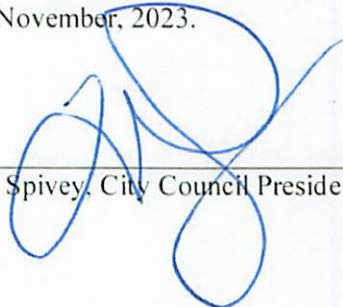


**Resolution 2023-R-163**

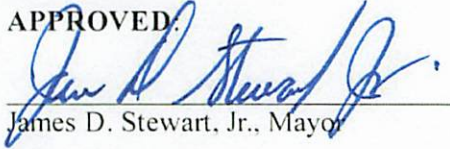
*A Resolution authorizing the City of Irondale to enter into an Agreement  
with Kemp Management Solutions, LLC for  
Construction Project Program Management Services*

**THEREFORE BE IT RESOLVED** that Mayor James D. Stewart, Jr. or his designee is authorized to execute an agreement with Kemp Management Solutions, LLC for the provision of i) design, procurement, and planning support and (ii) construction phase support, as program management services for following Phase I constructions projects – renovations to Ruffner Ball Park, renovations to Crestwood Boulevard administrative building, new Library on Grants Mill Road, renovations to the Irondale Civic Center, and Fire Station #3 – in an amount not to exceed Twenty-Eight Thousand Two Hundred Thirty-Two Dollars and 00/100 Dollars (\$28,232.00) per month for thirty (30) months, as well as any other documents necessary to accomplish such agreement.

**ADOPTED AND APPROVED:** This 7th day of November, 2023.

  
\_\_\_\_\_  
David Spivey, City Council President

**APPROVED:**

  
\_\_\_\_\_  
James D. Stewart, Jr., Mayor

**ATTESTED:**

  
\_\_\_\_\_  
Leigh Ann Allison, City Clerk

**CERTIFICATION**

I, Leigh Ann Allison, the City Clerk of the City of Irondale, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Irondale at its regular meeting held on the 7th of November, 2023, as the same appears in the minutes of record of said meeting.

  
\_\_\_\_\_  
Leigh Ann Allison, City Clerk

**PROJECT MANAGEMENT AGREEMENT**

**THIS PROJECT MANAGEMENT AGREEMENT** (this "Agreement") is entered into by and between City of Irondale, Alabama an Alabama municipal corporation (the "Owner"), and **KEMP MANAGEMENT SOLUTIONS, LLC**, an Alabama limited liability company ("KMS"), effective as of the date of execution by the last party hereto (the "Effective Date").

**RECITALS**

- A. KMS is engaged in the business of providing a range of project management and construction management services.
- B. Owner desires to engage KMS to perform project and construction management services as more specifically described on Exhibit A.
- C. KMS and Owner are entering to this Agreement to establish the terms and conditions of the engagement of KMS to perform project and construction management services.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the respective agreements herein contained, it is hereby agreed between the Owner and KMS as follows:

**Section 1. Scope of Services.** The project and scope of services are described in detail on Exhibit A hereto and incorporated herein ("Services").

**Section 2. Engagement of KMS as Project Manager; Term; Termination.**

- (a) The Owner hereby engages KMS to carry out the scope of Services outlined on Exhibit A. KMS shall not have any rights, powers or authorities to act on behalf of the Owner and shall not be authorized to enter into any agreements with any other person or party that would bind Owner without Owner's prior written approval.
- (b) The Agreement shall commence on the Effective Date and shall continue to be in full force for a period of thirty (30) months (the "Term") as outlined in Exhibit A.
- (c) Owner shall have the right to terminate this Agreement without cause at any time by providing KMS with not less than **ninety (90) days** prior written notice of such termination.

**Section 3. KMS's Services.** KMS shall function as the Owner's representative to coordinate and manage the architect, general contractor and any other vendor for the project and shall perform the Services and carry out the responsibilities reasonably within the general scope of such engagement as are described on Exhibit A hereto or otherwise designated from time to time by the Owner. KMS shall perform the Services with the skill and care of project managers in the area in which the project is located, in connection with projects of comparable size, use, location, complexity and value.

