



# SANDY SPRINGS™

GEORGIA

19-022

## REQUEST FOR QUALIFICATIONS

On Call Sidewalk Design and Engineering Services

### Pre-Bid Conference:

February 7, 2019; 11:00am

City of Sandy Springs City Hall

City Springs Training Room - Barfield 2nd Floor

1 Galambos Way, Sandy Springs, GA 30328

### Statement of Qualifications are due:

February 27, 2019; 2:00 p.m.

Sealed Statement of Qualifications will be received no later than February 27, 2019; 2:00 p.m. The City of Sandy Springs will only accept online submissions for this RFP through the Bonfire Portal at <https://sandysprings.bonfirehub.com/projects/view/12675>. Any proposal submitted in any other format (email, paper, fax, mail, etc.) will not be accepted for any reason.

#### General Information:

1. All communications regarding this solicitation must be with the assigned Procurement Agent, Dezirae Gaines, [purchasing@sandyspringsga.gov](mailto:purchasing@sandyspringsga.gov).
2. All questions or requests for clarification must be sent via Bonfire under Message - Opportunity Q&A: <https://sandysprings.bonfirehub.com/projects/view/12675>. Questions are due **no later than** February 8, 2019, 5:00 p.m. Questions received after this date and time may not be answered.
3. Questions and clarifications will be answered in the form of an addendum. Any addenda, schedule changes and other important information regarding the solicitation related to this solicitation will be posted on Bonfire website at <https://sandysprings.bonfirehub.com/projects/view/12675>. It is the Offeror's responsibility to check the Bonfire portal for any addendums or other communications related to this solicitation.
4. **A Pre-Bid Conference will be held on February 7, 2019; 11:00 am at the City of Sandy Springs, 1 Galambos Way, City Springs Training Room - Barfield 2nd Floor, Sandy Springs, GA 30328.**
5. The form of contract ("Model Contract") the City intends to execute with the selected Offeror is included as Attachment C for your review.
6. The City of Sandy Springs reserves the right to reject all bids and to waive technicalities and informalities, and to make award in the best interest of the City of Sandy Springs.
7. An Offeror's RFQ Checklist is provided for your convenience below. This checklist is provided for assistance only and should not be submitted with your proposal.

**Questions may be submitted until 5:00 p.m., February 8, 2019. Questions received after this date and time may not be answered.**

## TABLE OF CONTENTS

PROPOSAL SIGNATURE AND CERTIFICATON

CORPORATE CERTIFICATE

OFFEROR'S RFQ CHECKLIST

SECTION 1: BACKGROUND AND GENERAL INFORMATION

SECTION 2: SCOPE OF SERVICES

SECTION 3: STATEMENT OF QUALIFICATIONS PRESENTATION AND FORMAT

SECTION 4: STATEMENT OF QUALIFICATIONS CONTENTS AND ORGANIZATION

SECTION 5: GENERAL EVALUATION PROCESS AND CRITERIA

SECTION 6: PRE-SUBMITTAL INQUIRIES

SECTION 7: COMMUNICATIONS

SECTION 8: TERMS AND CONDITIONS

SECTION 9: ATTACHMENTS

Attachment A: Statement of Qualifications

Attachment B: Financial Stability

Attachment C: SAMPLE MODEL CONTRACT, which includes all Exhibits attached thereto including:

- Offeror's Proposal
- Fee Schedule
- Certification of Contractor - Georgia Security and Immigration Compliance Act
- Certification of Consultant - Drug-Free Workplace
- Affidavit Verifying Status for City Public Benefit Application
- Contractor Affidavit Under O.C.G.A. § 13-10-91(b)(1)
- Insurance Requirements
- Notice to Contractors - Compliance with Title VI of the Civil Rights Act of 1964

**STATEMENT OF QUALIFICATIONS SIGNATURE AND CERTIFICATION**

I certify that this Statement of Qualifications is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Statement of Qualifications (“Offeror”) for the same materials, supplies, equipment, or services and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this Proposal and certify that I am authorized to sign this Proposal for Offeror. I further certify that the provisions of O.C.G.A. § 45-10-20, et seq. have not been violated and will not be violated in any respect.

Authorized Signature for Offeror: \_\_\_\_\_

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

Print/Type Name: \_\_\_\_\_

Print/Type Offeror Name Here: \_\_\_\_\_

Company Name: \_\_\_\_\_

**CORPORATE CERTIFICATE**

I, \_\_\_\_\_, certify that I am the Secretary of the company named as Offeror in the foregoing Proposal; that \_\_\_\_\_, who signed said Proposal on behalf of the Offeror, was then (title) \_\_\_\_\_ of said company; that said Proposal was duly signed for and in behalf of said company by authority of its Board of Directors, and is within the scope of its corporate powers; that said company is organized under the laws of the State of Georgia.

