temporary workers or any person who is employed full-time, part-time, or on a temporary basis as a service employee of a contractor or subcontractor on a County service contract. This term is subject to the exemptions set forth in §12-122.

Employer means any person, company or corporation that employs two or more employees at any one time within a calendar year and who is a contractor or subcontractor provided, however, that corporations organized under Section 501(c)(3) of the Internal Revenue Code of 1965, 226 U.S.C. §501(c)(3) shall be exempted as to all employees other than child care workers.

Health benefits mean comprehensive family medical coverage in which the Employer contributes a minimum of fifty percent of the employee health benefits costs.

Living Wage means either:

a. One hundred and four percent of the federal poverty level for a family of four, divided by 52 weeks per year x 40 hours of work per week. In 2007 the wage level equals $10.02 per hour; or

b. One hundred and twenty percent of the federal poverty level for a family of four without health benefits, divided by 52 weeks per year x 40 hours of work per week. In 2007 the wage level without benefits equals $12.01 per hour.

RFP means any proposal and/or sealed bid requested by the County.

Service Contract means a contract awarded to a contractor by the County primarily for the furnishing of services to or for the County (as opposed to the purchase of goods or other property or the leasing of property). Service contract includes subcontracts but does not include any contract, whether or not a subcontract, which: (1) involves only the purchase of goods; (2) involves services provided primarily by student interns; (3) is a contract in existence prior to the effective date of this article; or (4) is a contract with a school district, municipality or other unit of the government.

Subcontractor means any person, not an employee, that enters into a contract with a contractor (and that employs for such purpose) to assist the contractor in performing service contracts.

Section 12-114. Living Wage Applicable to Employees of Shelby County Government, Service Contracts and Service Contractors

All employees shall receive a Living Wage as defined in this article.

All persons/entities engaged in service contracts, including but not limited to both prime and subcontractors, with the County shall pay a Living Wage for all work done pursuant to the service contract.

Section 12-115. Annual Adjustment of Living Wage

a. The Living Wage rate shall be modified annually as of July 1 to incorporate the adjustments, if any, made to the federal poverty level income. Such annual adjustment shall take effect automatically every year, absent an affirmative vote by a majority of the County Commission to suspend the adjustment for that year.

b. The Living Wage rate for employees of service contractors shall be modified in accordance with the date the RFP is issued, and such RFP will contain the actual rate (in dollars per hour, with and without benefits) which applies for that RFP.

c. In the case of contract renewals, the Living Wage rate applicable as of the date of the renewal shall be the effective Living Wage rate.

Section 12-116. **Monitoring and Enforcement.**

a. The Director shall monitor compliance with this law and may contract with non-governmental agencies to investigate possible violations.

b. The Mayor or his or her designee may promulgate rules to the Director.

c. The Director shall submit an annual report to the Mayor and the County Board of Commissioners summarizing and assessing the implementation of and compliance with this new law during the preceding year.

d. Any contractor/service provider subject to the terms of this Ordinance shall, within five business days, make available upon request by the Director any and all payroll records, including hourly wages of individual employees, as needed to verify compliance with the terms and conditions contained herein.

e. Upon receipt of any complaint of non-compliance, whether complaint is made by the Administration and/or affected employee(s), the Director shall request from the contractor/service provider documentation to verify compliance with the terms of this Ordinance contained herein. The contractor/service provider shall submit a statement of compliance certified by penalty of perjury.

f. Service contracts under $25,000.00 are not required to be monitored for compliance, however violations reported will be investigated and upon the validation of the complaint will be subject to the penalties as defined in Section 12-120.

Section 12-117. **Required records**

(a) Contractor to submit.

For each service contract, the service contractor shall submit appropriate documents verifying compliance with this Ordinance, as set out in the RFP. Each RFP shall specify the necessary documentation and verification procedures.

(b) Contents.

The verifying documents shall include the following information, only as it pertains to the county service contract:

(1) The name of the prime service contractor and any subcontractor;

(2) A designation of the project and location; and

(3) Such other data as may be required by the Director from time to time.

(c) Prime contractor responsible for subcontractors.

The prime service contractor shall be responsible for the submission of all subcontractors' payrolls covering work performed.

(d) Signed statement of compliance certified by penalty of perjury.

Each verifying document shall be accompanied by a statement signed by the contractor or subcontractor, as the case may be, indicating:

(1) that the information contained is correct;

(2) that the wage rates contained therein are not less than those established by this ordinance as set forth in the contract; and

(3) that the service contractor has complied with the provisions of this article.

Section 12-118. Article to be applicable to new service contracts.

The provisions of this article pertaining to service contacts shall ONLY apply to service contracts with Shelby County Government for which the RFP is issued after the effective date of this article.

