Shelby County
Tennessee

EXHIBIT A

A C Wharton, Jr., Mayor

Request for Proposal
Shelby County Government
Purchasing Department

160 N. Main, Suite 550
Memphis, TN 38103
(901) 545-4360

Issued: October 17, 2007
Due: November 2, 2007 no later than 3:00 P.M. (Central Standard Time)

RFP # 08-010-27

Architectural & Engineering Design Services
(Mixed-Use Redevelopment of 157 Poplar Avenue)

The County seeks a highly qualified Architectural and Engineering Design Firm (the "Consultant") to program and design the redevelopment of the Facility ("Design") consistent with the County's requirements. Information regarding this RFP is located on the County's website at www.shelbycountytn.gov. Go to "Purchasing Bids" under Online Services on the home page to locate the above-described RFP.

The proposal, as submitted, should include information related to the services requested by the RFP specifications. If selected, your proposal will be the basis for negotiating a contract with Shelby County Government. Your proposal must be received by the Administrator of Purchasing **no later than 3:00 p.m. on Friday, November 2, 2007**. Proposals should be addressed to:

Nelson Fowler, Manager A
Shelby County Government
160 N. Main, Suite 550
Memphis, TN 38103

The package containing an original copy (clearly identified as original) and ten (10) copies of *each section of your proposal must be sealed and marked with the Consultant's name and* **"CONFIDENTIAL, Design Proposal for Mixed-Use Redevelopment of 157 Poplar Avenue, Memphis TN 38138" and RFP # 08-010-27"** noted on the outside.

Sincerely,

Nelson Fowler, Manager A
Purchasing Department Shelby County Government

Cc: Ray Siddiqui, AIA

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I. INTRODUCTION

Shelby County Government (the "County"), is seeking proposals from interested and qualified Architectural and Engineering Design firms to program and design the Mixed-Use Redevelopment of 157 Poplar Avenue (the "Project"). This project shall consist on two major components, i.e., the Building and the Underground Utility Infrastructure.

Building: Shelby County Government ("County") owns and operates a four-story office facility on approximately one acre lot (the "Facility") located at 157 Poplar Avenue, Memphis, Tennessee on the north side of the downtown corridor. Other government office buildings are located to the east, south and west of the Facility. The County is currently in need of additional parking for 600-650 employees, jury commission offices, jury assembly room and general office spaces. The existing Facility therefore shall be demolished.

Underground Utility Infrastructure: Currently the Voice, Data and Low Voltage Systems of the Shelby County Downtown Campus including 160 North Main Administration Building, 140 Adams Courthouse, 150 Washington Archives, 157 Poplar Office Building and 201 Poplar Criminal Justice Center (the "West Campus") are interconnected via damaged underground conduits. All of these buildings have independent chilled water sources.

As part of the redevelopment program the existing Low Voltage System infrastructure for the West Campus shall be redesigned with emphasis on the security, future expandability, moisture control and ease of maintenance. Whereas the chilled water sources in each building shall be interconnected to a central chilled water supply loop with emphasis on Energy Cost Savings, Redundancy and Back-up Capabilities and effective centralize controls.

This Request for Proposals ("RFP") is being released to invite interested and qualified Architectural and Engineering Design Firms to prepare and submit proposals in accordance with instructions provided where one successful Firm will be selected and invited to enter into a contractual relationship with Shelby County for the Services outlined in the RFP. The successful Firm will investigate County needs, prepare the re-development program, design, prepare construction documents and provide contract administration services.

II. MINIMUM CONSULTANT REQUIRMENT

Consultants interested in pursuing this opportunity to provide Architectural and Engineering Design Services must have outstanding credentials and be able to demonstrate a minimum of 10 years experience and staff expertise in the following areas:

- Design and construction of mixed-use developments, particularly in downtown/urban environments;
- Staff experience in all disciplines associated with this type of redevelopment (i.e., Architectural, Structural, Mechanical, Plumbing, Civil, Communication, BAS Systems, Cost Estimating, Market Research, Project Management, etc.);
- Development of mixed-use commercial or governmental facilities with emphasis on design of multilevel parking garages, office building and underground utility infrastructure;

- Project financing knowledge associated with preparing and evaluating development and ownership options for facility delivery and operation (capital, financing and operational costs.)

III. CORRESPONDENCE

All correspondence, proposals and questions concerning the RFP are to be submitted to:

Nelson Fowler, Manager A
Shelby County Government
160 N. Main, Suite 550
Memphis, TN 38103

Respondents requesting additional information or clarification are to contact Clifton Davis in writing at nelson.fowler@shelbycountytn.gov at the address listed above. Questions should reference the section of the RFP to which the question pertains and all contact information for the person submitting the questions. ***IN ORDER TO PREVENT AN UNFAIR ADVANTAGE TO ANY RESPONDENT, VERBAL QUESTIONS WILL NOT BE ANSWERED. The deadline for submitting questions will be October 26, by 12:00 p.m. (CST).*** These guidelines for communication have been established to ensure a fair and equitable process for all respondents.