This \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
(Signature)

(Seal)

Corporate Name: \_\_\_\_\_

d/b/a \_\_\_\_\_

## OFFEROR'S RFQ CHECKLIST

### 10 Critical Things to Keep in Mind When Responding to an RFQ for the City of Sandy Springs

1. \_\_\_\_\_ **Read the *entire* document.** Note critical items such as: supplies/services required; submittal dates; number of copies required for submittal; contract requirements (e.g. bonding and insurance requirements); etc.
2. \_\_\_\_\_ **Note the Buyer's name, address, phone numbers and e-mail address.** This is the **only** person you are allowed to communicate with regarding the RFQ and is an excellent source of information.
3. \_\_\_\_\_ **Attend the pre-proposal conference** if one is offered. These conferences provide an opportunity to ask clarifying questions, obtain a better understanding of the project, or to notify the City of any ambiguities, inconsistencies, or errors in the RFQ. This conference may be mandatory.
4. \_\_\_\_\_ **Take advantage of the "question and answer" period.** Submit your questions to the Buyer by the due date listed in the *Schedule of Events* and view the answers given in the formal "addenda" issued for the RFQ. All addenda issued for an RFQ are posted on the Bonfire website and will include all questions asked and answered concerning the RFQ.
5. \_\_\_\_\_ **Follow the format required in the RFQ** when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
6. \_\_\_\_\_ **Provide complete answers/descriptions.** Read and answer **all** questions and requirements. Don't assume the City will know what your company's capabilities are or what items/services you can provide, even if you have previously contracted with the City. The proposals are evaluated based solely on the information and materials provided in your response.
7. \_\_\_\_\_ **Use the forms provided**, e.g. cover page, standard forms, etc.
8. \_\_\_\_\_ **Check the Bonfire website for RFQ addenda.** Before submitting your response.  
<https://sandysprings.bonfirehub.com/projects/view/12675>  
to see whether any addenda were issued for the RFQ. **If so, you must submit a signed cover sheet for each addendum issued along with your RFQ response.**
9. \_\_\_\_\_ **Review the RFQ document again** to make sure that you have addressed all requirements.
10. \_\_\_\_\_ **Submit your SOQ on time.** Note all the dates and times listed in the *Schedule of Events* and within the document, and be sure to submit all required items on time. Late proposal responses will not be accepted.

***This checklist is provided for assistance only and should not be submitted with Offeror's SOQ.***

## CITY OF SANDY SPRINGS

### SECTION 1: BACKGROUND AND GENERAL INFORMATION

The City of Sandy Springs ("City") is located in Fulton County, Georgia, and has a population of approximately 105,000. It is metropolitan Atlanta's second (2) largest city. The geographic area of the City is approximately thirty-eight (38) square miles. The City currently controls several hundred acres of parkland. While most of this acreage is owned outright by the City, many outdoor school parks are under an intergovernmental agreement with Fulton County Schools, renewable on a periodic basis. City limits include twenty-two (22) miles of shoreline along the Chattahoochee River and three (3) units of the National Park Service.

The City of Sandy Springs seeks to obtain the services of a qualified firm to provide on call sidewalk design and engineering services.

Offerors should have successful experience with projects of similar size, function, and complexity in the past three (3) years. As a result of this procurement, the Awarded Offeror(s) will be responsible for providing and maintaining all aspects of the on call sidewalk services in accordance with requirements of this RFQ. The City intends to award multiple contracts for the delivery of on call sidewalk services to the Offeror(s) presenting the proposal which will provide the best overall value to the City; however, the City reserves the right to make a single award or no award, if these options are in the City's best interest. The instructions, conditions and notices in this RFP are designed to assist Offerors in preparing a proposal that presents an effective approach to accomplish all contractual requirements.

## SECTION 2: SCOPE OF SERVICES

The City of Sandy Springs is seeking Statement of Qualifications for consideration to accomplish the following tasks:

1. Survey services, including right-of-way, individual owner information, utilities (to include all coordination and certification of no conflict or conflict resolution, and SUE services, Level A and B, as required), specimen trees, drainage analysis and profile of existing road right-of-way for the identified target areas.
2. Design services from initial design development through final detailed design to include approval by the Community Development Department with the City with erosion control and utility coordination completed to include a complete bidding package for future use by the City to construct the project.
3. On an as required basis, conduct public involvement meetings and/or prepare displays for use in City project-related public outreach.
4. Every effort shall be made to avoid requiring the purchase of easement and additional right-of-way. Right-of-way, construction easement and utility coordination (to include identification and location of sub-surface utilities) support as required for future construction of the sidewalk project.
5. The consultant is to provide record of correspondence indicating no conflict or resolution from impacted utilities. Attendance at the monthly Public Works Utility Coordination meeting during design is encouraged. Sub-surface utilities will be required to be located to Level A confidence where the potential for conflict with sub-surface utilities exists.
6. Prepare Lighting Design on an as required basis. Perform lighting installation acceptance inspections, as required.
7. Prepare Landscape Architecture Design to include special provisions/specifications as needed.
8. Prepare Stormwater Drainage Design and Hydrology Study per Georgia Stormwater Management Manual as needed.
9. Prepare Retaining Wall Design including wall foundation investigation through a geotechnical engineering consultant as needed.
10. All work will be done in accordance with City of Sandy Springs Development Code and Technical Code, ADA Standards, and the Georgia Department of Transportation's (GDOT) Standard Drawings. An estimate of probable construction costs with unit prices based on GDOT current estimates and pay items will be required at concept phase and updated as design progresses to bidding.