Section 12-119. Retaliation and Discrimination Barred.

It shall be unlawful for any employer to retaliate, discharge, demote, suspend, or take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of this law, for seeking or communicating information regarding rights conferred by this law, for exercising any other rights protected under this law, or for participating in any investigatory or court proceeding relating to this law. This protection shall also apply to any employee or his or her representative who in good faith believes this law applies.

Taking adverse employment action against a covered employee(s) or his or her representative within sixty days of the covered employee engaging in any of the abovementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. A covered employee subjected to any action that violates a subsection may pursue administrative remedies or bring a civil action against the offending party in a court of competent jurisdiction.

Section 12-120. Penalties.

(a) Debarment (or ineligibility) for three years.

In the event the Director determines that any service contractor has failed to pay the Living Wage rate or has otherwise violated the provisions of this article, he or she shall notify the service contractor of the violation and give the contractor ninety days to get into compliance, including the payment of restitution to all affected employees in the form of back pay owed. If the service contractor does not comply with these requirements, the Director shall then cancel the contract and debar the contractor for a period of three (3) years.

(b) Civil remedies.

i. If the Director determines that the violation was willful, the Director shall cancel the contract, require the contractor to pay affected employees restitution in the form of back pay owed within ninety days and debar the contractor for a period of no less than three years. In the event that the service contractor, who has willfully violated the provisions of this article, fails to pay restitution to its affected employees, Shelby County Government reserves the right to pursue civil remedies, up to and including remedies for treble damages, against such service contractor for breach of contract.

ii. In the event that any contractor/service provider fails to pay its affected employees restitution, the provisions of this Ordinance do not create a private right of action against Shelby County Government for such contractor/service provider's violation of the provisions herein.

Section 12-121. Memorandum of Understanding ("MOU")

Parties subject to this article may, by the labor organization agreement, provide that such agreements shall supersede the requirements of this article.

Section 12-122. Exemptions

The following are not covered employees for purposes of this article:

(1) A person who provides solely volunteer services that are uncompensated, or otherwise compensated by a nominal fee, except for reimbursement of expenses such as meals, parking, or transportation, and election day officers assigned to precincts on election day which include Officers of Election, Judges, Inspectors, Precinct Registrars, Assistant Precinct Registrars and Machine Operations; and

(2) A person employed in construction work that is subject to the provisions pursuant to any legally recognized Prevailing Wage standard; and

(3) Any and all employees in the Hospitality industry, including but not limited to, any and all employees working for restaurants and limited and full-service hotels and lodging establishments within the city limits of Memphis and Shelby County.

(4) Any person employed pursuant to an emergency contract. For purposes of this Ordinance, the term emergency contract will be defined in the same manner in which it is defined by the provisions outlined in the Shelby County Government Purchasing Policy, as it may be amended from time to time.

(5) Any and all employees who hold a professional license issued by the State of Tennessee, in medicine, law, engineering, architecture, landscape architecture, and accounting;

(6) A person employed by or as a financial or swap advisor, underwriter, counsel, securities broker or dealer, transfer agent, trustee, paying agent, rating agency, bond insurance company, dealer, escrow agent, liquidity facility provider, information or securities repository, remarketing agent, swap counterparty or tender agent in connection with the issuance of debt by the county, including bonds, commercial paper, swaps and notes.

(7) Any person under the age of 18; and

(8) Any person participating in any Student Internship.

(9) Any Locally Owned Small Business (LOSB) as defined by the LOSB Ordinance of Shelby County, Tennessee, with ten employees or less.

Sections 12-123 -- 125. Reserved.

SECTION 2. BE IT FURTHER ORDAINED. That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, or sentences, clauses, phrases or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED. That this Ordinance shall take effect beginning July 1, 2007.

CONTRACT

This contract (the "Contract") entered into this 2 day of July, 2008, and between SHELBY COUNTY GOVERNMENT, hereinafter referred to as "COUNTY" and Swanson Services Corporation, hereinafter referred to as "CONTRACTOR".

WITNESSETH

WHEREAS, the COUNTY has the need for the provision of professional Fiduciary Management Services at the Shelby County Justice Center, 201 Poplar Avenue, Memphis, TN 38103 and the Shelby County Jail East, 6201 Haley Road, Memphis, TN 38134; and

WHEREAS, the COUNTY issued a Request for Proposals ("RFP") Number 08-003-55, Fiduciary Management Services on March 27, 2008, and CONTRACTOR responded to said RFP on April 21, 2008; and

WHEREAS, the CONTRACTOR has the knowledge and expertise to provide such services; and

WHEREAS, the COUNTY awarded the RFP to CONTRACTOR on May 29, 2008; and

WHEREAS, the parties are desirous of entering into a contract setting forth the terms and conditions under which the CONTRACTOR will provide said services.

