

CONTRACT #3
RFS # 330.02-86313
FA # NA
Edison # 34366

**Department of Economic and
Community Development**

VENDOR:
Takatsugu Yamaguchi



Department of Economic and Community Development

William F. Hagerty
Commissioner

Bill Haslam
Governor

To: Ms. Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee
From: Department of Economic and Community Development
Date: August 30, 2013
Re: Request for approval of contract amendment one with Takatsugu Yamaguchi

Please consider the enclosed request for an amendment to contract # 34366 with Takatsugu Yamaguchi. This contract for foreign direct investment services for Japan was procured via RFP in mid-2012, and was effective beginning November 1, 2012. The original contract was written as a one-year contract with an option to renew in one-year increments for a total contract period of up to three years. The maximum liability of the contract for three years was funded in the original contract. This amendment would represent the exercise of the first one-year renewal period. No other changes to the contract are being requested. Therefore, ECD respectfully requests approval of this contract renewal by the Fiscal Review Committee.

If you have any further questions, please contact Summer Carr at 615-253-1944 or summer.carr@tn.gov.

Attachments:

- Supplemental Documentation Required for Fiscal Review Committee
- Original Edison Contract
- Non-Competitive Amendment Request – Draft
- Proposed Contract Amendment—Draft

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Summer Carr	*Contact Phone:	615-253-1944		
*Original Contract Number:	34366	*Original RFS Number:	33002-69213		
Edison Contract Number: <i>(if applicable)</i>	34366	Edison RFS Number: <i>(if applicable)</i>	33002-69213		
*Original Contract Begin Date:	November 1, 2012	*Current End Date:	October 31, 2013		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	10/31/13				
*Department Submitting:	Economic and Community Development				
*Division:	Business Development				
*Date Submitted:	8/30/13				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Takatsugu Yamaguchi				
*Current Maximum Liability:	\$716,400				
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 2013	FY: 14	FY: 15	FY: 16	FY	FY
\$159,200	\$ 238,800	\$ 238,800	\$ 79,600	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)					
FY: 2013	FY:	FY:	FY:	FY	FY
\$ 159,200	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		n/a			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		n/a			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		n/a			
*Contract Funding	State:	\$716,400	Federal:		

Supplemental Documentation Required for
Fiscal Review Committee

Source/Amount:			
<p>For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.</p> <p>If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.</p> <p><i>“ECD does not believe this section is applicable because this amendment does not make any changes to sections A or C.3. of the contract. This amendment is an exercise of the renewal provision in Section B.2. of the original contract. The original contract provided for a one-year contract term with one-year options for renewal up to a three-year total contract term, and this amendment would represent the first one-year renewal. ECD allocated funds for all three years of the contract term at the outset of the original contract.”</i></p>			

Interdepartmental:		<i>Other:</i>	
If “other” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
No previous amendments	No previous amendments		
Method of Original Award: <i>(if applicable)</i>	RFP		
*What were the projected costs of the service for the entire term of the contract prior to contract award?	\$716,400.00		

Supplemental Documentation Required for
Fiscal Review Committee

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.					
Deliverable description:	FY:	FY:	FY:	FY:	FY:
Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.					
Deliverable description:	FY:	FY:	FY:	FY:	FY:
Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.					
Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Invoice Date	Payment Date	Vendor ID	Vendor Name	Cntrct ID on PO	UOM	Unit Price	Voucher Line Description	Fiscal Year
11/28/2012	12/7/2012	0000120222	Takatsugu Yamaguchi	34366	DO	\$19,900.00	International marketing in Japan	FY-2013 \$159,200.00
12/28/2012	1/15/2013	0000120222	Takatsugu Yamaguchi	34366	DO	\$19,900.00	International marketing in Japan	
1/10/2013	1/29/2013	0000120222	Takatsugu Yamaguchi	34366	DO	\$19,900.00	International marketing in Japan	
2/6/2013	2/27/2013	0000120222	Takatsugu Yamaguchi	34366	DO	\$19,900.00	International marketing in Japan	
3/13/2013	3/26/2013	0000120222	Takatsugu Yamaguchi	34366	DO	\$19,900.00	International marketing in Japan	
4/10/2013	4/26/2013	0000120222	Takatsugu Yamaguchi	34366	DO	\$19,900.00	International marketing in Japan	
5/13/2013	5/29/2013	0000120222	Takatsugu Yamaguchi	34366	DO	\$19,900.00	International marketing in Japan	
6/13/2013	6/27/2013	0000120222	Takatsugu Yamaguchi	34366	DO	\$19,900.00	International marketing in Japan	
7/11/2013	7/26/2013	0000120222	Takatsugu Yamaguchi	34366	DO	\$19,900.00	International marketing in Japan	FY-2014 \$39,800.00
8/13/2013	8/28/2013	0000120222	Takatsugu Yamaguchi	34366	DO	\$19,900.00	International marketing in Japan	
							Total Contract Spend	\$199,000.00