**Section 4. Relationship of the Parties.** The parties intend that the relationship between them created under this Agreement is that of independent contractors only. KMS is not to be considered an agent or employee of Owner for any purpose.

**Section 5. Project Management Fee and Allowed Expenses.** In consideration of the services to be provided by KMS, the Owner will pay KMS a project management fee of \$846,960 to provide the services outlined in Exhibit A. Payment of the project management fee will be made in payments on a monthly basis in the amount of \$28,232 per month plus reimbursement for reasonable project-related costs as set forth in Exhibit A. Owner agrees that the payment terms will be net 30 days from receipt of invoice.

**Section 6. Indemnity; Insurance.**

(a) Indemnification.

(i) KMS hereby agrees to indemnify and hold harmless Owner, and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage that arise out of or result from the negligent acts or omissions of KMS in performing the Services under this Agreement; provided, however, that KMS does not assume any risk of damages and shall not be liable for any damages to Owner, architect, contractor or any other project vendor engaged by Owner not caused by the negligent acts or omissions of KMS in performing the Services. The provisions of this Section 6(a) shall survive the termination or expiration of the Agreement.

(ii) To the extent allowed by law, Owner hereby agrees to defend, indemnify, and hold harmless KMS and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage that arise out of or result from negligent acts or omissions of Owner, its employees, officials, and representatives related to the project work for which the Services will be completed by KMS.

(iii) Owner shall require each of its contractors (hereinafter collectively referred to as "Indemnitors" and individually as an "Indemnitor") to agree to defend, indemnify and hold harmless KMS (and its agents and employees) as to and from all liability, claims, action, causes of action, lawsuits and demands (including all judgments and settlements made at arm's length and all attorney's fees and litigation expense connected therewith) for personal injury, death, (including personal injury or death of the Indemnitor's own employees) and/or property damage arising out of any act or omissions, work or operation performed by, for, and on behalf of such Indemnitor arising from the projects on which KMS performs the Services. KMS shall be named as an additional insured on each Indemnitor's comprehensive general liability, automobile and excess liability insurance policies.

(b) Insurance. Throughout the Term of this Agreement, KMS shall maintain the following insurance at its cost and expense:

(i) Worker's Compensation Insurance; Employer's Liability. Worker's compensation and employer's liability insurance as required by Alabama law. Employer's Liability insurance limits shall be at least (i) Each Accident - \$1,000,000, (ii) Disease – each employee \$1,000,000, and (iii) Disease – policy limit \$1,000,000.

- (ii) **Automobile and Vehicle Liability Insurance.** Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits each occurrence.
- (iii) **Professional Liability Insurance.** Professional liability insurance covering claims for any errors or omissions, with \$1,000,000 limit of liability.
- (iv) **Comprehensive General Liability.** Comprehensive liability insurance covering claims arising out of KMS's operations and performance of Services, including coverage for contractual obligations assumed hereunder, with a combined single limit of \$1,000,000 per occurrence and a general annual aggregate limit of \$2,000,000. All such insurance shall be on an occurrence basis.
- (v) **Excess/Umbrella Liability.** City and/or Board shall procure and maintain at the City's sole expense excess/umbrella liability coverage in the amount of \$4,000,000 per occurrence and aggregate. All excess/umbrella coverage shall cover over Commercial General Liability, and Commercial Auto Liability and Employer's Liability.

Any combination of primary and umbrella/excess coverage is acceptable as long as it satisfies the combined minimum coverage limits of each line. Nothing contained in these insurance requirements is to be construed as limiting KMS's responsibility for any and all damages resulting from operations under this Agreement. Each of the insurance coverages required herein shall be issued by an insurer licensed by the Insurance Commissioner to transact the business of insurance in the state of Alabama for the applicable line of insurance, and such insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) must have a Best Policyholders Rating of "A-" or better and financial size rating of Class VII or larger.

City shall be listed as an additional insured on the policies required under this section. KMS shall, within a reasonable time following execution of this Agreement, furnish to City certificates of all of the insurance required herein. Upon renewal thereof, KMS shall provide City with certificates of renewal no later than thirty (30) days prior to the expiration of any such policy. Such insurance certificates held by KMS shall provide that City is an additional insured as required by written contract and that no cancellation or non-renewal of such policies can take effect without thirty (30) days' prior written notice by mail to Irondale.

