



DIVERSITY PLAN AGREEMENT (Liberty Park Project)

This Diversity Plan Agreement (“Agreement”) is entered into as of _____, 2021 (the “Effective Date”) by and between the ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE, a public not-for-profit corporation of the State of Tennessee, with an office in Memphis, Tennessee (“EDGE”), and the City of Memphis, Tennessee (“City”), a Tennessee municipal corporation, with respect to the following:

PRELIMINARY STATEMENTS

A. EDGE has issued its \$75,000,000.00 Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee Liberty Park Revenue Bonds, Series 2021 (Federally Taxable), (the “Series 2021 Bonds Obligation”) to finance the development of a 22-acre site encompassed with a 230,000 square foot Sports and Event Complex containing a hardcourt pavilion with basketball and volleyball courts, an events pavilion containing 75,000 square feet of column free space including 2,000 fixed bleacher seats, and will also include three outdoor turf fields and the infrastructure necessary for an 18-acre portion of the site to be transformed into a mixed-use private development area focused on hospitality, retail, entertainment, office space use, and market-rate housing located at the Memphis Fairgrounds Campus, now known as Liberty Park (the “Liberty Park Project”).

B. EDGE has requested that the City, receiving economic incentives through EDGE for the Project (“Economic Incentives”), participate in a diversity plan as contemplated in this Agreement (“Diversity Plan”) in connection with the operation of the Project.

C. This Agreement will set out the terms and conditions among the parties to establish and enforce the Diversity Plan.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations created hereby, EDGE and the City intending to be legally bound, agree as follows:

1. **Diversity Plan Participation.** The City shall document or cause its operator for the Memphis Sports & Events Center in the Liberty Park Project to document good faith efforts to contract with local minority, women-owned and small businesses that are certified and registered with either the City of Memphis or Shelby County firms in the construction and ongoing operation of the Project based on targeted goals that are agreed as outlined below:

Over the initial three (3) year period of the Term, as defined below, the City will have discretionary spending for construction of the Project in the following estimated amount:

	Total Spending	M/WBE	Percent
Construction	\$75,000,000	\$18,750,000	25%

The City has estimated the ongoing expenditures for goods and services used in the ongoing operation of the Project for which it is feasible to use local third-party suppliers. These spending obligations shall not apply to internal activities of the City nor shall they apply to expenditures for which there are less than three local qualified minority or women owned business enterprises (“MWBE”) vendors eligible to provide the goods or services to the City of Memphis or to Shelby County. The following are estimated annual averages for purchases through local firms over the Term of this Agreement for which the City agrees to utilize good faith efforts to achieve with MWBEs through its operator for the Memphis Sports & Events Center in the Liberty Park Project:

	Total Spend	M/WBE	Percent
Professional Services	\$280,000	\$70,000	25%
Goods	\$21,705,600	\$5,426,400	25%
Non-Professional Services	<u>\$7,980,000</u>	<u>\$1,995,000</u>	25%
	\$29,965,600	\$7,491,400	

Additionally, the City shall list all open positions for the Project with the Work Force Investment Network so long as such network shall exist.

2. **Term.** This Agreement is effective on the Effective Date and shall expire six months after the last of a) the termination of the tourism development zone for the Project, or b) the repayment in full of the Series 2021 Bonds Obligation. Notwithstanding anything herein to the contrary, this Agreement shall terminate if EDGE terminates its diversity requirements.

3. **Reporting by City.** Starting January 1, 2022, and continuing annually until the last of a) the termination of the tourism development zone for the Project or b) the expiration of the tax increment financing for the Project, or c) the repayment in full of the Series 2021 Bonds Obligation. The City shall submit a full and complete certified report to EDGE regarding compliance with this Agreement within sixty (60) days after the close of such period. Such report shall describe the compliance that the City has made regarding the obligations in Section 1 above for the preceding year pursuant to the annual report form attached herein as Exhibit A (“Report Form”) which list the names and amounts for specific qualified vendors. Additionally, each annual report shall state the total jobs, wages (as an average wage and in the aggregate) and capital expenditures during such year for the Project. Each such Report Form shall be signed by an authorized officer or director. The City will cause its operator of the Memphis Sports & Events Center in the Liberty Park Project to submit the necessary information to the City for all reporting purposes.

4. **Recordkeeping and Accounting.** Expenditures made in furtherance of the purposes of the Diversity Plan shall appear on the books and records of the City. The City shall cause its operator of the Memphis Sports & Events Center in the Liberty Park Project to carry all

the Memphis Sports & Events Center in Liberty Park Project expenditures on its books and records and to make the information available to EDGE as if it were a City expenditure pursuant to the terms of this Section 4. The City shall keep back up records and receipts to substantiate such expenditures. The City shall make such books and records regarding compliance with this Agreement available to EDGE at reasonable times, as requested by EDGE or its agents. The City shall keep copies of all books and records regarding compliance with this Agreement and all reports to EDGE regarding compliance with this Agreement for at least four years after the end of the Term of this Agreement. EDGE is hereby authorized to conduct an audit of the City's books and records regarding compliance with this Agreement, and the City shall cooperate fully with any such audit authorized or conducted by EDGE. The City further agrees that EDGE and any of its duly authorized agents shall have the right at all reasonable times upon reasonable notice to the City to examine and inspect the Project to determine that the City is in compliance with the terms and conditions of this Agreement; provided that any such inspection will be conducted in a manner that will minimize any intrusion on the operations of the Project.