Please be aware that contact with any other personnel (other than the person clearly identified in this document) regarding this RFP may disqualify your company from further consideration.

IV. PROPOSAL SUBMISSION & DEADLINE

All proposals must be received at the address listed above no later than **3:00 p.m. on Friday, November 2, 2007.** Facsimile or e-mailed proposals will not be accepted since they do not contain original signatures. Postmarks will not be accepted in lieu of actual receipt. Late or incomplete proposals may not be opened and considered. Under no circumstances, regardless of weather conditions, transportation delays, or any other circumstance, will this deadline be extended.

V. PROPOSAL TIMELINE

Shelby County reserves the right to modify this timeline at any time. If the due date for proposals is changed, all prospective Consultants shall be notified.

Proposals Due	November 2, 2007
Selection of Consultant	November, 2007
Notice to Proceed	December, 2007
Program & Conceptual Design	February 12, 2008
Bid Documents	June 4, 2008

The County may reproduce any of the proposal and supporting documents for internal use or for any other purpose required by law.

VI. PROPOSAL CONDITIONS

a. Contingencies

This RFP does not commit the County to award a contract. The County reserves the right to accept or reject any or all proposals if the County determines it is in the best interest of the County to do so. The County will notify all Consultants, in writing, if the County rejects all proposals.

b. Modifications

The County reserves the right to issue addenda or amendments to this RFP.

c. Proposal Submission

To be considered, all proposals must be submitted in the manner set forth in this RFP. It is the Consultant's responsibility to ensure that its proposals arrive on or before the specified time.

d. Incurred Costs

This RFP does not commit the County to pay any costs incurred in the preparation of a proposal in response to this RFP and the Consultants agree that all costs incurred in developing this RFP are the Consultant's responsibility.

e. Final Authority

The final authority to award a contract rests solely with the Shelby County Purchasing Department.

f. Proposal Validity

Proposals submitted hereunder will be firm for at least ninety (90) calendar days from the due date unless otherwise qualified.

g. LOSB

The County encourages the utilization of locally-owned small businesses as sources of subcontract work. The County notifies all respondents that all firms and/or individuals shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Title VI of the Civil Rights Act of 1964, as amended.

LOCALLY OWNED SMALL BUSINESS PURCHASING PROGRAM RULES AND REGULATIONS:

(i) The Administrator of Purchasing in conjunction with the Administrator of EOC shall identify certain goods and services required by the County to be set aside for special purchasing procedures for locally owned small businesses.

(ii) Only certified locally owned small businesses will be allowed to submit competitive bids on the goods or services identified under paragraph (i) above.

(iii) The Administrator of Purchasing shall, in conjunction with the Administrator of EOC, annually review the Shelby County Capital Improvement Program to determine those projects with a construction cost of $250,000 or more. Contracts amounting to at least ten (10%) of the construction costs of such project shall be awarded to locally owned small businesses as defined herein, except as set forth in sub-paragraph (vi) of this section, either as part of the conditions of the solicitation for general contractors bidding on these projects, or as separate bids issued by the County for subcontracts that may be assigned to general contractors.

(iv) After adhering to all other bidding and purchasing requirements of the County, not inconsistent with this part, if no bids are received from locally owned small businesses, then the County may solicit bids for the goods or services from all other sources.

(v) On all purchases and/or contracts entered into by the County, the Purchasing Administrator or his or her designee shall have the right to negotiate with any supplier of goods or services to the County for the inclusion of locally owned small business subcontractors and/or suppliers in the contract award.

(vi) Failure by a supplier or contractor to include locally owned small business sub-contractors or suppliers in its bid or contract may be grounds for rejection of said bid or contract unless the supplier or contractor can show documented evidence of good cause why none were included.

(vii) Any locally owned small business awarded a contract or purchase order under this section shall not sublet, subcontract or assign any work or services awarded to it without the prior written consent of the Mayor or the Purchasing Administrator.

(viii) As to those purchases below the requirement for a formal bid solicitation (currently, under $15,000) and not included in the locally owned small business set aside, the Administrator of Purchasing shall determine if any locally owned small business offers that product or service. If so, at least one such eligible locally owned small business should be included in the vendors contacted for an opportunity to bid, and the Administrator of Purchasing may, at his discretion, designate in a purchase order the purchase of such goods and services from the identified locally owned small business.

