

**Revised**

**MEMORANDUM OF AGREEMENT  
between the  
COMMONWEALTH OF KENTUCKY  
DEPARTMENT FOR LOCAL GOVERNMENT**

**and**

**City of Midway, KENTUCKY**

**and**

**Midway Renaissance, Inc.**

THIS MEMORANDUM OF AGREEMENT (hereinafter "Agreement"), by and between the Commonwealth of Kentucky, Department for Local Government, Renaissance on Main Office (hereinafter "DLG"), with address at 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, the City of Midway, Kentucky, with address of 101 East Main, Box 4275 Midway, Kentucky 40347, (hereinafter "the Recipient") and Midway Renaissance, Inc., with an address of P.O. Box 4354, Midway, Kentucky 40347, (hereinafter "the Sub-Recipient") is made and entered into as of the date last executed by the parties thereto as evidenced by the dates written below.

WHEREAS, the Recipient has filed a Renaissance on Main program (Renaissance) application and has been certified by the Kentucky Heritage Council as a Certified Renaissance on Main City; and

WHEREAS, the Sub-Recipient through the Recipient has made application for Renaissance funds; and

WHEREAS, the funds requested from the Renaissance program shall be used for Midway Market Study project (Project) (listed in greater detail in Scope of Work, incorporated by reference as though set forth fully herein); and is to be funded in an amount not to exceed \$15,000.00 (FIFTEEN THOUSAND AND 00/100); and

WHEREAS, DLG shall administer the local grant for the Project; and

WHEREAS, the Sub-Recipient has agreed to serve as the administrator and beneficiary of the grant money from DLG for the Project under the terms and conditions enumerated herein and has further agreed to effectuate the completion of the Project in accordance with those terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, commitments, and conditions contained herein, the DLG, the Recipient and the Sub-Recipient agree as follows:

## 1 - OBLIGATIONS OF DLG

DLG covenants and agrees, conditioned upon the timely performance by the Sub-Recipient of its obligations herein, to undertake the following obligations:

- A. DLG shall, subject to the availability of appropriate funds, pay the Sub-Recipient a sum not to exceed \$15,000.00 (FIFTEEN THOUSAND AND 00/100) for the performance of the obligations listed within this Agreement and upon receipt of:
  - (1) Up to date Quarterly Progress Reports (incorporated by reference as though set forth fully herein); and
  - (2) Properly executed Request for Disbursement (incorporated by reference as though set forth fully herein) and all supporting documentation, including, but not limited to, receipts, invoices, proof of payment and cancelled checks; and
  - (3) The Declaration of Covenants and Restrictions for each property (incorporated by reference as though set forth fully herein); and
  - (4) Resolution authorizing the execution of this Agreement.
- B. All attachments listed above are hereby incorporated herein and made a part of this Agreement.
- C. DLG may, but is not required to, make periodic inspections of the Project and may send inspection reports to the Sub-Recipient. Deficiencies identified in an inspection report shall be corrected by the Sub-Recipient and their correction reported in writing to DLG within two weeks of receipt of the inspection report.
- D. DLG shall cooperate fully with the Sub-Recipient in order to facilitate the obligations set out in this Agreement.
- E. DLG shall close out the Project upon satisfactory completion of the Project by the Sub-Recipient in accordance with the terms and conditions of this Agreement and submission of an acceptable project completion report in the form prescribed by DLG.

## 2 - OBLIGATIONS OF THE SUB-RECIPIENT

The Sub-Recipient (through the Recipient) covenants and agrees to undertake the following obligations:

- A. The Sub-Recipient shall perform and cause to be performed all necessary acts to plan, design and complete the Project in accordance with the following Scope of Work:

*Funds will be used for a market analysis for the City of Midway.*
- B. The Sub-Recipient shall submit all necessary documentation, including, but not limited to those items listed in Section 1(A) of this Agreement.
- C. The Sub-Recipient shall obtain all necessary permits, licenses, and approvals required for completion of the Project from the appropriate governmental entities.
- D. The Sub-Recipient shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, policies, and all local orders and ordinances.
- E. The Sub-Recipient shall use its own procurement procedures that reflect applicable state and local laws for all purchases of goods or services related to the Project.

- F. Effective upon execution of this agreement, the Sub-Recipient shall submit quarterly progress reports to DLG in the form prescribed by DLG (incorporated by reference as though set forth fully herein) until the Project is closed out by DLG. The reports shall be submitted no later than the 30<sup>th</sup> day of the month following the last day of each calendar quarter (i.e., January 30<sup>th</sup>, April 30<sup>th</sup>, July 30<sup>th</sup>, and October 30<sup>th</sup>). The report shall list, at a minimum, the line items in the cost estimate and the percent of completion, as well as any indication of problems or time delays. Failure to submit quarterly reports shall result in non-reimbursement of claims until such time as the quarterly reports are current.
- G. The Sub-Recipient shall retain all records relating to the Project until the records are audited by DLG, or for three years after the Project has been closed out by DLG, whichever occurs first.
- H. The Sub-Recipient shall cooperate fully with DLG and provide any documentation requested by DLG in order to facilitate the obligations set out in this Agreement.
- I. The Sub-Recipient shall be responsible for the expenditure of funds in accordance with this agreement and all applicable laws. Any unauthorized or improper expenditure of funds or expenditure of funds other than in accordance with the terms of this Agreement shall be deemed a default of this Agreement by the Sub-Recipient.
- J. The Sub-Recipient shall repay DLG all funds that are not spent in accordance with this Agreement and appropriate laws.
- K. The Sub-Recipient shall submit a project completion report to DLG in the form prescribed by DLG upon completion of the Project.
- L. All Recipients, including sub-recipient herein, with the exception of 6<sup>th</sup> Class Cities covered by KRS 91A.040(2) and (3) and Districts covered by KRS 65.065(2), are subject to an independent annual audit conducted in accordance with generally accepted auditing standards, Government Auditing Standards, issued by the Comptroller General of the United States, the provisions of Office of Management and Budget Circular A-133, "Audits of State and Local Governments," if applicable, and the Audit Guide for Fiscal Court Audits issued by the Kentucky Auditor of Public Accounts. The audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to DLG, Office of State Grants, no later than 12 months after the end of each fiscal year in which funds were received by a recipient.