### SECTION 3: STATEMENT OF QUALIFICATIONS PRESENTATION AND FORMAT

In order for the City of Sandy Springs to adequately compare and evaluate Statement of Qualifications, all Statement of Qualifications must be submitted in accordance with format detailed in the following pages.

**Cover Letter:** (One page maximum one-sided.) The letter should designate the proposing firm, the business address of where the relationship will be housed, and be signed by authorized company officers. The letter should address the firm's willingness and commitment to provide the proposed services and why the Awarded Vendors believes it should be selected. No pricing information should be included in this section.

**Table of Contents:** (One-page maximum) Table of Contents should follow the RFP format.

**Company Overview:** (Two-page maximum) General overview of company, how long the company has been in business, customer service philosophy, and identification of the primary office which will be supporting the City of Sandy Springs.

**Sidewalk/Streetscape Design Approach:** (Five-page maximum) Description of the Consultant's understanding of the proposed project as outlined in the Request for Qualifications. Along with the overall approach, include but not limited to the firm's fit to the project and/or needs of the Owner, any special or unique qualifications for the project and any techniques or methodologies offered by the firm that may be particularly suitable for this project type. In addition to any unique design efforts that will be required, and any tools or methodologies that are needed to complete the proposed project on time and within scope and budget; the proposal should also address the following: Survey Supporting Sidewalk Projects, Utility Coordination, Project Quality Control, Lighting Design and Inspection, and Landscape Architecture support to Sidewalk Design. Consultants should use the most innovative, cutting-edge and cost saving approach to the proposed project.

**Project Management/Team:** (Three-page maximum) Provide information on personnel to be assigned to this project for the prime Consultant as well as the key personnel of the sub-consultants. Personnel should have experience in a variety of fields necessary to complete this proposed work. You may include resumes in an Appendix and will not count towards your page total.

**Similar Project Experience and References:** (Three-page maximum) Provide three (3) project references that demonstrate that the firm(s) and personnel have experience and expertise with the subject matter and have demonstrated performance of work that is similar in type and scope. The Consultant shall submit a minimum of three projects with similar scope completed in the last five years. Include project description, location, cost, construction status, and client contact information. The projects should reflect the firm(s) experience delivering the design process from concept development to final completed construction plans. You may also include a web links that provides more details about the project references.

**Conflict of Interest Policy:** Provide a copy of the proponent's conflict of interest policy.

**Financial Stability:** Provide audited financial statements from the last two (2) years demonstrating financial stability.

## SECTION 4: STATEMENT OF QUALIFICATIONS CONTENTS AND ORGANIZATION

### A. General Instructions for Proposal Preparation

Each Response to this RFQ shall address the elements described in the Scope of Services (Section 2) and Contents of Response-including questions (Section 3).

Responses shall be as succinct as possible while completely providing all requested information. Responses should be kept to a **maximum of fifteen (15)** one sided pages not including required forms or certifications. The Cover Letter and Table of Contents are not included in the page maximum.

Sealed Statement of Qualifications will be received **no later than February 27, 2019; 2:00 p.m.** The City of Sandy Springs will only accept online submissions for this RFP through the Bonfire Portal at <https://sandysprings.bonfirehub.com/projects/view/12675>. Statement of Qualifications submitted after the bid close date, **February 27, 2019; 2:00 p.m.**, will not be accepted. Any Statement of Qualifications submitted in any other format (email, paper, fax, mail, etc.) will not be accepted for any reason.