(ix) In those situations where a locally owned small business as defined herein, engages in open competitive bidding for County contracts, the Administrator of Purchasing shall provide for a preference for the locally owned small business where responsibility and quality are equal. Said preferences shall not exceed five percent (5%)

of the lowest possible bidder meeting specifications. The preference shall be applied on a sliding scale in the following manner:

a. A preference of up to five percent (5%) shall be allowed for contracts up to $500,000.00;

b. A preference of up to three and five-tenths percent (3.5%) shall be allowed for contracts up to $750,000.00;

c. A preference of two and one-half percent (2.5%) shall be allowed for contracts up to $1,000,000.00;

d. A preference of two percent (2%) shall be allowed for contracts that exceed $1,000,000.00.

(x) For construction contracts over $2,000,000.00, the Administrator of Purchasing shall provide for a preference of two percent (2%) to general contractors meeting the requirements of Section 1, Subparagraph B, if fifty percent (50%) or more of the total work comprising the bid has been or will be awarded to certified locally owned small businesses. The fifty percent subcontracting threshold must be met prior to contract execution.

(xi) The Administrator of Purchasing may divide a single bid package for any purchase of goods and services into two or more smaller bid packages in any case that the Administrator of Purchasing reasonably believes that the smaller bid packages will result in a greater number of bids by locally owned small businesses.

(xii) The Administrator of Purchasing, upon approval of the County Mayor, may establish special insurance and bonding requirements for certified locally owned small businesses so long as they are not in conflict with the laws of the State of Tennessee.

(xiii) The Administrator of Purchasing, with the approval of the County Mayor, shall adopt and promulgate, and may from time to time, amend rules and regulations not inconsistent with the provisions of this ordinance, governing the purchase of goods and services from locally owned small business concerns to effectuate and implement the Locally Owned Small Business Purchasing Program within the intent of this ordinance.

(xiv) The Administrator of EOC shall, in conjunction with the Administrator of Purchasing, provide a written quarterly report to the Mayor and Board of Commissioners which shall include a summary of the purchases selected for this program, a listing of the contracts awarded to locally owned small businesses for the period, and the dollar amounts of each such contract, and the percentage which such contracts bear to the total amount of purchases for the period.

h. Living Wage

Shelby County Government Ordinance # 328 "Living Wages" is hereby incorporated into this Request for Proposal and any resulting contract. Please make sure that you review and apply the requirements of the ordinance to your proposal response. Failure to do so will result in disqualification from the review and award process. You may view and print the ordinance as a separate attachment for this RFP (***please do not forget to download ALL the additional attachments***).

VII. GENERAL Requirements

a. Background

The County seeks a highly qualified Consultant to program and design the Mixed-Use Redevelopment of 157 Poplar Avenue (the "Project"). This project shall consist on two major components i.e., the Building and the Underground Utility Infrastructure as described elsewhere in this RFP.

b. The Intent of this RFP

The County wishes to engage in a contractual relationship with the best-qualified Consultant selected through a competitive process that will work well with the County's personnel in the performance of the Services in a manner that is cost-effective and practical. The successful Consultant must be prepared to begin immediately upon receipt of a Notice to Proceed.

c. Reservation of Rights

The County reserves the right, for any reason to accept or reject any one or more proposals, to negotiate the term and specifications for the services provided, to modify any part of the RFP or to issue a new RFP.

d. Required Information and References

Any information that would be helpful to the County in evaluating the proposals including a list of current and former clients with a similar profile to Shelby County should be submitted. At least three former clients who have terminated in the last five years should be included on this list.

VIII. AWARD OF CONTRACT

Respondents to this RFP are advised that the lowest cost proposal will not necessarily be awarded the contract, as the selection will be based upon qualification criteria as determined by the County Consultants Selection Committee and the County Mayor.

IX. PURPOSE

To select the best-qualified Consultant and award a County-approved contract for professional services to perform the Services and to satisfactorily complete all activities associated with this Project.

Services Required

The consultant will use existing market and other data, surveys, interviews, and other applicable sources/documents and specialty consultants to obtain the information necessary to program and Design the Mixed Use Redevelopment of the 157 Poplar Ave property and Underground Utility Infrastructure as required by the County.

1. Collecting the existing building and site information including but not limited to the underground existing utilities, geotechnical information and any other information required to successfully complete all aspects of the Project;
   Footnote: The cost of Geotechnical and Environmental Survey/Investigation shall be a reimbursable cost to the Consultant...
2. Collecting programmatic data, analyzing and recommending a solution for the best and highest mixed-use redevelopment for the Project to the County needs for Parking and Office Spaces;
3. Developing the preliminary design, cost and project schedule with emphasis on sustainability, contextual design sensitivity and cost.
4. Determining the optimal strategy for development, i.e., whether development of the Project should be carried out under County ownership versus private and public partnership or other option;
5. Upon approval of the Preliminary Design, Cost and Schedule by the County proceeding with Design Development, Construction Documents and assisting the County during the bidding process/Construction Contract negotiation processes.
6. Providing Contract Administration Services as required by the County.
7. Identifying suitable organizational and management models for the Project and assisting the County in making an informed decision regarding operation of the building (Garage, Security, and Maintenance, etc.) to result in the most effective operational and life cycle costs.

