CONTRACT #2
RFS # NA
Edison # Pending

Department of Economic and Community Development

VENDOR:
Takatsugu Yamaguchi

Department of Economic and Community Development

Randy Boyd,
Commissioner

Bill Haslam
Governor

To: Ms. Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee

From: Department of Economic and Community Development

Date: August 25, 2015

Re: Request for approval of contract with Takatsugu Yamaguchi

Please consider the enclosed request for a new contract with Takatsugu Yamaguchi. This contract for foreign direct investment services for Japan will begin on November 1, 2015 and will extend for one year, with two one-year renewal options. Mr. Yamaguchi has operated ECD's FDI office for Japan for over 10 years with proven success. After being procured via sole source request for several years, this contract was re-procured via RFP in 2012, with Mr. Yamaguchi's proposal exhibiting the best combination of technical score and cost proposal. The proposed contract will be based upon the current contract for the Japan FDI office and will not contain any cost increases from the current contract. 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 (including invoices from current contract)
- Special Contract Request – draft (awaiting CPO approval)
- Proposed Summary Sheet & Contract—Draft

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Summer Carr, Director of Contracts	*Contact Phone:	615-253-1944
*Presenter's name(s):	Andrew Dunn, Director of FDI		
Edison Contract Number: (*if applicable*)	N/A (new contract)	RFS Number: (*if applicable*)	
*Original or Proposed Contract Begin Date:	November 1, 2015	*Current or Proposed End Date:	October 31, 2016
Current Request Amendment Number: (*if applicable*)		N/A	
Proposed Amendment Effective Date: (*if applicable*)		N/A	
*Department Submitting:		Department of Economic and Community Development	
*Division:		Business Development Division	
*Date Submitted:		August 25, 2015	
*Submitted Within Sixty (60) days:		Yes	
If not, explain:			
*Contract Vendor Name:		Takatsugu Yamaguchi	
*Current or Proposed Maximum Liability:		$238,800.00	
*Estimated Total Spend for Commodities:		N/A	

*Current or Proposed Contract Allocation by Fiscal Year:
(as Shown on Most Current Fully Executed Contract Summary Sheet)

FY:16	FY:17	FY:	FY:	FY	FY
$159,200.00	$79,600.00	$	$	$	$

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from Edison) **–see attached documentation from prior contract procured in 2012**

FY:	FY:	FY:	FY:	FY	FY
$	$	$	$	$	$

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	N/A

Supplemental Documentation Required for Fiscal Review Committee

was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:	$238,800.00	Federal:	N/A
Interdepartmental:	N/A	*Other*:	N/A
If "*other*" please define:		N/A	
If "*interdepartmental*" please define:		N/A	

Dates of All Previous Amendments or Revisions: (*if applicable*)	Brief Description of Actions in Previous Amendments or Revisions: (*if applicable*)
N/A	N/A

Method of Original Award: (*if applicable*)	Edison 34366 was awarded via RFP in 2012. This contract expires on October 31, 2015, with no renewal options remaining.
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?	$238,800.00 per year; this is the amount of the current contract with the Contractor for the period 2012-2015.
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.	Two other vendors bid on the State's RFP in 2012. Those vendors provided proposals which either exceeded the Contractor's costs and/or were significantly lower in quality than the Contractor. The Contractor (and the Japan FDI office that this contract will be used to operate) is integral to the department's mission to increase foreign direct investment from Japan. During the Contractor's tenure with the State, the Contractor has exhibited proven success in securing Japanese foreign direct investment. *Please see memo from ECD FDI Director Andrew Dunn for further details of the Contractor's success in this area, including why a sole source contract is in the best interest of the State.*

8/26/2015
Andrew Dunn, Director of Foreign Direct Investment

State of Tennessee, Department of Economic and Community Development Memo: Japanese Office Contract

The Tennessee Department of Economic and Community Development's mission is to work domestically and internationally to attract and retain jobs for Tennesseans, to grow Tennessee's tax base by attracting corporate investment to our state. These activities are led through our Nashville-based office and supported by nine regional offices located throughout the state. In addition to these offices in Tennessee, ECD engages an outside contractor, Taka Yamaguchi, to represent the department goals and interests in the country of Japan.