Non-Competitive Amendment Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@state.tn.us

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	
1. Procuring Agency	Department of Economic and Community Development
2. Contractor	Takatsugu Yamaguchi
3. Contract #	34366
4. Proposed Amendment #	1
5. Edison ID #	120222
6. Contract Begin Date	11/1/2012
7. Current Contract End Date – with ALL options to extend exercised	10/31/2013
8. Proposed Contract End Date – with ALL options to extend exercised	10/31/2014
9. Current Maximum Contract Cost – with ALL options to extend exercised	\$ 716,400.00
10. Proposed Maximum Contract Cost – with ALL options to extend exercised	\$ 716,400.00
11. Office for Information Resources Endorsement – information technology service (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
13. Human Resources Support – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
14. Explanation Need for the Proposed Amendment This amendment reflects an exercise of the first of two one-year renewal provisions contained in the original contract.	
15. Name & Address of the Contractor's Principal Owner(s) – NOT required for a TN state education institution Takatsugu Yamaguchi	

Request Tracking #	
<p>Yokohama World Porters, 6F 2-2-1 Shinko, Naka-ku Yokohama, 231-0001, Japan</p>	
<p>16. Evidence Contractor's Experience & Length Of Experience Providing the Service Contractor has provided foreign direct investment services for ECD since 2009.</p>	
<p>17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives This contract was procured competitively via RFP in mid-2012. The original contract was written as a one-year contract with two one-year extensions for a total potential contract term of three years. This amendment would reflect the exercise of the first one-year extension.</p>	
<p>18. Justification – <i>specifically explain why non-competitive negotiation is in the best interest of the state</i> The original contract was written as a one-year contract with two one-year extensions for a total potential contract term of three years. This amendment would reflect the exercise of the first one-year extension.</p>	
<p>Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i></p>	



CONTRACT AMENDMENT

Agency Tracking # 33002-86313	Edison ID 34366	Contract # 34366	Amendment # 1		
Contractor Legal Entity Name Takatsugu Yamaguchi			Edison Vendor ID 120222		
Amendment Purpose & Effect(s) This amendment reflects an exercise of the first of two one-year renewal provisions contained in the original contract.					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: 10/31/2014			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 0		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	\$159,200.00				\$159,200.00
2014	\$238,800.00				\$238,800.00
2015	\$238,800.00				\$238,800.00
2016	\$79,600.00				\$79,600.00
TOTAL:	\$716,400.00				\$716,400.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				<i>OCR USE</i>	
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT 1
OF CONTRACT 34366**

This Amendment is made and entered by and between the State of Tennessee, Department of Economic and Community Development, hereinafter referred to as the "State" and Takatsugu Yamaguchi, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section B.1. is deleted in its entirety and replaced with the following:

B.1. This Contract shall be effective for the period beginning November 1, 2012, and ending on October 31, 2014. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor that were not performed within this specified contract period.

2. The following is added as Contract section D.20.

D.20. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures 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. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Reference, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall 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 shall be maintained by the Contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall 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.

3. Contract Attachment 1 attached hereto is added as a new attachment.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective October 31, 2013. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

TAKATSUGU YAMAGUCHI:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT:

WILLIAM F. HAGERTY, COMMISSIONER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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.

CONTRACTOR SIGNATURE

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.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

**CONTRACT**

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date 11/1/2012	End Date 10/31/2013	Agency Tracking # 33002-86313	Edison Record ID 34366		
Contractor Legal Entity Name Takatsugu Yamaguchi			Edison Vendor ID 120222		
Service Caption (one line only) International marketing in Japan					
Subrecipient or Vendor <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Vendor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	\$159,200.00				\$159,200.00
2014	\$238,800.00				\$238,800.00
2015	\$238,800.00				\$238,800.00
2016	\$79,600.00				\$79,600.00
TOTAL:	\$716,400.00				\$716,400.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Ownership/Control					
<input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input checked="" type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input checked="" type="checkbox"/> RFP		The procurement process was completed in accordance with the approved RFP document and associated regulations.			
<input type="checkbox"/> Competitive Negotiation		The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Alternative Competitive Method		The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Non-Competitive Negotiation		The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.			
<input type="checkbox"/> Other		The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.				OCR USE - FA	
 10/30/12					
Speed Chart (optional) EC00000056		Account Code (optional) 708		Contract #	



**CONTRACT
BETWEEN THE STATE OF TENNESSEE, DEPARTMENT OF
ECONOMIC AND COMMUNITY DEVELOPMENT AND
TAKATSUGU YAMAGUCHI**

This Contract, by and between the State of Tennessee, Department of Economic and Community Development, hereinafter referred to as the "State" and Takatsugu Yamaguchi, hereinafter referred to as the "Contractor," is for the provision of International Marketing, as further defined in the "SCOPE OF SERVICES."