Deliverables

The consultant will prepare detailed written reports, oral reports and drawings during each phase of the project for the use of the County in the consultant's scope of work. The County will review such material and provide its feedback within 10 business days. The consultant will also provide fifteen (15) sets of the Construction Documents (hard copies) and one (1) set in electronic format before bidding/contract negotiation phase.

X. CONTRACT REQUIREMENTS

The successful Consultant will be expected to enter into a contract incorporating the following terms and conditions, and such additional terms and conditions standard to services of this type.

a. General Requirements

1. Control. All services by the Consultant will be performed in a manner satisfactory to the County, and in accordance with the generally accepted business practices and procedures of the County.

2. Consultant's Personnel. The Consultant certifies that it presently has adequate qualified personnel to perform all services required under this Contract. All work under this Contract will be supervised by the Consultant. The Consultant further certifies that all of its employees assigned to serve the County have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Consultant who, in the opinion of the County, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with services under this Contract.

3. Independent Status.

(a) Nothing in this Contract shall be deemed to represent that the Consultant, or any of the Consultant's employees or agents, are the agents, representatives, or employees of the County. The Consultant will be an independent consultant over the details and means for performing its obligations under this Contract. Anything in this Contract which may appear to give County the right to direct the Consultant as to the details of the performance of its obligations under this Contract or to exercise a measure of control over the Consultant is solely for purposes of compliance with local, state and federal regulations and means that the Consultant will follow the desires of the County only as to the intended results of the scope of this Contract.

(b) It is further expressly agreed and understood by Consultant that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the County; that the Consultant has been retained by the County to perform the services specified herein (not hired) and that the remuneration specified herein is considered fees for services performed (not wages) and that invoices submitted to the County by the Consultant for services performed shall be on the Consultant's letterhead.

4. Termination or Abandonment.

(a) It shall be cause for the immediate termination of this Contract if, after its execution, the County determines that either:

(i) the Consultant or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead nolo contender, or has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting.

(ii) The Consultant has subcontracted, assigned, delegated, or transferred its rights, obligations or interests under this Contract without the County's consent or approval.

(iii) The Consultant has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of Consultant's assets.

(b) The County may terminate the Contract upon five (5) days written notice by the County or its authorized agent to the Consultant for Consultant's failure to provide the services specified under this Contract.

(c) This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of such termination, the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date; however, the Consultant shall not be reimbursed for any anticipatory profits that have not been earned as of the date of termination.

(d) All work accomplished by Consultant prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the County prior to payment for services rendered.

(e) Notwithstanding the above, the Consultant shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Consultant and the County may withhold any payments to Consultant for the purpose of setoff until such time as the exact amount of damages due the County from the Consultant is determined.

5. Subcontracting, Assignment or Transfer. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the Consultant of performance of its duties under this contract. The County shall not be responsible for the fulfillment of the Consultant's obligations to its transferors or sub-Consultants. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the assignment.

6. Conflict of Interest. The Consultant covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its services. The Consultant warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the County as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-Consultant to the Consultant in connection with any work contemplated or performed relative to this Contract.

7. Covenant Against Contingent Fees. The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the County will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

8. Employment Of County Workers. The Consultant will not engage on a full or part-time or other basis during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of the Contract in the employ of the County.

9. Arbitration. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the Consultant and the County will be referred to the Shelby County Contract Administrator or his/her duly authorized representative, whose decision regarding same will be final.

10. General Compliance With Laws

(a) If required, the Consultant shall certify that it is qualified and duly licensed to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

(b) The Consultant is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, the Americans with Disabilities Act (ADA), and all state and local laws, rules and regulations pertaining to electrical requirements of residential construction and renovation.

(c) This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this contract the Consultant agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this contract will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

11. Nondiscrimination. The Consultant 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 Consultant on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional or statutory law. The Consultant shall upon request show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination.

12. Entire Agreement. This Contract contains the entire Contract of the parties and there are no other promises or conditions in any other Contract whether oral or written. This Contract supersedes any prior written or oral Contracts between the parties.

13. Amendment. This Contract may be modified or amended, only if the amendment is made in writing and is signed by both parties.

14. Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract shall then

be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Contract shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible, and be legal, valid and enforceable.