Japan is an extremely important market for Tennessee and the work that ECD does. To date, 180 Japanese companies have invested over $16 billion in the state, employing more than 47,000 Tennesseans. As a result of this cumulative investment, Tennessee is one of the top destination states for Japanese investment into the United States. Mr. Yamaguchi's efforts ensure that Tennessee continues to be the number one State for Japanese investment in the South east both by attracting new companies to the state and undertaking activities to ensure that companies who have located here continue to grow and thrive.

The scope of Mr. Yamaguchi's activities include:

(1) Foreign Investment Attraction
(2) Existing Industry Outreach
(3) Market Research
(4) Attending Trade Shows or other marketing-related events
(5) Trade Mission Planning and Support
(6) Growing Multiplier Networkrs by representing Tennessee at relevant trade associations, chambers of commerce, government agency meetings and other business group functions which impact the impression of Tennessee in their market
(7) Maintaining a database of key multipliers within their market
(8) Data collection and reporting back to ECD

Under the supervision of the Director for Foreign Direct Investment, ECD will continue to work with Mr. Yamaguchi to ensure that the needs of Japanese companies are being met and that Japanese investment in Tennessee continues to grow.

Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.
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@tn.gov.

APPROVED	APPROVED
CHIEF PROCUREMENT OFFICER DATE	COMPTROLLER OF THE TREASURY DATE

Request Tracking #	
1. Contracting Agency	**Department of Economic and Community Development**
2. Type of Contract or Procurement Method	☐ **No Cost** ☐ **Revenue** ☒ **Sole Source** ☐ **Proprietary** ☐ **Competitive Negotiation** ☐ **Other** _____
3. Requestor Contact Information	**Summer Carr, Director of Contracts** **summer.carr@gmail.com, 615-253-1944**
4. Brief Goods or Services Caption	**Foreign Direct Investment Services - Japan**
5. Description of the Goods or Services to be Acquired	**The Contractor operates the State of Tennessee Foreign Direct Investment Office in Japan. The contract provides funds for operation of the office, including consultant fees for Mr. Yamaguchi, and costs necessary for operation of the office including support staff, office space, and other overhead costs.**
6. Proposed Contractor	**Takatsugu Yamaguchi**
7. Name & Address of the Contractor's principal owner(s) *– NOT required for a TN state education institution*	**Takatsugu Yamaguchi** **Yokohama World Porters, 6F** **2-2-1 Shinko, Naka-ku** **Yokohama, 231-0001 JAPAN**

Request Tracking #	
8. Proposed Contract Period – *with ALL options to extend exercised* ***The proposed contract start date shall follow the approval date of this request.***	**36 months**
9. Office for Information Resources Pre-Approval Endorsement Request *– information technology (N/A to THDA)*	☒ **Not Applicable** ☐ **Attached**
10. eHealth Pre-Approval Endorsement Request *– health-related professional, pharmaceutical, laboratory, or imaging*	☒ **Not Applicable** ☐ **Attached**
11. Human Resources Pre-Approval Endorsement Request *– state employee training*	☒ **Not Applicable** ☐ **Attached**
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	☒ **NO** ☐ **YES,**
13. Maximum Contract Cost *– with ALL options to extend exercised*	**$ 716,400.00**
14. Was there an initial government estimate? If so, what amount?	☐ **NO** ☒ **YES, $716,400.00**
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	**Cost of contract for previous three-year period (2012-2015).**
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	**The Contractor has provided foreign direct investment services for the State of Tennessee for over 10 years. In 2012, ECD conducted an RFP in order to determine whether its costs were in line with market costs for these services. The Contractor was awarded the contract via RFP in 2012 based upon the best combination of technical and cost proposal scores. The cost of the contract will not increase from 2012-2018 under this new contract.**
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	**Please see the attached memorandum from ECD's Foreign Direct Investment Director, Andrew Dunn, regarding this contract.**
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	**The Japan FDI office is integral to ECD's international marketing strategy. The office has been in operation for over 10 years.**
19. Proposed contract impact on current State operations	**ECD has funds in its budget for this contract. These services are part of ECD's mission to expand its international FDI and export offices that market the State of Tennessee to potential investors and companies around the world.**
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	**Please see the attached memorandum from ECD's Foreign Direct Investment Director, Andrew Dunn, regarding this contract.**
For No Cost and Revenue Contracts Only	