Those 6<sup>th</sup> Class Cities and Districts referenced-above shall be required to submit a copy of their financial statement, when applicable, to DLG, Office of State Grants, no later than 12 months after the end of each fiscal year in which funds were received by a recipient. Where a financial statement is not applicable, pursuant to the relevant statute, an audit shall be required.

### **3 - MUTUALITY OF OBLIGATIONS**

- A. The parties agree that the obligations imposed upon them are for the benefit of the parties and the timely fulfillment of each and every obligation in accordance with this Agreement is necessary. The failure of any party to fulfill its obligations under this Agreement or the failure of any event to occur by a date established by this Agreement shall constitute a breach of it unless the fulfillment of such obligation is waived or modified by written Agreement of the parties.
- B. In the event of default by the Sub-Recipient, including the failure to meet any time deadlines set out in this memorandum, DLG may declare this Agreement void from the beginning without further obligation to the Sub-Recipient and may commence appropriate legal or equitable action to enforce its rights under this Agreement including action for recovery of funds expended hereunder.

- C. Except as may otherwise be provided herein, the parties to this Agreement shall be solely responsible for any costs incurred in fulfilling their obligations under this Agreement and no party shall have any claim against the other party for reimbursement of costs whether or not a party is in default.

**4 - MISCELLANEOUS PROVISIONS**

- A. This Agreement may be signed by each party upon a separate copy, and in such case one counterpart of this Agreement shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Agreement may be executed in two or more counterparts each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.
- B. The headings set forth in this Agreement are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
- C. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Agreement which assignment shall be prohibited except with the prior written consent of all parties hereto.
- D. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.
- E. Unless previously waived by DLG, no person, employee, agent, consultant, officer or elected official or appointed official of the Recipient or Sub-Recipient who exercises or has any function or responsibilities with respect to activities assisted with funds or who is in a position to participate in the decision making process or gain inside information with regards to these activities, may obtain a financial interest or benefit from the Project activity, or have an interest in any contract, subcontract or agreement with respect to the Project, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. DLG may grant exceptions to the provisions of this section if DLG determines that the exception will serve to further the purposes of the Renaissance on Main Program, effective and efficient administration of the Project, and would not violate any state, local or federal statute, law, ordinance or regulation.
- F. Time is of the essence in the performance of each of the terms and conditions of this Agreement.
- G. The parties agree that any suit, action, or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Eastern District of Kentucky, Frankfort Division.
- H. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

If to DLG: Department for Local Government  
1024 Capital Center Drive, Suite 340  
Frankfort, Kentucky 40601  
ATTENTION: Harry Carver

If to the Recipient: City of Midway, Kentucky  
101 East Main, Box 4275

Midway, Kentucky 40347  
ATTENTION: Tom Bozarth

If to the Sub-Recipient      Midway Renaissance, Inc.  
P.O. Box 4354  
Midway, Kentucky 40347  
ATTENTION: Randy Thomas

- I. The parties agree that this Agreement is not entered into under the provisions of KRS 56.8161 et seq.

## **5 - MOA Standard Terms and Conditions**

- A. Cancellation clause: Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.
- B. Funding Out Provision: DLG may terminate this contract if funds are not appropriated to the Contractor or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. DLG shall provide the Contractor thirty (30) calendar days written notice of termination of the contract.
- C. Access to Records: DLG certifies that it is in compliance with the provisions of KRS 45A.695. "Access to Contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor as defined in KRS 45A.030(9) agrees that DLG, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884
- D. Effective Date: All Memorandum of Agreements are not effective until the secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Government Contract Review Committee. However, Memoranda of Agreements \$50,000 or less are exempt from review by the Committee and need only be filed with the Committee within thirty (30) days of their effective date for informational purposes only as provided under KRS 45A.700.
- E. KRS 45A.695(7) Payments on personal service contracts and Memoranda of Agreement shall not be authorized for services rendered after Government Contract Review Committee disapproval, unless the decision of the Committee is overridden by the Secretary of the Finance and Administration cabinet or agency head, if the agency has been granted delegation authority by the secretary.
- F. Violation of tax and employment laws: KRS 45A.485 requires the Contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the Contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor shall be in continuous compliance with the provisions of those statutes which apply to the Contractor's operations, and that the Contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for DLG's cancellation of the contract and the Contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

\_\_\_\_\_ The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

\_\_\_\_\_ The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

IN WITNESS WHEREOF, DLG, the City of Midway, and Midway Renaissance, Inc. have executed this memorandum as of the dates written below.

CITY OF MIDWAY

COMMONWEALTH OF KENTUCKY

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Tom Bozarth  
Mayor

\_\_\_\_\_  
Tony Wilder, Commissioner  
Department for Local Government

Examined as to form and legality only:

Examined as to form and legality only:

\_\_\_\_\_  
Counsel for City

\_\_\_\_\_  
Counsel, Department for Local Government

MIDWAY RENAISSANCE

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Examined as to form and legality only:

\_\_\_\_\_  
Randy S. Thomas  
President, Midway Renaissance, Inc.

\_\_\_\_\_  
Counsel, Midway Renaissance, Inc.