



SANDY SPRINGS™
GEORGIA

**ADDENDUM NO. 2
REQUEST FOR PROPOSAL #18-001
TRAFFIC SIGNALS MAINTENANCE**

**PROPOSAL DUE DATE:
FEBRUARY 21, 2017 NO LATER THAN 2:00 P.M. EST**

In hard copy, not electronic copy or via email or fax.

Submit Proposals to:

City of Sandy Springs, Purchasing Office

7840 Roswell Road, Building 500

Sandy Springs, Georgia 30350

Proposals received after the deadline
or at any other locations will not be accepted.

QUESTIONS/RESPONSES

1. Indemnification question: Can a Contractor request changes to the contract language of any kind? **The Contract that was issued with the RFP is the contract that the City will accept. No additional changes will be accepted**
2. Proposed Contract changes: **Section T. Indemnification. Contractors requested changes in red.**

1. Contractor shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from and against any and all liability, suits, actions, damages, losses and expenses, costs of every nature, including **reasonable** attorneys' fees, **to the extent** arising out of or resulting from the **negligence negligent acts, omissions, or willful misconduct** of Contractor, its employees, or its agents, **except to the extent such actions, claims, damages to persons or property, penalties, obligations, or liabilities arise from the negligent acts, omissions, or willful misconduct of the City, its officers and employees.**

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3. Should the City seek indemnification pursuant to subparagraph (1) above, it shall give reasonably prompt notice to Contractor of the assertion of any claim or the commencement of any action, suit, or proceeding (collectively, "action"), in respect of which indemnity may be sought hereunder and will give Contractor such information with respect thereto as Contractor may reasonably request in writing. Failure to give reasonably prompt notice hereunder shall

not relieve Contractor of liability pursuant to this subsection; provided, however, should Contractor prove actual financial loss directly attributable to delayed notice, its financial liability pursuant to this subsection may be offset by the amount of the direct financial loss proven. Contractor shall, when directed and at its expense, participate in the defense of any such action involving a third party; provided, however, the defense shall be conducted with counsel mutually satisfactory to the City and Contractor, **which approval shall not be unreasonable withheld**. The City and Contractor shall consult with each other regarding the conduct of such defense. If the defense is assumed by Contractor, Contractor shall submit any proposed settlement under this section for the City's approval, which approval shall not be unreasonably withheld or delayed. The City shall have the right (but not the duty) to participate in the defense thereof, and to employ counsel, at its own expense (except that Contractor shall pay the **reasonable** fees and expenses of such counsel to the extent the City reasonably concludes that there is a conflict of interest between the City and Contractor), separate from counsel employed by Contractor in any such action. Contractor shall be liable for the **reasonable** fees and expenses of counsel employed by the City if Contractor has not assumed the defense thereof. Whether or not Contractor chooses to defend or prosecute any action involving a third party, all the parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information, and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

The Contract that was issued with the RFP is the contract that the City will accept. No additional changes will be accepted.

3. In disputes between the City and Contractor, in no event shall either party be entitled to or responsible for any special, indirect or consequential damages, whether such liability arises in breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action; ~~provided, however, such limitation does not include any liability for which Contractor is obligated to indemnify the City based upon special, indirect or consequential damages suffered by third parties.~~ **The Contract that was issued with the RFP is the contract that the City will accept. No additional changes will be accepted.**

4. The City and Contractor agree that Contractor shall be liable for fines or civil penalties to a maximum aggregate of One Hundred Fifty Thousand Dollars (\$150,000) per year, which may be imposed by a federal or state department regulatory agency or federal or state court **to the extent caused** as a result of Contractor's ~~negligence~~ **negligent acts, omissions, or willful misconduct**. The City will assist Contractor to contest any such fines or civil penalties in administrative and/or court proceedings prior to any payment by Contractor. Contractor shall pay the costs of contesting any such fines or civil penalties. Contractor shall not be liable for fines or civil penalties that result from violations that occurred prior to the effective date of this Contract, ~~or for the effects of prior violations by the City that have contributed to the assessment of any fine or civil penalty caused by Contractor's negligence,~~ **or for any violations or contributions thereto caused by the City's negligent acts, omissions, or willful misconduct.** **The Contract that was issued with the RFP is the contract that the City will accept. No additional changes will be accepted.**

5. In determining the amount of any loss, liability, or expense for which the City is entitled by indemnification under this Contract, the gross amount thereof will be reduced by any insurance proceeds actually paid to the City under any insurance policies held by the City; provided, however, that if the City has been indemnified hereunder but does not actually receive such insurance proceeds until after being indemnified, the City shall reimburse Contractor for amounts paid to it to the extent of the insurance proceeds are actually received. **The Contract that was issued with the RFP is the contract that the City will accept. No additional changes will be accepted.**

6. If both Contractor and the City have insurance coverage respecting a particular claim for which indemnification is provided pursuant to this section, the parties agree that the insurance coverage of Contractor is the primary coverage and will be called upon before the insurance coverage of the City is called upon. **The Contract that was issued with the RFP is the contract that the City will accept. No additional changes will be accepted.**

7. Contractor acknowledges that the obtaining of this Contract is the specific consideration for this hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and with the collateral obligation of insuring said indemnity as set forth herein. **The Contract that was issued with the RFP is the contract that the City will accept. No additional changes will be accepted.**

8. Nothing in this section shall:

a. Limit or prevent the City or Contractor from determining positions and actions relative to settlement or defense on any matter for which the City or Contractor are responsible; or

b. Limit or prevent the City or Contractor from joining the other party or any affiliate of a party in any claim, suit, action or proceeding involving a third party claim through interpleading, third party claim, cross-claim or otherwise limit or prevent a party from voluntarily joining any claim, suit, action or proceeding through intervening or as may otherwise be permitted by law or rule. **The Contract that was issued with the RFP is the contract that the City will accept. No additional changes will be accepted.**

Other Questions and Responses:

- 1) I would like to request a copy of the original "Traffic Signal and Street Light Maintenance Services" contract that was awarded to Siemens back in 2011. **Submit an Open Records Request.**

I hereby acknowledge receipt of Addendum Number 2 for Request for Proposal #18-001 for the Traffic Signals Maintenance Project. I have incorporated the necessary changes into my response for the abovementioned Request for Proposal.

COMPANY NAME _____

CONTACT PERSON: _____

ADDRESS: _____ CITY: _____

STATE: _____ ZIP: _____

PHONE: _____ EMAIL ADDRESS _____

SIGNATURE: _____ DATE: _____