#### General Information:

1. All communications regarding this solicitation must be with the assigned Procurement Agent, Dezirae Gaines, [purchasing@sandyspringsga.gov](mailto:purchasing@sandyspringsga.gov).
2. All questions or requests for clarification must be sent via Bonfire under Message - Opportunity Q&A: <https://sandysprings.bonfirehub.com/projects/view/12675>. Questions are due **no later than February 8, 2019, 5:00 p.m.** Questions received after this date and time may not be answered.
3. Questions and clarifications will be answered in the form of an addendum. Any addenda, schedule changes and other important information regarding the solicitation related to this solicitation will be posted on Bonfire website at <https://sandysprings.bonfirehub.com/projects/view/12675>. It is the Offeror's responsibility to check the Bonfire portal for any addendums or other communications related to this solicitation.
4. The form of contract ("Model Contract") the City intends to execute with the selected Offeror is included as Attachment C for your review.
5. The City of Sandy Springs reserves the right to reject all bids and to waive technicalities and informalities, and to make award in the best interest of the City of Sandy Springs.
6. An Offeror's RFQ Checklist is provided for your convenience below. This checklist is provided for assistance only and should not be submitted with your proposal.

## SECTION 5: GENERAL EVALUATION PROCESS AND CRITERIA

### **A. General Information**

The RFP will enable the City to gather additional information and identify one or more qualified firms to perform the services described in the Scope of Services. The City will conduct a comprehensive, fair and impartial evaluation of all Responses received. An evaluation team will be established by the City to evaluate the Responses ("Evaluation Committee"). The Evaluation Committee may invite the most qualified Offerors to interview; however, the City retains the right to select only one Offeror and negotiate a contract. The City may also determine that no qualified Responses have been received and reject all Responses.

### **B. Interviews**

At the City's discretion, selected Offerors may be interviewed and re-evaluated based upon the criteria set out in the RFP, or other criteria to be determined by the Evaluation Committee (i.e. unique qualities, methodologies, or approaches taken to differentiate from other Offerors). Selected Offerors may be asked to provide additional information to the Evaluation Committee regarding demonstrated competence and qualifications, feasibility of implementing the Project as proposed, ability to meet schedules, costing methodology, or other factors as appropriate.

Any information received by the Evaluation Committee subsequent to the Offeror's Response will be used to further evaluate the short-listed Offerors to determine a rank-order. Final approval of a selected Offeror is subject to the City's Purchasing Policies.

### **C. Past Performance – References**

The City, at its discretion, may review past performance of the Offeror. Offeror shall include three reference projects from the past five years. Projects shall be a scope similar to the project outlined in this RFP. One reference should be a public agency.

References should include the following: Name of the organization, contact information including contact name, address, email address and telephone number; description of the project; brief summary of services provided; period of performance; and project cost.

### **D. Negotiation and Best and Final Offer (as applicable)**

1. If the City deems it is in its best interest to retain the services of one or more Offerors, the City reserves the right to negotiate a revised scope and or fees. Negotiations will encompass all phases of work, including but not limited to: hourly rates, fees for services, markups for overhead and profit on subcontractors, a "not to exceed" contract amount, as well as any other items the City deems appropriate.

2. If negotiations are successful, the City and the highest ranking Offeror will enter into an agreement to develop the services as outlined in this RFP. If an acceptable agreement cannot be reached between the City and the highest ranking Offeror, the City may choose to negotiate with other Offeror(s).

3. Qualified firms submitting Responses will be required to submit financial statements for a minimum of three recording periods prior to contract award.

4. Separate meetings with more than one Offeror may be conducted during the same time frame; however, negotiation sessions with an Offeror will not be held in the presence of another Offeror.

5. Offerors submitting Responses should be aware that the Evaluation Committee has sole discretion to determine what constitutes the “best qualified offer” for the City. Consequently, Offerors are urged to submit best possible terms in their original submittal.

**E. Evaluation Criteria**

Offeror’s submissions will be scored and ranked based upon demonstrated knowledge and understanding of the evaluation criteria provided below. The score of the proposal will total a maximum of 100 points. The City will use a proposal evaluation panel to review and rank the responsiveness and reasonableness of each proposal. Review the City of Sandy Springs Public Works Department web site link, “Consultant Prequalification Information and Application” for more information on the prequalification process

Evaluation Criteria		Description	Points
1.	<b>Sidewalk/Streetscape Design Approach</b>	Offeror’s understanding of the following: <ol style="list-style-type: none"> <li>1. Various aspects of sidewalk design as well as, but not limited to storm water design, roadway pavement design, retaining wall design to include foundation investigation, traffic signal modification/design and utility adjustments</li> <li>2. Coordination of design related to right of way/easement negotiations with impacted property owners.</li> <li>3. City of Sandy Springs Development Code and Technical Code</li> <li>4. ADA design standards</li> <li>5. Development of project cost estimates and project cost management.</li> <li>6. Developing construction documents for bidding to include preparing special provisions.               <ul style="list-style-type: none"> <li>- Assessment of contractor bids to include bid tabulation.</li> </ul> </li> </ol>	20
	Survey Supporting Sidewalk Projects	<ol style="list-style-type: none"> <li>7. Topographic and Boundary Survey</li> <li>8. Identifying property ownership and preparing Right of Way Plans</li> </ol>	20

