars (\$11,800.00)**, plus an additional allowance for reimbursable Additional Services expenses not to exceed **One Thousand Dollars (\$1,000)**.

(b) The City may request additional services (the "Additional Services"), as defined below, during the term of this Agreement. Such Additional Services shall only be performed by Firm upon prior written notice being given by the City to Firm approving such Additional Services and upon both parties agreeing to the scope of such Additional Services. If Firm performs any Additional Services without prior written notice being provided to the City, the City shall not be liable for any fees or expenses incurred by Firm in providing such Additional Services. All fees and expenses incurred must be covered within the **One Thousand Dollars (\$1,000)** amount as outlined in Section 3(a).

(i) The City may request that Firm propose a fixed maximum fee for any Additional Services or may agree to have the Additional Services performed on an hourly basis.

(ii) Firm's fee for Additional Services performed on an hourly basis shall be based on the rates indicated in **Exhibit A**.

(iii) Firm must, prior to the City granting approval of such Additional Services, notify the City if any time extension is required for completion of the Services described in the Scope of Work if Firm provides Additional Services.

(iv) Additional Services will include, without limitation:

- a. Services such as travel that are not included in the Scope of Work in the letter attached as **Exhibit A** to this agreement;
- b. Additional deliverables such as printing not included in the Scope of Work; and
- c. Changes to the Scope of Work that would significantly alter the amount of work involved in developing the Scope of Work

(c) Firm shall be paid a monthly fee to be made monthly on a "percent complete" basis reflecting the progress completed for each Task/Deliverable listed in Firm's Project Cost/Scope of Work as outlined in the attached **Exhibit A**. Accordingly, Firm shall submit monthly billing invoices reflecting the progress and completion for a given month for each Task/Deliverable listed in Firm's Project Cost table as reflected in the attached **Exhibit**, 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 Firm within thirty (30) days of the approved date of invoice. All fees and expenses incurred must be covered within the **Twelve Thousand Eight Hundred Dollars (\$12,800.00)** amount as outlined in 3(a) above.

(d) Firm'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 Firm for revision and resubmission, provided that the reason(s) for the rejection or the disputed Services or deliverables are identified in writing to Firm.

(ii) Upon receipt of notice of rejection of an invoice, Firm may revise and resubmit the invoice, provided that Firm 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 Firm's receipt of the rejection, the City representative may direct Firm, in writing, to stop further work until the City representative determines that satisfactory progress is being made, at which time the City will inform Firm, in writing, that Firm may resume work.

(e) If City fails to make timely payment of an invoice that is undisputedly owed and an Event of Default (as defined herein) occurs, Firm 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 Firm's proposal dated October 5, 2016, the provisions herein supersede those contrary provisions.

4. MONITORING AND EVALUATION. Firm shall work under the direction of the City's Community Development Department, which will monitor and evaluate the performance of this agreement. The Director of the Community Development Department shall be the designated correspondent for the City of Birmingham in all matters regarding this agreement. All correspondence shall be submitted to the Community Development Department Director, 710 North 20th Street, Room 1000, Birmingham, AL 35203-2286.

5. RELATIONSHIP OF PARTIES. The City and Firm agree that nothing contained in this Agreement nor any act of Firm 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 Firm and the City other than as set forth herein. It is understood by the parties that Firm 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 Firm or any of Firm'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 Firm, its agents or employees. Firm 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.

6. USE OF AGENTS OR ASSISTANTS. To the extent reasonably necessary to enable Firm to perform the duties under this Agreement, Firm is authorized to engage the services of any agents or assistants that Firm may deem proper and further to employ, engage, or retain the services of such other persons, businesses, or corporations to aid or assist Firm in the proper performance of Firm's duties. Firm shall assign only competent personnel to the performance of such duties. Firm shall ensure that such agents and assistants, if any, who perform services under this Agreement shall comply with the provisions of this Agreement.

7. PERFORMANCE STANDARDS. Firm 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. Firm 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. Firm 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 Firm's profession. Except as set forth herein, Firm shall, at its

sole cost and expense, provide all facilities and equipment that may be necessary to perform the Services required by this Agreement.

8. RECORDKEEPING. Firm shall maintain sufficient records to document its use and expenditure of all funds paid to Firm pursuant to this Agreement. All pertinent books, accounts, or other records accumulated by Firm 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 Firm 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. Firm 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.

9. LICENSES. Before commencing any of the Services, Firm, 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.

10. OWNERSHIP OF INFORMATION; CONFIDENTIALITY. All plans, studies, documents and other writings prepared by and for Firm, 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 Firm for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Firm or to any other party. Firm shall, at Firm's expense, provide such reports, plans, studies, documents and other writings to City upon written request. Firm 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 Firm in connection with the performance of this Agreement, shall be held confidential by Firm. Consistent with the professional standard of care and unless otherwise specifically provided herein, Firm 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 Firm 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 Firm that is otherwise known to Firm, or is generally known, or has become known to the related profession shall be deemed confidential. Firm shall not use City's name or insignia, photographs relating to the Project for which Firm's services are rendered, or any publicity pertaining to Firm'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.

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

12. REPRESENTATION AND WARRANTIES OF FIRM. Firm makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) Firm is a corporation organized and existing under the laws of the State of Alabama, 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 Firm has been duly authorized by a resolution of Firm's governing body duly adopted and by all other necessary actions.

(c) The execution and performance of this Agreement by Firm 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 Firm is a party.

(d) Firm 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 Firm before or by any court, board, commission or agency whatsoever which would have a material effect on Firm'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) Firm has the expertise and is qualified to perform the Services described in this Agreement. Firm 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) Firm acknowledges that it is not a debarred Federal contractor.