15. No Waiver of Contractual Right. No waiver of any term, condition, default, or breach of this Contract, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Contract or of such document. No delay or failure to enforce any provision in this Contract or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Contract or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

16. Matters To Be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this contract.

17. Subject To Funding. This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government for any of its fiscal period during the term hereof, then this Contract will be terminated. In the event of such termination, the consultant shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date.

18. Travel Expenses. All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the County.

19. Incorporation Of Other Documents.

(a) Consultant shall provide services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for the Shelby County Purchasing Department and incorporated herein by reference.

(b) It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

20. Contracting With Locally Owned Small Businesses. The Consultant shall take affirmative action to utilized Locally Owned Small Businesses when possible as sources of supplies, equipment, construction and services.

21. Incorporation of Whereas Clauses. The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

22. Waiver of Proprietary Interest. Notwithstanding anything to the contrary contained herein or within any other document supplied to County by the Consultant, Consultant understands and acknowledges that County is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to County by Consultant due to services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

23. Organization Status And Authority.

(a) Consultant represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

(b) The execution, delivery and performance of this Contract by the Consultant has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Consultant, any provision of any indenture, agreement or other instrument to which the Consultant is a party, or by which the Consultant's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

24. Warranty. Consultant warrants to County that all Services shall be in strict compliance with the terms of this Contract, and all applicable governmental laws, rules and regulations.

25. Rights in Data. The County shall become the owner, and the Consultant shall be required to grant to the County, or its successors, a perpetual, non-exclusive, non-transferable, royalty-free right, in the County's name, to use any deliverables provided by the Consultant under this Contract, regardless of whether they are proprietary to the Consultant or to any third parties.

26. Consultant Responsibilities.

A. INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. Responsibilities For Claims And Liabilities.

(a) Consultant shall indemnify, defend, save and hold harmless the County, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the duties hereunder, whether performed by the Consultant its sub-Consultants, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

(b) Consultant expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Consultant shall in no way limit the responsibility to indemnify, defend, save and hold harmless the County or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

(c) The County has no obligation to provide legal counsel or defense to the Consultant or its sub-Consultants in the event that a suit, claim or action of any character is brought by any person not party to this Contract against Consultant as a result of or relating to obligations under this Contract.

(d) Except as expressly provided herein, the County has no obligation for the payment of any judgment or the settlement of any claims against the Consultant as a result of or relating to obligations under this Contract.

(e) Consultant shall immediately notify the County, c/o Shelby County Government, Contracts Administration, 160 N. Main Street, Suite 550, Memphis, TN 38103, of any claim or suit made or filed against the Consultant or its sub-Consultants regarding any matter resulting from or relating to Consultant's obligations under this Contract and will cooperate, assist and consult with the County in the defense or investigation thereof.

(f) *NOTE*: The County, by state law, cannot indemnify another party for its or any other party's actions. The County will hold the Consultant harmless from damages resulting from intrusions or a breach of the security system by a third party. A Consultant should not respond to this RFP if it is unable to contract without a contractual indemnity from the County.

2. Insurance Requirements. Consultant/Consultant shall maintain coverage with limits of no less than:

a) Commercial General Liability Insurance $1,000,000 limit per occurrence bodily injury and property damage/$1,000,000 personal and advertising injury/$2,000,000 General Aggregate/ $2,000,000 Products-Completed Operations Aggregate. The consultant/Consultant should indicate in its bid whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:

i) Premises/Operations
ii) X, C, & U
iii) Products/Completed Operations
iv) Contractual
v) Independent Consultants
vi) Broad Form Property Coverage
vii) Personal Injury

b) Business Automobile Liability Insurance - $1,000,000 each accident for property damage and personal injury. Coverage is to be provided on all:

i) Owned/Leased Autos
ii) Non-owned Autos
iii) Hired Autos

c) Workers Compensation and Employers' Liability Insurance - Workers Compensation statutory limits as required by Tennessee. This policy should include Employers' Liability Coverage for $1,000,000 per accident.

d) Professional Liability Insurance - $1,000,000 per claim/$3,000,000 annual aggregate. Indicate if coverage is on occurrence basis or claims-made.

Shelby County shall be named as additional insured. All policies will provide for 30 days written notice to Shelby County of cancellation or material change in coverage provided.

Other Insurance Provisions

1. Commercial General Liability and Automobile Liability Coverages

a) Shelby County Government, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, leased or used by the Consultant or premises on which Consultant is performing services on behalf of the County. The coverage shall contain no special limitations on the scope of protection afforded to Shelby County Government, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees.

b) The Consultant's insurance coverage shall be primary insurance as respects the County, its elected officials, appointees, employees, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees. Any insurance or self-insurance maintained by the County, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees shall be excess of Consultant's insurance and shall not contribute with it.

c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Shelby County its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees.

d) Coverage shall state that Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers Compensation and Employers' Liability and Property Coverages

The insurer shall agree to waive all rights of subrogation against Shelby County Government, its elected officials, appointees, employees, volunteers and members of its boards, agencies, commissions and committees for losses arising from activities and operations of Consultant in the performance of services under this Agreement.