The Contractor is an individual.
Contractor Edison Registration ID: # 0000120222

A. SCOPE OF SERVICES:

A.1. This performance-based contract will be reimbursed upon successful performance of Outputs described in the following with approximate time allocations in parentheses after each Output:

- a. Investment Deal Sourcing (65%)
- b. Investment Promotion Services (10%)
- c. Negotiation and Finalizing Deals (5%)
- d. Investor Relations & Expansion Promotion (5%)
- e. Visiting Tennessee (5%)
- f. Collaborating with Other International ECD Representatives (5%)
- g. Other Duties (3%)
- h. Reporting (2%)

A.2. Contractor will perform the following with respect to A.1.a. Investment Deal Sourcing:

- a. Research and provide investor intelligence on trends in Japan; target opportunities, competitor information and other strategic information.
- b. Research, develop and maintain a database of potential investors interested in Tennessee based on targeted industries developed jointly with ECD.
- c. **Best Prospects Database**
 - (1) Develop a database to include best-prospect investors based on customized parameters to qualify individual companies in the targeted industry database as well as those who express specific interest in investment opportunities in Tennessee
 - (2) Facilitate communication between best-prospect companies and ECD to provide customized investor information
- d. Develop best prospects into a minimum of three (3) pre-qualified leads, which result in detailed requests to ECD for investor support and assistance including facilitation of visits to Tennessee to view site alternatives, detailed discussions with strategic partners, etc.



- A.3. Contractor will perform the following with respect to A.1.b. Investment Promotion Services:
- a. **Matchmaking Services**
 - (1) Identify best investment channels in Tennessee for Japanese industries, companies and products. Maintain records of qualified agents, brokers, and investment professionals
 - (2) Identify associations, agencies and individuals of potential service to Japanese companies interested in investing in Tennessee.
 - b. **Market Intelligence**
 - (1) Provide prospective investors with market information for Tennessee and the greater USA.
 - (2) Provide other resources and referrals in Japan for information on: i. Entry regulations/controls/tariffs/duties, etc. and ii. Political, legal, social, and cultural peculiarities affecting market opportunities.
 - c. **Marketing Tennessee**
 - (1) Develop broad-based strategies to inform the Japanese business community about advantages in Tennessee's commercial landscape.
 - (2) Hold events to educate potential investors about advantages of Tennessee.
- A.4. Contractor will perform the following with respect to A.1.c. Negotiation and Finalizing Deals:
- a. Identify investor needs and communicate them to ECD project managers.
 - b. Assess competitive advantage of Tennessee and proffer incentives for choosing Tennessee.
 - c. Work closely with ECD program managers, senior leadership to secure investment, and Regional Office Directors.
- A.5. Contractor will perform the following with respect to A.1.d. Investor Relations & Expansion Promotion:
- a. Maintain relationship with existing foreign companies in Tennessee.
 - b. Encourage and facilitate expansion projects.
 - c. Cultivate Japanese network to source future business opportunities in Tennessee.
- A.6. Contractor will perform the following with respect to A.1.e. Visiting Tennessee:
- a. Attend Governor's Conference each year.
 - b. Activities during the Tennessee visit may include:
 - (1) Delivering presentations for Japanese activities and future plans.
 - (2) Improving relationships with Japanese companies in Tennessee.
 - (3) Meeting with ECD Regional Directors.