(c) **Waiver of Subrogation Rights.** Each party hereto waives all subrogation rights against the other for any and all claims or actions covered by the respective party's insurance coverage.

(d) **Notification of Claims and/or Litigation.** KMS shall notify the City in writing of any known claims and/or litigation within two (2) business days of the earlier of (i) learning of such claims and/or litigation or (ii) receipt thereof. KMS shall also provide therewith a copy of any and all information related thereto to the City as well as any other information requested by the City.

**Section 7. Compliance with Law.** KMS shall perform the Services in compliance with all applicable requirements of law and governmental regulations applicable thereto; provided, however, that

KMS shall not in any way be responsible for the actions or activities of the contractor(s), subcontractors or other vendors for the Project.

**Section 8. Notices.** All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person, sent by generally recognized, prepaid, overnight air courier services, or sent by certified mail, postage prepaid with return receipt requested, to the other party at the following address:

**(a) If to KMS:**

Kemp Management Solutions, LLC  
3029 2<sup>nd</sup> Avenue South  
Birmingham, Alabama 35233  
Attention: J. Michael Kemp, Sr.

**(b) If to Owner:**

City of Irondale, Alabama  
101 20<sup>th</sup> Street South  
Irondale, Alabama 35210  
Attention: Mayor James D. Stewart, Jr.

with a copy to:

Wallace, Jordan, Ratliff & Brandt LLC  
800 Shades Creek Parkway  
Suite 400  
Birmingham, Alabama 35209  
Attention: April B. Danielson, City Attorney

All such notices to any party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services. Any of the above-mentioned parties may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. Owner and KMS will send a copy of each notice to each of the other above-named parties, but the failure to send a copy of such notice that either thereof gives to the other pursuant to the provisions hereof to any such other party shall not invalidate such notice or render it ineffective unless notice to such other party is otherwise herein expressly required. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of such party by a duly authorized officer or employee.

**Section 9. Entire Agreement; Amendment.**

- (a) This Agreement, together with the exhibits hereto, constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- (b) No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the parties.

**Section 10. Force Majeure.** Any delays in the performance of any obligation of City and/or KMS under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, pandemics, and other similar causes not within the control of City and/or KMS and any time periods required for performance shall be extended accordingly.

**Section 11. Governing Law; Venue; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without regard to its conflicts of laws principles. Mandatory and exclusive venue for any dispute regarding this Agreement shall only be appropriate in Jefferson County, Alabama, Birmingham Division. The parties hereby consent to the exclusive personal jurisdiction of the courts in and for the State of Alabama in the event of litigation pertaining to this Agreement.

**Section 12. Headings.** The headings of sections hereof are inserted for convenience only and shall not be deemed to constitute a substantive part of this Agreement.

**Section 13. Permits/Licenses.** Before commencing the Services, KMS, at its own expense, will obtain all licenses, permits or other governmental authorizations needed to perform the Services (collectively, "Licensing"). KMS further agrees to maintain that Licensing throughout the performance of its Services.

**Section 14. Severability.** If any of the provisions contained in this Agreement are held to be illegal, invalid, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

**Section 15. Immigration Compliance.** By signing this agreement, KMS affirms for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed to be in breach of the Agreement and shall be responsible for all resulting damages.

**Section 16. Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

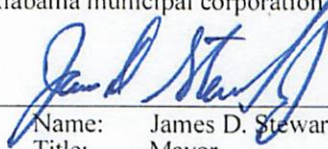
(signature page follows)

**IN WITNESS WHEREOF.** Owner and KMS have caused this Agreement to be executed in their respective corporate names as of the dates set forth below.