3. All Coverages

a) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given (add user department and specify specific individual and title) to the County, except 10 days notice for non-payment of premium.

b) If Consultant, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. County, at its

sole option, may terminate this Agreement and obtain damages from the Consultant resulting from said breach.

Alternatively, County may purchase such required insurance coverage (but has no special obligation to do so), and without further notice to Consultant, County may deduct from sums due to Consultant any premium costs advanced by County for such insurance.

4. Aggregate Limits

a) Per-Project General Aggregate Limit. The standard Commercial General Liability policy has a general aggregate limit that places an annual cap on the amount of coverage available for all claims, other than products-completed operations claims, covered by the policy. A standard endorsement to the CGL policy allows a Consultant to specify the application of a *separate* general aggregate limit to individual construction projects. This endorsement (CG 25 03) is readily available to most Consultants in the current marketplace. It should generally be required in construction contracts. The endorsement guarantees that whatever amount of insurance the Consultant is required to maintain according to the provisions of the construction contract will be available to pay claims arising from the project – without those limits being depleted by claims against the Consultant arising from other projects.

b) Per-Location General Aggregate Limit. The standard Commercial General Liability policy has a general aggregate limit that places an annual cap on the amount of coverage available for all claims, other than products-completed operations claims, covered by the policy. A standard endorsement to the CGL policy allows the named insured to specify the application of a *separate* general aggregate limit to any or each of its locations. This endorsement (CG 25 04) is readily available to most businesses in the current marketplace. It should generally be required in premises leases if the lessee has multiple locations.

c) Each-Occurrence Limit. There are a number of approaches that may be taken to specify the limits required of the indemnitor. One approach is to specify a dollar amount for each of the primary coverages (i.e., CGL, employers liability, and auto liability), but this can cause problems as discussed under the "Common Errors and Problems" heading below. Probably the best approach is to specify that the occurrence and aggregate limits of the primary policy(ies) will meet the requirements imposed under the indemnitor's umbrella policy. A minimum limit required for the indemnitor's overall liability program can then be specified. This allows the indemnitor the flexibility for structuring a layered liability program in whatever manner makes the most business sense while affording the protection required under the contract.

5. Deductibles and Self-Insured Retentions

Any self-insurance, self-insured retentions or deductibles must be declared to and approved by the County. At the option of the County, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Shelby County or the Consultant shall procure a bond guaranteeing payment of losses, related investigation, claim administration and defense expenses.

6. Acceptability of Insurers

Insurance is to be placed with Tennessee admitted insurers rated A X or better by *A.M. Best's* rating service or as approved by Shelby County's Insurance Specialist.

7. Verification of Coverage

Consultant shall furnish the County with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the County before work commences. Shelby County may at its discretion. request a certified copy of any insurance policy required under any contract or agreement.

8. Sub-Consultants

Consultant shall include each of its sub Consultants as insured under the policies of insurance required herein or ensure that their sub Consultants meet the minimum requirements for insurance specified herein.

9. Defense, Indemnification and Hold Harmless Agreement (Contracts for Services)

Consultant shall indemnify, defend, save and hold harmless Shelby County Government, and its elected officials, officers, employees, agents, assigns, and instrumentalities from and against any and all claims, liability, losses or damages—including but not limited to Title VII and 42 USC 1983 prohibited acts—arising out of or resulting from any conduct; whether actions or omissions; whether intentional, unintentional, or negligent; whether legal or illegal; or otherwise that occur in connection with or in breach of this Contract or in the performance of the Services hereunder, whether performed by the Consultant its sub Consultants, agents, employees or assigns. This indemnification shall survive the termination or conclusion of this Contract.

Consultant expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Consultant shall in no way limit the responsibility to indemnify, defend, save and hold harmless Shelby County or its elected officials, officers, employees, agents, assigns, and instrumentalities as herein provided.

Shelby County has no obligation to provide legal counsel or defense to Consultant or its sub Consultants in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against Consultant as a result of or relating to performance of the Services under this Contract.

Except as expressly provided herein, Shelby County has no obligation for the payment of any judgment or the settlement of any claims against Consultant as a result of or relating to performance of the Services under this Contract.

Consultant shall immediately notify Shelby County of any claim or suit made or filed against Consultant or its sub Consultants regarding any matter resulting from or relating to Consultant's performance of the Services under this Contract and will cooperate, assist and consult with Shelby County in the defense or investigation thereof.