		<p>9. Staking of existing and proposed Right of Way during the Right of Way acquisition process.</p> <p>10. Communicating survey information to construction contractors for layout purposes.</p> <p>11. Comparing as-built conditions to design plans during/post construction.</p>	
	Utility Coordination	<p>12. Coordinate with utility agencies to ensure utilities are addressed and any conflicts resolved</p> <p>Conduct utility locates to include Level A SUE</p>	10
	Project Quality Control (QC)	13. Describe QC program for projects to ensure accuracy and completeness of submittals	10
	Lighting Design and Inspection	<p>14. Provide design and coordination of design with regulatory agencies to provide lighting, as required in sidewalk/streetscape projects.</p> <p>15. Coordinate with appropriate utilities to ensure adequate power to lighting</p> <p>16. Provide inspection of lighting systems installed to confirm compliance with National Electric Code, as required.</p>	5
	Landscape Architecture support to Sidewalk Design	17. Landscape design as related to development of sidewalks and streetscapes.	5
2.	<b>Project Management/Team</b>	18. Offeror's key personnel that will directly support this project and their related work experiences designing and developing construction documents for similar projects. City shall be offered the opportunity to approve any future change to this personnel.	15
3.	<b>Similar Project Experience and References</b>	<p>19. Offeror's previous project references on three similar projects (one per page) within the last three years to include:</p> <ul style="list-style-type: none"> <li>- Client Contact Information</li> <li>- Project Description</li> <li>- Project Design and Construction Costs</li> <li>- Photo(s)</li> </ul>	15
Total			100

## SECTION 6: PRE-SUBMITTAL INQUIRIES

All questions or requests for clarification must be sent via Bonfire under Message - Opportunity Q&A: <https://sandysprings.bonfirehub.com/projects/view/12675> or directed to [purchasing@sandyspringsga.gov](mailto:purchasing@sandyspringsga.gov).

**Questions are due no later than February 8, 2019 at 5:00 p.m. Questions received after this date and time may not be answered.**

Questions and clarifications will be answered in the form of an addendum. Any addenda, schedule changes and other important information regarding the solicitation related to this solicitation will be posted on Bonfire website at <https://sandysprings.bonfirehub.com/projects/view/12675>. It is the Offeror's responsibility to check the Bonfire portal for any addendums or other communications related to this solicitation.

## SECTION 7: COMMUNICATIONS

Questions or comments regarding this procurement shall be submitted in writing via email to the Procurement Officer **ONLY** (see address below). **The Offeror shall clearly reference the section and page numbers of the RFP which are applicable to the question(s) or comment(s) submitted.**

**Note: Oral questions will not be accepted due to the possibility of misunderstanding or misinterpretation.**

Offerors are encouraged to submit questions or comments by no later than **February 8, 2019 at 5:00 p.m., EST**, to allow for analysis and dissemination of the City's responses in advance of the Proposal due date. Questions received after this date and time may not be answered.

The principal point of contact for this procurement is the Procurement Officer. The Procurement Officer can be reached via email at [purchasing@sandyspringsga.gov](mailto:purchasing@sandyspringsga.gov). Until a contractor is selected and the selection is announced regarding the procurement, elected officials, Evaluation Committee members, employees of the City, and contracted personnel receiving information and documents regarding this procurement are not allowed to communicate regarding the procurement for any reason with any potential or interested contractors, vendors, City staff, or contracted personnel except through the City's Procurement Officer or designated successor.

For violation of this restriction, the City reserves the right to reject the Proposal of any potential or interested contractor or vendor who knowingly participates in such violation. Any City staff or elected officials who violate this restriction acknowledge such conduct may result in an ethics violation pursuant to the City's ethics ordinance and/or disqualification from further participation in, or briefing on, the procurement. **All communications concerning this procurement must be directed to the Procurement Officer named in this procurement.**

## SECTION 8: TERMS AND CONDITIONS

All Statement of Qualifications and supporting materials as well as correspondence relating to this Solicitation become property of the City when received. Any proprietary information contained in the Proposal shall be so indicated; however, a general indication that the entire contents, or a major portion, of the Proposal is proprietary will not be honored. The following terms and conditions shall also apply:

- A. All applicable Federal and State of Georgia laws and City of Sandy Springs ordinances, licenses and regulations of all agencies having jurisdiction shall apply to Offerors throughout and are incorporated herein.
- B. Professionals requiring special licenses must be licensed in the State of Georgia, and shall be responsible for those portions of the work as may be required by law.
- C. No Proposal shall be accepted from, and no contract will be awarded to, any person, firm, or corporation that (i) is in arrears to the City with respect to any debt, (ii) is in default with respect to any obligation to the City, or (iii) is deemed irresponsible or unreliable by the City.
- D. The City shall be able to request of an Offeror satisfactory evidence that it has the necessary financial resources to accomplish the requirements of the contract.
- E. From the date this RFP is issued until a firm is selected, Offerors are not allowed to communicate with any staff or elected officials of the City regarding this procurement, except at the direction of Charise Glass, Procurement Officer in charge of this solicitation. Any unauthorized contact may disqualify the Offeror from further consideration. Contact information for the single point of contact is as follows:

Dezirae Gaines, Sr. Contract Specialist  
City of Sandy Springs  
1 Galambos Way  
Sandy Springs GA 30328  
Email: [purchasing@sandyspringsga.gov](mailto:purchasing@sandyspringsga.gov)

- F. While the City has every intention to make an award as a result of this solicitation, issuance of the RFP in no way constitutes a commitment by the City to award and execute a contract. Upon a determination such actions would be in its best interest, the City, in its sole discretion, reserves the right to:
  - 1. Cancel or terminate this RFP at any time. A notice of cancellation will be issued. If the RFP is cancelled, the City will not reimburse any Offeror for preparation of its Proposal. Statement of Qualifications may be returned upon request if unopened;
  - 2. Reject any or all Statement of Qualifications received, make a contract award based directly on the Statement of Qualifications received in the best interest of the City, in its sole discretion, or enter into further discussions with one (1) or more Offerors;
  - 3. Waive and/or amend any undesirable, inconsequential, or inconsistent provisions/specifications of this RFP which would not have significant impact on any Proposal;
  - 4. Make partial award or no award if it is in the best interest of the City to do so; and

5. Terminate any contract if the City determines adequate funds are not available.

**END OF SECTION**

## SECTION 9: ATTACHMENTS

ATTACHMENT A: Consultant's Statement of Qualifications

ATTACHMENT B: Financial Stability

ATTACHMENT C: SAMPLE MODEL CONTRACT including, as Exhibits, the following:

- Offeror's Statement of Qualifications
- Fee Schedule
- Certification of Contractor - Georgia Security and Immigration Compliance Act
- Certification of Consultant - Drug-Free Workplace
- Affidavit Verifying Status for City Public Benefit Application
- Contractor Affidavit Under O.C.G.A. § 13-10-91(b)(1)
- Insurance Requirements
- Notice to Contractors - Compliance with Title VI of the Civil Rights Act of 1964

**ATTACHMENT A**  
**Statement of Qualifications**

**ATTACHMENT B**  
**Financial Stability**

**ATTACHMENT C: SAMPLE MODEL CONTRACT**



**SANDY SPRINGS™**  
GEORGIA

**AGREEMENT FOR SERVICES**

This AGREEMENT FOR SERVICES (hereinafter “Contract”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between Contractor (hereinafter “Contractor”) located at Contractor Address and the City of Sandy Springs, Georgia (hereinafter “City” or “Sandy Springs”).

WITNESSETH:

WHEREAS, Contractor is engaged in the business of providing \_\_\_\_\_;  
and

WHEREAS, the City has a need to acquire the services described in the Scope of Services attached hereto as Exhibit A (hereafter “Services”) (note that “Services” includes services performed, workmanship, and material furnished or utilized in the performance of services pursuant to this Contract); and

WHEREAS, Contractor is willing and able to render the Services and wishes to perform the Services for the City; and

WHEREAS, the City wishes to acquire the Services from Contractor;

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth herein, the parties hereto agree as follows:

**A. Services.**

Contractor hereby agrees to render the Services to the City as set forth in the Scope of Services attached hereto as Exhibit A and incorporated herein by this reference. Contractor agrees to perform the Services at the direction of the Sandy Springs Recreation and Parks Department Director, or designee, in the manner and to the extent required by the parties herein, as may be amended hereafter in writing by mutual agreement of the parties.

**B. Compensation.**

1. Fee. As consideration for the Services, the Contractor shall pay to City the fee described in Exhibit B attached hereto and incorporated herein by this reference.

2. Manner of Payment. Contractor shall, on a monthly basis, prepare and submit to the Sandy Springs Recreation and Parks Department a report to include a certified statement of monthly revenue and expense, monthly participation numbers by activity, facility maintenance activities and new maintenance issues with the agreed upon fee payment.

3. Notice of the City's Use of Outside Contractors to Review Submitted Invoices. The City may utilize support contractors to assist the City in the review and evaluation of Contractor's invoices and similar requests for payment or evidence of delivery. Support contractors will be provided access to these and other records to support City officials in reviewing and reconciling invoices, payment records, and the City's financial and budgetary records, and in facilitating the timely payment of submitted invoices. Such documents and records may contain the proprietary information of Contractor including, but not limited to, awarded contracts.