Request Tracking #	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	☐ **NO** ☐ **YES**
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Explanation of Need for or requirement placed on the State to acquire the goods or services	**The Japan FDI office is integral to ECD's international marketing strategy. The office has been in operation for over 10 years.**
26. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	**The Contractor has provided FDI services in Japan for ECD for over 10 years.**
27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	☐ **NO** ☒ **YES,** **Method: RFP, 2012** **Name/Address:** **Takatsugu Yamaguchi** **Yokohama World Porters, 6F** **2-2-1 Shinko, Naka-ku** **Yokohama, 231-0001 JAPAN**
28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	**Please see the attached memorandum from ECD's Foreign Direct Investment Director, Andrew Dunn, regarding this contract.**
Signature Required for all Special Contract Requests	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	

Request Tracking #	
Signature:	Date:

CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID
November 1, 2015	October 31, 2016		

Contractor Legal Entity Name	Edison Vendor ID
Takatsugu Yamaguchi	

Goods or Services Caption (one line only)

Foreign Direct Investment services - Japan

Contractor	CFDA #
☒ Contractor	

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
16	$159,200.00				$159,200.00
17	$79,600.00				$79,600.00
TOTAL:	**$238,800.00**				**$238,800.00**

Contractor Ownership Characteristics:

☐ Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American

☐ Woman Business Enterprise (WBE)

☐ Tennessee Service Disabled Veteran Enterprise (SDVBE) F

☐ Tennessee Small Business Enterprise (SBE): $10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.

☐ Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

☐ Competitive Selection

☒ Other — ECD has obtained an approved Special Contract Request for this contract (attached to Edison record).

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.

Speed Chart (optional)	Account Code (optional)

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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 Developmnet ("State") and Takatsugu Yamaguchi ("Contractor"), is for the provision of foreign direct investment services - Japan, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is an Individual.
Contractor Place of Incorporation or Organization: Japan
Contractor Edison Registration ID # 120222

A. SCOPE:

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. This Contract provides funds for the operation of the State of Tennessee foreign direct investment office for Japan. The Contractor will perform the following activities:

i. Investment Deal Sourcing
ii. Investment Promotion Services
iii. Negotiation and Finalizing Deals
iv. Investor Relations & Expansion Promotion
v. Visiting Tennessee
vi. Collaborating with other International ECD Representatives
vii. Other Duties
viii. Reporting

A.3. The Contractor will perform the following with respect to A.1.i. Investment Deal Sourcing:

i. Research and provide investor intelligence on trends in Japan; target opportunities, competitor information and other strategic information.
ii. Research, develop and maintain a database of potential investors interested in Tennessee based on targeted industries developed jointly with ECD.
iii. Best Prospects Database
    a. 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
    b. Facilitate communication between best-prospect companies and ECD to provide customized investor information
iv. 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.4. The Contractor will perform the following with respect to A.1.ii. Investment Promotion Services:

i. Matchmaking Services
    a. Identify best investment channels in Tennessee for Japanese industries, companies and products. Maintain records of prequalified agents, brokers, and investment professionals.
    b. Identify associations, agencies and individuals of potential service to Japanese companies interested in investing in Tennessee.
ii. Market Intelligence

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a. Provide prospective investors with market information for Tennessee and the greater USA.
b. 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.

iii. Marketing Tennessee
a. Develop broad-based strategies to inform the Japanese business community about advantages in Tennessee's commercial landscape.
b. Hold events to educate potential investors about advantages of Tennessee.

A.5. The Contractor will perform the following with respect to A.1.iii. Negotiation and Finalizing Deals:

i. Identify investor needs and communicate them to ECD project managers;
ii. Assess competitive advantage of Tennessee and proffer incentives for choosing Tennessee;
iii. Work closely with ECD program managers, regional directors, and executive leadership team to secure investment.

A.6. The Contractor will perform the following with respect to A.1.iv. Investor Relations and Expansion Promotion:

i. Maintain relationship with existing Japanese companies in Tennessee;
ii. Encourage and facilitate expansion projects of such companies;
iii. Cultivate Japanese network to source future business opportunities in Tennessee.

A.7. The Contractor will perform the following with respect to A.1.vi. Visiting Tennessee:

i. Attend Governor's Conference each year, and visit Tennessee for at least one additional trip each year;
ii. Activities during the Tennessee visit may include:
    a. Delivering presentations for Japanese activities and future plans;
    b. Improving relationships with Japanese companies in Tennessee;
    c. Meeting with ECD program managers, regional directors, or executive leadership team; or
    d. Establishing ties with other investment service providers, such as attorneys, financiers, etc.