- (4) Establishing ties with other investment service providers, such as lawyers, financiers, etc.
- c. Visit Tennessee for at least one additional trip.
- A.7. Contractor will perform the following with respect to A.1.f. Collaborating with Other International ECD Representatives: Contractor will work closely with other International ECD Representatives in order to promote a collaborative international export promotion strategy.
- A.8. Contractor will perform the following with respect to A.1.g. Other Duties:
- a. Perform other duties as requested to include:
 - (1) Assisting Tennessee official visitors as directed.
 - (2) Performing other duties as requested by the assigned Contract representative or Managing Director for International Trade
 - (3) Notifying Contract representative of any contacts, inquiries or requests from the media or elected public officials.
 - b. In providing the above services, the Contractor will maintain regular communication with the assigned International Business Liaison Officer or appropriate Nashville-based program managers and will maintain and deliver information to ECD's CRM database
- A.9. Contractor will perform the following with respect to A.1.h. Reporting:
- a. Communicate with ECD through correspondence with International Business Liaison Officer
 - b. Provide ECD with a Monthly Activity Report for the previous month, due on the first working day of each month. The Monthly Activity Report will include:
 - (1) Performance Measures
 - (2) Status Report of Service Requests or Projects
 - (3) Actual and projected assisted investments as a result of the Contractor's involvement, including investment amount and projected number of Tennessee employees hired
 - (4) Database of targeted contacts or customers in Japan and Tennessee
 - c. Be available for a regular bi-weekly 30-minute phone meeting with ECD.
 - d. Provide ECD with an annual updated list of existing non-confidential public sector clients represented by July 31 with quarterly updates of any changes during contract period.
 - e. The Contractor shall not enter into a contract with any other entity ECD feels may create a conflict of interest on the part of the Contractor or where a conflict may adversely affect Contractor's performance for ECD. ECD reserves the right to terminate the contract if a significant conflict of interest exists.
 - f. Contractor to provide ECD with an Annual Report of activities by June 30.
 - g. Contractor to acknowledge receipt of emails sent by ECD staff within two (2) business days.
 - h. Contractor to access and report information regularly to the ECD database. Access and use of ECD data is restricted to work done under the contract and cannot be used or shared for any other purposes.



B. CONTRACT PERIOD:

- B.1. This Contract shall be effective for the period beginning November 1, 2012, and ending on October 31, 2013. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor that were not performed within this specified contract period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than three (3) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Seven Hundred Sixteen Thousand Four Hundred Dollars (\$716,400.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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 requested by the State. 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 the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
 - a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones or increments of service defined in Section A.
 - b. The Contractor shall be compensated for said units, milestones or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Monthly Consultant Fee	\$ 19,900.00 per month.



C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Department of Economic & Community Development
Attn: Assistant Commissioner of Marketing
312 Rosa L. Parks Ave.,
11th Fl. Nashville, TN 37243-1102

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly):

- (1) Invoice Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Contract Number (assigned by the State);
- (4) Customer Account Name: Tennessee Department of Economic and Community Development;
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor Name;
- (7) Contractor Federal Employer Identification, Social Security, or Tennessee Edison Registration ID Number Referenced in Preamble of this Contract;
- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax);
- (9) Contractor Remittance Address;
- (10) Description of Delivered Service;
- (11) Complete Itemization of Charges, which shall detail the following:

- i. Service or Milestone Description (including name & title as applicable) of each service invoiced;
- ii. Number of Completed Units, Increments, Hours, or Days as applicable of each service invoiced;
- iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
- iv. Amount Due by Service; and,
- v. Total Amount Due for the invoice period.

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) Include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) Only be submitted for completed service and shall not include any charge for future work;
- (3) Not include sales tax or shipping charges; and
- (4) Initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.



- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. 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, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the



State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee 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 relative to this Contract. The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.
- D.7. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.8. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated, Section 12-4-401, et seq.*
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either 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 shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.



- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall 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. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, 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 relating hereto, whether written or oral.
- D.18. 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 hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

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, these special terms and conditions shall control.
- E.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. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Samar Ali
312 Rosa L. Parks Avenue, 11th Floor
Nashville, TN 37243-1102
Telephone: (615)741-1888
Fax Number: (615)741-7306
samar.ali@tn.gov

The Contractor:

Takatsugu Yamaguchi, Consultant
State of Tennessee Japan Office
Yokohama World Porters, 6F
2-2-1 Shinko, Naka-ku
Yokohama, 231-0001, JAPAN



Telephone: +81-45-222-2041
Fax Number: +81-45-222-2043
yamaguchi.tennjp@ywbc.org

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

- E.3. 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 State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 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 pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 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 the State 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 period of this Contract.
- E.5. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.6. 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 shall govern in order of precedence below.
- a. this Contract document with any attachments or exhibits (excluding the items listed as subsections b through e., below);
 - b. any clarifications of or addenda to the Contractor's Proposal seeking this Contract;
 - c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - d. any technical specifications provided to proposers during the procurement process to award this Contract;
 - e. the Contractor's proposal seeking this Contract.



IN WITNESS WHEREOF,

TAKATSUGU YAMAGUCHI:

山口 喬 世

10/30/12

CONTRACTOR SIGNATURE

DATE

TAKATSUGU YAMAGUCHI

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT:

Will Alexander / SA

10/21/12

WILL ALEXANDER, CHIEF OF STAFF

DATE