Each of the support contractor employees may, at the direction of Contractor to the City Manager, be required to execute a non-disclosure agreement which acknowledges that the support contractor employees:

- a. Shall use proprietary information only in performance of the above tasks and for no other reason;
- b. Shall not share proprietary information with his or her employer;
- c. Shall not use such information for personal or other benefit; and
- d. Shall promptly notify his or her employer of any breach of his or her responsibilities.

Unless Contractor specifically objects in writing, Contractor agrees, by the submission of a proposal, to allow the City's support contractors to have access to Contractor's proprietary information for the purposes described above. Contractor is required to promptly notify the City Manager of any breach of the non-disclosure obligations of this section.

**C. Inspection of Services.**

1. Contractor shall provide and maintain a system, acceptable to the City, for inspecting all Services it provides under this Contract. Complete records of all inspection work performed by Contractor shall be maintained and made available to the City during Contract performance and for a period of three (3) years following Contract termination.

2. The City has the right to inspect and test all Services called for by the Contract, to the extent practicable, at all times and places during the term of the Contract. The City shall perform inspections and tests in a manner that will not unduly delay the work.

3. If the City performs inspections or tests on the premises of Contractor or a subcontractor, Contractor shall furnish, and shall require subcontractors to furnish, at no increase in the Contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

4. (a) If any of the Services do not conform to Contract requirements or industry standards, the City may require Contractor to perform the Services again in conformity with Contract requirements, at no increase in Contract amount. When the defects in Services cannot be corrected by re-performance, the City may:
  - i. Require Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
  - ii. Reduce the Contract price to reflect the reduced value of the Services performed.

(b) If Contractor subsequently fails again to take the necessary action to ensure future performance in conformity with Contract requirements, the City may:

- i. By contract or otherwise, perform the Services and charge to Contractor any cost incurred by the City that is directly related to the performance of such Services; or
- ii. Terminate the Contract for default by procedures set forth in this Contract.

**D. City Property.**

1. Definitions. As used in this section:

“Acquisition Cost” means the cost to acquire a tangible capital asset including the purchase price of the asset and costs necessary to prepare the asset for use. Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use.

“Cannibalize” means to remove parts from City Property for use or for installation on other City Property.

“City-Furnished Property” means Property in the possession of, or directly acquired by, the City and subsequently furnished to Contractor for performance of the Contract. City-Furnished Property includes, but is not limited to, spares and Property furnished for repair, maintenance, overhaul, or modification. City-Furnished Property also includes Contractor-Acquired Property if Contractor-Acquired Property is a deliverable under a cost contract when accepted by the City for continued use under the Contract.

“City Property” means all Property owned or leased directly by the City. City Property includes both City-furnished and Contractor-Acquired Property. City Property includes Material, Equipment, vehicles, special tooling, special test Equipment, and real Property. City Property does not include intellectual property and software. City Property includes logos, trademarks and service marks owned or controlled by the City.

“Contractor-Acquired Property” means Property acquired, fabricated, or otherwise provided by Contractor for performing a contract, and to which the City acquires title.

“Discrepancies Incident to Shipment” means any differences (e.g., count or condition) between the items documented to have been shipped and items actually received.

“Equipment” means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include Material, real Property, special test Equipment or special tooling.

“Inventory” means:

- a. Any Property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is subsequently vested in the City and which exceeds the amounts needed to complete full performance under the entire Contract;
- b. Any Property that the City is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the full or partial termination of the Contract (or subcontract thereunder), before completion of the work, for the convenience or at the

option of the City; and

c. City-Furnished Property that exceeds the amounts needed to complete full performance under the entire Contract.

“Material” means Property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include Equipment, special tooling, special test Equipment or real Property.

“Property” means all tangible property, both real and personal.

“Property Records” means the records created and maintained by Contractor in support of its stewardship responsibilities for the management of City Property.

“Provide” means to furnish, as in City-Furnished Property, or to acquire, as in Contractor-Acquired Property.

## 2. Property Management.

a. Contractor shall have a system to manage (control, use, preserve, protect, repair and maintain) City Property in its possession. The system shall be adequate to satisfy the requirements of this section. In doing so, Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective control of City Property, consistent with voluntary consensus standards and/or industry-leading practices and standards for City Property management except where inconsistent with law or regulation. During the period of performance, Contractor shall disclose any significant changes to its Property management system to the City Manager prior to implementation. For purposes of this provision, “system to manage” means defined procedures and methodology.

b. Contractor’s responsibility extends from the initial acquisition and receipt of Property and Material, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus Property), or other disposition, or via a completed investigation, evaluation, and final determination for lost, stolen, damaged, or destroyed Property and Material. This requirement applies to all City Property under Contractor’s accountability, stewardship, possession or control, including its vendors or subcontractors.

c. Contractor shall include the requirements of this section in all subcontracts under which City Property is acquired or furnished for subcontract performance.