B. Right to Monitor and Audit

Access To Records. During all phases of the work and services to be provided hereunder the Consultant agrees to permit duly authorized agents and employees of the County, to enter Consultant's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The

Consultant will maintain all books, documents, papers, accounting records, and other evidence pertaining to the fee paid under this Contract and make such materials available at their offices at all reasonable times during the period of this Contract and for three (3) years from the date of payment under this Contract for inspection by the County or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof; copies of said records to be furnished if requested.

XI. PROPOSAL SUBMISSION

A. General

1. All interested and qualified Consultants are invited to submit a proposal for consideration. Submission of a proposal indicates that the Consultant has read and understands this entire RFP, including all attachments, exhibits, schedules, and addenda (as applicable) and all concerns regarding this RFP have been satisfied.

2. Proposals must be submitted in the format described below. Proposals are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc. are neither necessary nor desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.

3. Proposals must be complete in all respects as required in this section. A proposal may not be considered if it is conditional or incomplete.

4. **Hard copy proposals must be received by <u>no later than 3:00 pm (CST) on November 2, 2007</u>, at Shelby County Government Purchasing Department, 160 N. Main St., Suite 550, Memphis, TN 38103.**

5. Consultant agrees to provide County with any additional information it deems necessary to accurately determine ability to perform the services proposed. Furthermore, submission of this proposal constitutes permission by this organization for the County to verify all information contained in the proposal. Failure to comply with any request for additional information may disqualify this organization from further consideration. Such additional information may include evidence of financial ability to perform.

B. Proposal Presentation

1. One (1) original copy (clearly identified as original) and ten (10) copies of **<u>each section</u>** of the proposal will be required.

2. The package containing the original must be sealed and marked with the Consultant's name and **"FEASIBILITY STUDY (MIXED-USE RE-DEVELOPMENT OF 157 POPLAR AVENUE)", RFP #08-010-27" with due date and time indicated.**

3. Proposals must be in ink. Erasures and "white-out" are not permitted. Mistakes may be crossed out, corrections typed adjacent and initialed in ink by the person signing the proposal. Please identify all attachments, literature and samples, etc., with your firm name and our bid number.

4. Proposals must be verified before submission as they cannot be withdrawn or corrected after being opened. The County will not be responsible for errors or omissions on the part of bidders in making up their proposals. A responsible officer or employee must sign proposals. Tennessee sales tax shall not be included in the Consultant's proposal.

C. Proposal Format

Response to this RFP must be in the form of a proposal package that must be submitted in the following format:

1. Cover Page – Submit a letter, on letterhead stationary, signed by a duly authorized officer, employee, or agent of the organization/firm submitting the proposal that must include the following information:

a) A statement that the proposal is being submitted in response to the **Request for Proposal #** _____.

b) A statement indicating which individuals, by name, title, address, telephone number, and signature are authorized to negotiate with the County on behalf of the organization/firm.

c. A statement certifying that:

(i) The Consultant's signatory is an agent authorized to submit proposals on behalf of the organization/firm;
(ii) all declarations in the proposal and attachments are true to the best of reasonable knowledge;
(iii) all aspects of the proposal, including cost, have been determined independently, without consultation with any other prospective Consultant or competitor for the purpose of restricting competition;
(iv) the offer made in the proposal is firm and binding for 90 days after receipt of the proposal by the County; and
(v) all aspects of this RFP and the proposal submitted are binding for the duration if this proposal is selected and a contract awarded.

2. Proposal Sections

a. **Technical Proposal**

The Consultant's technical proposal shall be prepared using the following format to facilitate evaluation. If a consultant fails to provide the information requested in one or more sections, the proposal may be considered non-responsive.

- **Content:** The proposal shall contain the following items:
  Cover Letter
  Scope of Work
  Key Personnel
  Related Projects
  Background Experience
  References
  Time Schedule

- **Cover Letter:** The proposal shall be submitted with a cover letter summarizing key points in the proposal. Any introductory remarks may also be placed in the cover letter. The cover letter should not exceed two pages in length. The consultant shall identify the elements of the services they are proposing to perform and any sub-consultants it intends to use in the cover letter.

- **Scope of Work:** The consultant shall describe its plans to provide the requested services. This section should include a narrative description of the proposed methodology to accomplish the required tasks, as well as any innovations used on similar projects that may be applicable to the project. The proponent shall also provide a detailed scope of work for delivering the final product ready for use. The scope of work should be in sufficient detail to allow identification of all the items of work required and the respective deliverables.

- **Key Personnel:** A list of key personnel for this project must be submitted along with a résumé for each person. Each person's role on this project shall be identified.

- **Related Projects:** A list of other contracts entered into by your team that are similar to this project should be provided. Each should include the degree of involvement by your firm and those personnel proposed to be assigned to the services.