13. LIABILITY/INDEMNIFICATION. Firm 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 Firm shall hold harmless and indemnify the City, its elected and appointed official, directors, officers, employees and agents from any and all claims and damages arising from such injury or damage in connection with any activity of Firm or any of Firm'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 Firm'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 Firm, upon notice from the City, shall defend the same at Firm'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.

14. INSURANCE.

(a) Throughout the term of this Agreement, Firm 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 Firm 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 Firm's negligence in the rendering of its professional services.

(b) Firm 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) Firm 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, Firm shall promptly obtain a new policy or policies in the same limits. Such policy shall name the City of Birmingham as an additional insured. Firm acknowledges that its obligations under this Section 13 shall survive the termination of this Agreement.

15. GENERAL COMPLIANCE WITH LAWS. Firm 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, including the Disaster Appropriations Act of 2013, Pub. L. 113-2, and Fed. Reg. 32262 (May 29, 2013), applicable to the performance of this Agreement.

16. 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 Firm to perform or observe any agreement, covenant or condition required by this Agreement to be performed or observed by Firm, 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 Firm by the City unless (i) the City 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, Firm has commenced and is diligently pursuing appropriate corrective action, or (iii) Firm 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 Firm;

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

(c) Institution by Firm of proceedings for Firm to be adjudicated bankrupt or insolvent, or consent by Firm to the filing of a bankruptcy or insolvency proceeding against it, or the filing by Firm 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 Firm to the institution of proceeding thereunder or to the filing of any such petition, or consent by Firm 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 Firm of an interest in all or a major part of its property, or an assignment by Firm for the benefit of its creditors, or a written admission by Firm of its inability to pay its debts generally as they become due, or the taking of any corporate action by Firm 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 Firm or adjudging Firm 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 Firm 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 Firm's compensation or other amounts due after thirty (30) days written demand for payment.

17. REMEDIES. If an Event of Default by Firm 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, Firm may terminate this Agreement and, in the event of any such termination, Firm shall be entitled to payment for services satisfactorily performed and expenses reasonably incurred prior to the date of termination.

18. TERMINATION AND SUSPENSION.

(a) This Agreement may be terminated by City for its convenience upon thirty (30) days' written notice to Firm. If this Agreement is terminated by City for convenience Firm shall be paid the amounts due for Services performed and expenses incurred up to the effective date of termination.

(b) City may terminate Firm (i) for cause if Firm has materially failed to perform its duties and obligations under this Agreement and if City has given Firm written notice of the intent to terminate for cause and the reasons for the intent to terminate for cause and has allowed Firm fourteen (14) days to cure the alleged reasons and has thereafter provided written notice of termination, or (ii) for a suspension of sixty (60) days or more based on order of a court or other authority having jurisdiction or other event not the fault of either party, upon City giving fourteen (14) days' written notice.

(c) Firm may terminate this Agreement for (i) nonpayment by City or (ii) material breach or failure of City to comply with this Agreement.

(d) City may in writing order Firm to suspend all or any part of the Services for a Project for the convenience of City upon a stoppage beyond the control of City or Firm.

(e) Persons assigned by Firm to another Project during such suspension periods and not available to return to a Project upon cessation of the suspension shall be replaced.

19. 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.

20. 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.

21. ASSIGNMENT. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Firm. Accordingly, Firm 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 Firm is hereby bound and obligated. For administrative

functions, the City representative is the Director of Community Development unless notice is given to all parties by the mayor of the City.

22. **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 Colón, 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 Firm:

Dynamic Civil Solution, Inc.
2210 2nd Avenue North
Birmingham, AL 35203
Attention: Bolaji Kukoyi

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

24. **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).

25. **IMMIGRATION ACT COMPLIANCE.** Firm 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, Firm 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.

26. NONDISCRIMINATION.

(a) Firm (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, Firm 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. Firm 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.

27. 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.

28. PARTICIPATION OF HISTORICALLY UNDERUTILIZED BUSINESS ENTERPRISES. Firm acknowledges and agrees that the City, as a matter of public policy, encourages participation of minority-and women-owned business enterprises to the maximum extent possible, subject to 24 CFR Pt. 85.36, which requires competitive procurements to be conducted in a manner providing full and open competition and prohibits the imposition of geographical or other unduly restrictive preferences in the evaluation of bids and proposals.

29. 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.

30. AMENDMENT. This Agreement contains the entire understanding of the parties, and no change of any term or provision of the Agreement shall be valid or binding unless so amending by written instrument which has been executed or approved by the recipient (City). Such actions include change of agreement effective dates, changes to program focus and performance goals pursuant to the established Scope of Work. Any such amendments shall become an official part of this agreement by attachment.

31. 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: _____

02/07/2017

Approved as to Form by Law Department:

James C. Hardy 2/6/17

Assistant City Attorney/Date

DYNAMIC CIVIL SOLUTIONS, INC.

By: _____

Wolfgang Krug

Date: _____

1/31/17

Exhibit A:

Project Cost / Scope of Work

Firm shall provide survey and engineering services related to the design of the OnePratt park project in the Pratt Community. The scope of the services shall include:

- Topographic survey of the area highlighted in the attached map in Exhibit B
- Re-survey of the following parcels into one parcel
 - o 22 00 20 3 015 001.000
 - o 22 00 20 3 015 002.000
 - o 22 00 20 3 015 003.000
 - o 22 00 20 3 015 004.000
 - o 22 00 20 3 015 005.000
 - o 22 00 20 3 014 007.000
 - o 22 00 20 3 015 008.000
- Record Map, including attending public hearing

The fee for the proposed scope of services shall be as follows:

Topographic Survey	\$2,950.00
Boundary Survey	\$8,850.00
Reimbursable Allowance	\$1,000.00
Total	\$12,800.00

Exhibit B:

Topographic survey area