OWNER:

**CITY OF IRONDALE, ALABAMA,**  
an Alabama municipal corporation

By: \_\_\_\_\_


  
Name: James D. Stewart, Jr.  
Title: Mayor

Date: \_\_\_\_\_

KMS:

**KEMP MANAGEMENT SOLUTIONS, LLC**  
an Alabama limited liability company

By: \_\_\_\_\_

  
Name: James M. Kemp, Sr.  
Title: President & CEO

Date: \_\_\_\_\_



# EXHIBIT A

November 2, 2023

Mayor James D. Stewart, Jr.  
City of Irondale  
101 20<sup>th</sup> Street South  
Irondale, AL 35210

RE: Proposal for Program Management Services – Phase I Construction Projects

Dear Mayor Stewart,

I am pleased to present our scope of work proposal to provide program management services for the Phase I construction projects including the following: renovations to Ruffner Ball Park, renovations to administrative building at Crestwood Blvd., new library at Grants Mill Rd., renovations to the Zamora Temple property and replacement of Fire Station #3. The following outlines KMS's proposed services based on the current program status:

## ***Summary of Services***

- ***Design, Procurement & Planning Support***
  - KMS will develop a program level communication plan along with the Mayor to identify and inform key stakeholders.
  - KMS will coordinate with the project design team and City of Irondale staff to develop and manage the overall program level schedule. This schedule will include key milestone dates as they relate to space and program needs of the tenants, proposed sequencing of work relating to renovation of existing facilities and progress of design phase milestones.
  - KMS will facilitate project meetings and assist as the Owner's representative.
  - KMS will assist the Owner and design team during the RFP process in order to identify general contracting firms to deliver the various projects.
  - KMS will provide monthly updates related to design progress, work complete and critical milestones.
  - Provide overall program-level cash flow analysis.
- ***Construction Phase Support***
  - KMS will coordinate and attend project related conference calls and site visits.
  - KMS will facilitate bi-weekly project meetings and assist as the Owner's representative.
  - Monitor and coordinate Owner's staff with internal department space planning and move management as needed.
  - Maintain project documents including: RFI's, Change Orders, Design Team Field Observations & Punch List.
  - Monitor construction cost by reviewing all pay applications as well as proposed and actual change orders in conjunction with design team review.
  - KMS will coordinate construction updates as required with program-level schedule.
  - KMS will provide executive-level reporting and project update presentations as needed.

**3029 2<sup>nd</sup> Avenue South, Birmingham, AL 35233**

**p. 205-731-7372**

**[www.kempmanagementsolutions.net](http://www.kempmanagementsolutions.net)**



- **Project Close-out Support**

- Monitor the closeout process to ensure all closeout documents are provided by the contractor after completion of each project.
- Coordinate and attend the one-year warranty walk-through to identify any items that need to be addressed by the contractor prior to the one-year warranty expiration.

As a part of this proposal, KMS will provide the necessary licenses and access to its project management system Framework. All project details will be managing within this system.

### **Summary of KMS Resource Allocation and Pricing**

#### **Total Cost for Program Support (30 Months)**

**\$846,960**

- Director of Project Operations – 10%
- Sr. Project Manager– 50%
- Project Manager – 80%
- Program Coordinator – 15%

**Monthly billing to occur throughout project duration at \$28,232 x 30 Months**

**\$846,960**

In addition to the compensation described above, City of Irondale shall reimburse KMS for all reasonable project-related costs including drawing/specification reproduction, airfare, hotels, rental cars and meals. KMS will not mark up any reimbursable cost.

Based on the current program status, this proposal and services described herein is limited to a total duration of thirty (30) consecutive months, and a total active project count of five (5 each). As a part of this proposal within the stated 30-month duration, KMS will assist the City of Irondale with the planning and initiation of the Phase 2, 3 & 4 projects. If any of the projects for Phase 2, 3 or 4 reach a stage of bid or construction during this 30-month period, KMS reserves the right to request additional compensation to manage those projects. Assuming all current active projects will complete within the stated 30-month duration, KMS is proposing that if the overall duration of the 5 active projects exceeds 30 months, through no fault of KMS, KMS will coordinate with the City of Irondale to establish an extension rate that is mutually acceptable to both parties.

Please feel free to review this proposal and contact me with any questions that you may have regarding the scope of services that have been outlined. ***Please note that KMS is prepared to start immediately upon notice of acceptance of this proposal.*** Thank you again for the opportunity to provide you with this proposal and we look forward to working with you and your team.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Michael Kemp, Sr.", written over a faint, larger version of the same signature.

J. Michael Kemp, Sr  
President & CEO

**3029 2<sup>nd</sup> Avenue South, Birmingham, AL 35233**

**p. 205-731-7372**

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