- **Background Experience:** This section should contain a brief history of your firm and any proposed sub Consultants, names of principals, concise description of the types of work accomplished, indication of current staff size and location and other relevant background information.

- **References:** A list of three references for similar projects completed within the past five years, with detailed description, should be submitted, as well as three references for projects completed for other government or public agencies.

- **Project Schedule:** A time schedule for the proposed Feasibility Study must be submitted, estimating the completion date of each major task identified in your scope of work. A graphical representation of the proposed schedule should be included.

b. **Cost Proposal**

The Project Cost Proposal (two copies) shall be submitted in a separately sealed envelope. The cost proposal shall be broken down to specifically identify lump sum costs and hourly billing rates and man-hours for each task in the scope of work to facilitate future negotiation of the scope of work and associated costs as necessary. Detail any assumptions made in arriving at the Cost Proposal, including

travel costs and the costs and fees associated with other consultants to be utilized on the Project. The Cost Proposal will be opened after selection of a short list of preferred consultants.

3. Additional Information

a. A description of any other resources available to the Consultant that will be useful in providing the Services;

b. A description of the methods used by the Consultant to measure the satisfaction of its client.

c. Any other relevant information about the capabilities of the Consultant deemed to be material.

XII. PROPOSAL EVALUATION AND SELECTION

A. EVALUATION PROCESS

1. Initial Review – All proposals will be initially evaluated to determine if they meet the following minimum requirements:

a. The proposal must be complete, in the required format, and be in compliance with all the requirements of the RFP.

b. Consultants must meet the Minimum Consultant Requirements outlined in Section II of this RFP.

2. Technical Review – Proposals meeting the above requirements will be evaluated on the basis of the following criteria:

a. Each proposal will be reviewed by a special Committee which may elect to schedule a personal presentation and interview with one or more of the bidders. After the review process is completed, this committee will recommend the successful bidder to the Division Director, Finance and Administration, who makes the decision, subject to the approval of the contract by the Mayor and the Board of County Commissioners.

b. All proposals submitted in response to this RFP will be evaluated based on the following criteria:

(i) Quality of alignment of the proposal with project goals to perform work and deliver content.

(ii) Experience of project director and team members on similar projects. Because the County is committed to inclusion, additional information about the diversity of team members, including the extent to which they represent minorities and women, should be provided. If appropriate, please provide the names of any locally-owned businesses included in the proposal.

(iii) Firm and team members' expertise in market research, financial analysis, funding resources and organizational/management models for evaluation of mixed-use development in downtown/urban areas.

(iv) Expertise in land use planning and regulatory environment for mixed-use development.
(v) Demonstrated track record in working in complicated organizational environments and establishing credibility with diverse clients.
(vi) Ability to complete study in appropriate time period.
(vii) Communications skills.
(viii) Track record in project management (on time, on budget deliverables)
(ix) Cost.
(x) References.

3. Oral Presentation.

The Shelby County Government reserves the right to interview, or require an oral presentation from, any Respondent for clarification of information set forth in the Consultant's response. In this regard, at the discretion of the evaluation committee, some or all Consultants who submit an Proposal in response to this RFP may be asked submit to an interview or give an oral presentation of their respective Proposals to the evaluation committee. If so, this is not to be a presentation restating the Proposal, but rather an in-depth analysis of certain qualifications of the Consultant. The interview or oral presentation, if utilized, is intended to provide an opportunity for the Consultant to clarify or elaborate on its qualifications without restating the Proposal. The interview or oral presentation is to be a fact finding and explanation session only and is not to be used to negotiate any terms of contract. If required, the time and location of such interview or oral presentation will be scheduled by the Administrator of Purchasing. Interviews and oral presentations are strictly an option of the Shelby County Government or its evaluation committee and, consequently, may or may not be conducted. All travel expenses to and from the interview or oral presentation shall be the responsibility of the Consultant.

Selection will be based on determination of which proposal best meets the needs of the County and the requirements of this RFP. All proposals will be examined for merit and ranked by a screening committee according to quality and responsiveness. The top proposals will be placed on a short list and will be called for an in-person or telephone interview. Upon completion of the interviews, the Cost Proposals of the short-list candidates will be evaluated. The firm selected as first choice will be notified and asked to negotiate final terms of the contract with the County Engineer.

The consultant chosen to prepare the Feasibility Study will not necessarily be selected to prepare any subsequent business or land use plan or to develop the Project if the Project proceeds further.

B. CONTRACT AWARD

Contract(s) will be awarded based on a competitive selection of proposals received. The contents of the proposal of the successful Consultant will become contractual obligations and failure to accept these obligations in a contractual agreement may result in cancellation of the award. The County reserves the right to negotiate any portions of the successful Consultant's fees and scope of work or utilize their own resources for such work.