A.8. The Contractor will perform the following with respect to A.1.v. Collaborating with other International ECD Representatives:

i. Contractor will work closely with other international ECD representatives and ECD program management to promote a collaborative international foreign direct investment strategy.

A.9. The Contractor will perform the following with respect to A.1.vi. Other Duties:

i. Others duties will be performed upon request by ECD and may include:
    a. Assisting Tennessee official visitors as requested;
    b. Notifying ECD of any contacts, inquiries or requests from the media or public officials; and
    c. Performing other duties as requested by ECD.

A.10. The Contractor will perform the following with respect to A.1.vii. Reporting:

i. The Contractor will 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:
    a. Description of progress toward activities listed in Section A.2. above;
    b. Status report of all service requests or projects requested by ECD;

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c. Actual and projected assisted investments as a result of the Contractor's involvement, including investment amount and project number of Tennessee employees hired;
d. Database of targeted contacts or customers in Japan and Tennessee; and
e. Other information as requested by ECD.

ii. Be available for a bi-weekly 30-minute phone meeting with ECD.

iii. Provide ECD with annual updated list of existing non-confidential public sector clients represented by December 31, with quarterly updates during the contract period.

iv. The Contractor shall not enter into a contract with any other entity that, in ECD's sole discretion, may create a conflict of interest on the part of the Contractor or where a conflict may adversely affect the Contractor's performance for ECD. ECD reserves the right to terminate this Contract if, in ECD's sole discretion, such a conflict exists.

v. The Contractor will provide ECD with an annual report of activities by June 30 of each year during the Term.

vi. The Contractor will acknowledge receipt of all communications from ECD within two (2) business days.

vii. The Contractor will maintain regular communication with ECD and will maintain and report regularly to ECD's CRM database. Access of use of ECD data is restricted to work performed under this Contract only and may not be used or shared for any other purpose.

A.11. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

A.12. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

B.1. This Contract shall be effective on November 1, 2015 ("Effective Date") and extend for a period of twelve (12) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and

conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Two Hundred Thirty-Eight Thousand Eight Hundred Dollars and No/100 ($ 238,800.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Monthly Consultant Fee - Foreign Direct Investment Services	$ 19,900.00

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

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

ECD.Invoices@tn.gov

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following 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: Department of Economic and Community Development, Business Development Division;
(5) Customer account number (assigned by the Contractor to the above-referenced Customer);
(6) Contractor name;
(7) Contractor Tennessee Edison registration ID number;
(8) Contractor contact for invoice questions (name, phone, or email);

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(9) Contractor remittance address;
(10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
(11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
(12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
(13) Amount due for each compensable unit of good or service; and
(14) Total amount due for the invoice period.

b. Contractor's invoices shall:

(1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
(2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
(3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
(4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that 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 other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services 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 that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

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 that 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, properly completed documentation.

a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the

Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Andrew Dunn, FDI Director
Department of Economic and Community Development
312 Rosa L. Parks Ave., 27th Floor
Nashville, TN 37243
andrew.dunn@tn.gov
Telephone # 253-1240

The Contractor:

Takatsugu Yamaguchi
Yokohama World Porters, 6F
2-2-1 Shinko, Naka-ku
Yokohama, 231-0001 JAPAN
yamaguchi.tennjp@ywbc.org
Telephone # +81-45-222-2041

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

D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.

D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

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D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"),the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation 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 under 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 (6) 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 (6) months has been, an employee of the State of Tennessee.

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, 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 agrees 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 A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor 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 Term, 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 under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

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c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's 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 Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) 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.12. 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.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any 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.

D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

D.16 Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.

b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq*., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this

Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and 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 Term.

D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

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D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.

D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.

D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.

D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.

D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

D.30. 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. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A;
c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
e. any technical specifications provided to proposers during the procurement process to award this Contract; and
f. the Contractor's response seeking 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, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

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IN WITNESS WHEREOF,

TAKATSUGU YAMAGUCHI:

CONTRACTOR SIGNATURE	**DATE**
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)	

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT:

RANDY BOYD, COMMISSIONER	**DATE**

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ATTACHMENT A

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. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

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