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

I. SCOPE OF WORK

1. The CONTRACTOR shall provide the services as outlined within the COUNTY's RFP Number 08-003-55 and CONTRACTOR'S response thereto which is attached hereto as Exhibit "A" and incorporated herein by reference as if stated verbatim (the "Services").

II. TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence upon the execution of this Contract and continue through June 30, 2009,

with an option to renew for two (2) one (1) year periods upon mutual written consent of both parties.

2. The COUNTY agrees to compensate the CONTRACTOR for the provision of the Services the sum total not to exceed ONE MILLION EIGHT HUNDRED EIGHTY-ONE THOUSAND SIX HUNDRED AND 00/100($1,881,600.00) Dollars (the "Fee") during the term of this Contract which shall include all reimbursable expenses.

3. The Fee shall be paid in accordance with the cost proposal on the attached Exhibit A. The Fee for any renewal period shall be increased by no more than three (3%) percent annually.

4. The CONTRACTOR shall submit invoices to the COUNTY on a monthly basis for Services performed during the preceding month. Invoices shall be submitted in duplicate to the address set forth in Paragraph 34 of this Contract to the attention of Chief James Coleman. The COUNTY shall pay such invoices within thirty (30) days of its receipt and approval of said invoices. The COUNTY is not obligated to pay, and will withhold from payment, any amounts the COUNTY has in dispute with the CONTRACTOR based on CONTRACTOR'S non-performance or negligent performance of any of the Services under this Contract.

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

All Services by the CONTRACTOR 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. CONTRACTOR'S PERSONNEL

The CONTRACTOR certifies that it presently has adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONTRACTOR. The CONTRACTOR 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 CONTRACTOR who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

3. INDEPENDENT STATUS

a. Nothing in this Contract shall be deemed to represent that the CONTRACTOR, or any of the CONTRACTOR'S employees or agents, are the agents, representatives, or employees of the COUNTY. The CONTRACTOR will be an independent CONTRACTOR over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the CONTRACTOR as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONTRACTOR is solely for purposes of compliance with local, state and federal regulations and means that the CONTRACTOR 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 CONTRACTOR that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that CONTRACTOR has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by CONTRACTOR for the Services performed shall be on the CONTRACTOR'S letterhead.

4. REPORTS

CONSULTANT shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. The reports shall include an itemization of the use of COUNTY'S funds, pertinent information pursuant to the applicable Living Wage Ordinance, and shall be inclusive of specific Services delivered. Any such reports provided to the COUNTY shall be prepared with the understanding that the COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY. The COUNTY shall have the right to withhold future disbursement of funds under this Contract and any future Contracts until this provision has been met.

5. TERMINATION OR ABANDONMENT

a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:

i) Either the CONTRACTOR or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled 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; or

ii) CONTRACTOR has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or

iii) CONTRACTOR has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONTRACTOR assets.

b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the CONTRACTOR for CONTRACTOR'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 (the "Termination Date"). In the event of such termination, the CONTRACTOR shall be paid for all Services rendered prior to the Termination Date, provided the CONTRACTOR shall have delivered to COUNTY such statements, accounts, reports and other materials as required under this Contract; however, CONTRACTOR shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by CONTRACTOR prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.

d. Notwithstanding the above or any section herein to the contrary, CONTRACTOR shall not be relieved of liability

to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by CONTRACTOR and the COUNTY may withhold any payments to CONTRACTOR for the purpose of setoff until such time as the exact amount of damages due the COUNTY from CONTRACTOR is determined.

6. COMPENSATION FOR CORRECTIONS

No compensation shall be due or payable to CONTRACTOR pursuant to this Contract for any CONTRACTOR'S Services performed by the CONTRACTOR in connection with effecting of corrections to the design of the Services, when such corrections are required as a direct result of negligence by the CONTRACTOR to properly fulfill any of his obligations as set forth in this Contract.

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

a. 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 CONTRACTOR from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONTRACTOR's obligations to its transferors or subcontractors.

b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. CONFLICT OF INTEREST

The CONTRACTOR 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 the Services. The CONTRACTOR warrants that no part of the total Contract Fee 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, subcontractor or consultant to the CONTRACTOR in connection with any work contemplated or performed relative to this Contract.

9. CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONTRACTOR, 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 CONTRACTOR 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.

10. EMPLOYMENT OF COUNTY WORKERS

The CONTRACTOR will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONTRACTOR agrees to permit duly authorized agents and employees of the COUNTY to enter CONTRACTOR'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 CONTRACTOR 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 Term 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 shall be furnished to the COUNTY upon request.

12. ARBITRATION

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

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

a. CONTRACTOR 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