5. **Failure to Perform Covenants.** Upon (i) failure of the City, itself or through its operator in the Memphis Sports & Events Center in the Liberty Park Project, to utilize good faith efforts to achieve with MWBEs the requirements set forth in Section 1, (ii) receipt of written notice specifying such failure and requesting that it be remedied, and (iii) the failure of the City, itself or through its operator in the Memphis Sports & Events Center in the Liberty Park Project, to utilize good faith efforts to meet the requirements of Section 1 for the default period during the first six months of the calendar year after which default occurred, the City shall pay to EDGE the difference between the amount that should have been expended with certified MWBEs during such period based on the City's failure to meet the requirements of Section 1, less the amount actually spent by the City with certified MWBEs during such period for the benefit of the Project. The City must certify the MWBE efforts during the six-month period for the amount to satisfy the prior year's default and to evidence that the City is compliant with the current year's MWBE requirement. The amount shall be remitted to EDGE within thirty (30) days of receipt of written demand from EDGE. The City shall pay interest at the highest legal rate for any amount outstanding after the expiration of the initial thirty (30) day notice period.

6. **Agreement to Pay Attorneys' Fees and Expenses.** In the event EDGE should employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the City then the City agrees that it will on demand therefor pay to EDGE, the reasonable fee of such attorneys and such other reasonable expenses incurred by EDGE.

7. **Governing Law.** This Agreement shall be governed by the laws of the State of Tennessee. All actions, whether sounding in contract or tort, relating to the validity, construction, interpretation and legal effect of this Agreement shall be instituted and litigated in the courts of Shelby County, Tennessee or the United States District Court for the Western District of Tennessee. The parties hereto irrevocable submit to the jurisdiction of said courts.

8. **Notices and Communications.** Any notice, request or other communication under this Agreement shall be given in writing and shall be deemed to have been given by either party to the other party at the addresses shown below upon any of the following dates:

- (a) The date of notice by telefax, telecopy, similar telecommunications or an email as an attached scanned PDF document, which is confirmed promptly by hard copy;
- (b) Three Business Days after the date of the mailing thereof, as shown by the post office receipt if mailed to the other party hereto by registered or certified mail;
- (c) The date of the receipt thereof by such other party if not given pursuant to (a) or (b) above.

All notices and communications to EDGE shall be directed to:

Reid Dulberger, President & CEO
Chief Economic Development Officer
Economic Development Growth Engine
Industrial Development Board of the City
Of Memphis and County of Shelby, Tennessee
100 Peabody Place, Suite 1100
Memphis, TN 38103-3652

With Copy to:

Mark Beutelschies
General Counsel
Farris Bobango Branan PLC
999 S. Shady Grove Road, Suite 500
Memphis, TN 38120

All notices and communications to the City shall be directed to:

Mary Claire Borys
170 N. Main St., 3rd Floor
Memphis, TN 38103

With a copy to:

Jennifer Sink
Chief Legal Officer/City Attorney
125 N. Main St. Room 336
Memphis, TN 38103

9. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.

10. **Entire Agreement; Amendments and Waivers.** This Agreement shall supersede any prior oral or written understandings or communications between the parties hereto and

constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by both parties hereto.

11. **Counterparts.** This Agreement may be signed in counterparts, meaning that the Agreement is valid if signed by both parties, even if the signatures of the parties appear on separate copies of the same Agreement rather than on a single document.

IN WITNESS WHEREOF, the parties have caused this Diversity Plan Agreement to be executed on the dates set forth below.

ECONOMIC DEVELOPMENT GROWTH
ENGINE INDUSTRIAL DEVELOPMENT
BOARD OF THE CITY OF MEMPHIS AND
COUNTY OF SHELBY, TENNESSEE

Date: _____

By: _____

Name: _____

Title: _____

ATTEST:

CITY OF MEMPHIS

Comptroller

By: _____

Jim Strickland, Mayor

APPROVED AS TO FORM:

Chief Legal Officer/City Attorney

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a notary public within and for said state and county, at Memphis, Tennessee, duly commissioned and qualified, personally appeared Jim Strickland, and with whom I am personally acquainted, and who upon oath acknowledged himself to be the Mayor of the City of Memphis, a municipal corporation of the State of Tennessee, and that he as mayor being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the municipal corporation by himself as mayor thereof.

WITNESS my hand and seal of office at Memphis, Tennessee, this the ____ day of _____, 2021.

Notary Public

My commission expires: _____