## 3. Use of City Property.

a. Contractor shall use City Property, either furnished or acquired under this Contract, only for performing this Contract and such Property shall not be used for non-City Contractor business or for personal uses unless otherwise provided for in this Contract or approved by the City Manager.

b. Modifications or alterations of City Property are prohibited, unless they are:

i. Reasonable and necessary due to the scope of work under this Contract or its terms and conditions;

- ii. Required for normal maintenance; or
    - iii. Otherwise authorized by the City Manager.
  - c. Contractor shall not Cannibalize City Property unless otherwise provided for in this Contract or approved by the City Manager.
- 4. City-Furnished Property.
  - a. The City shall deliver to Contractor the City-Furnished Property described in this Contract. The City shall furnish related data and information in its possession needed for the intended use of the Property.
  - b. The delivery and/or performance dates specified in this Contract are based upon the expectation that the City-Furnished Property will be suitable for Contract performance and will be delivered to Contractor by the dates stated in the Contract.
    - i. If the Property is not delivered to Contractor by the dates stated in the Contract, the City Manager shall, upon Contractor's timely written request, consider an equitable adjustment to the Contract.
    - ii. In the event Property is received by Contractor, or for City-Furnished Property after receipt and installation, in a condition not suitable for its intended use, the City Manager shall, upon Contractor's timely written request, advise Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the Property at the City's expense. Upon completion of the required action(s), the City Manager shall consider an equitable adjustment to the Contract).
  - c. The City Manager may by written notice, at any time:
    - i. Increase or decrease the amount of City-Furnished Property under this Contract;
    - ii. Substitute other City-Furnished Property for the Property previously furnished, to be furnished, or to be acquired by Contractor for the City under this Contract; or
    - iii. Withdraw authority to use Property.

Upon completion of any action(s) under paragraph (4)(c) of this section, and Contractor's timely written request, the City Manager shall consider an equitable adjustment to the Contract.

- 5. Title to City Property.
  - a. Title under City-Furnished Property. The City shall retain title to all City-Furnished Property. Title to City Property shall not be affected by its incorporation into or attachment to any Property not owned by the City, nor shall City Property become a fixture or lose its identity as personal Property by being attached to any real Property.
  - b. Title under Cost-Reimbursable Property.
    - i. Title to all Property purchased by Contractor for which Contractor is entitled to be reimbursed

as a direct item of cost under this Contract shall pass to and vest in the City upon the vendor's delivery of such Property.

ii. Title to all other Property, the cost of which is reimbursable to Contractor, shall pass to and vest in the City upon:

(A) Issuance of the Property for use in Contract performance;

(B) Commencement of processing of the Property for use in Contract performance; or

(C) Reimbursement of the cost of the Property by the City, whichever occurs first.

iii. All City-Furnished Property and all Contractor-Acquired Property, title to which vests in the City under this paragraph are subject to the provisions of this section.

6. Contractor Plans and Systems.

a. Contractor shall establish and implement Property management plans, systems, and procedures at the Contract, program, site or entity level to enable the following outcomes:

i. Acquisition of Property. Contractor shall document that all Property was acquired consistent with its engineering, production planning, and Property control operations.

ii. Receipt of City Property. Contractor shall receive City Property, document the receipt as requested by the City, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this section, identify as City owned in a manner appropriate to the type of Property (e.g., stamp, tag, mark, or other identification), and manage any Discrepancies Incident to Shipment.

(A) City-Furnished Property. Contractor shall furnish a written statement to the City Manager containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of City-Furnished Property.

(B) Contractor-Acquired Property. Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-Acquired Property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

iii. Records of City Property. Contractor shall create and maintain records of all City Property accountable to the Contract, including City-furnished and Contractor-Acquired Property.

(A) Property Records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the City Manager, contain the following:

(1) The name, part number and description, manufacturer, model number, and National Stock Number (if needed for additional item identification tracking and/or disposition)

- (2) Quantity received (or fabricated), issued, and balance-on-hand
- (3) Unit Acquisition Cos
- (4) Unique-item identifier or equivalent (if available and necessary for individual item tracking)
- (5) Unit of measure
- (6) Accountable Contract number or equivalent code designation
- (7) Location
- (8) Disposition
- (9) Posting reference and date of transaction
- (10) Date placed in service

(B) Use of a Receipt and Issue System for City Material. When approved by the City Manager, Contractor may maintain, in lieu of formal Property Records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Material that is issued for immediate consumption.

iv. Physical Inventory. Contractor shall periodically perform, record, and disclose physical Inventory results. A final physical Inventory shall be performed upon Contract completion or termination. The City Manager may waive this final Inventory requirement, depending on the circumstances (e.g., overall reliability of Contractor's system or the Property is to be transferred to a follow-on contract).

v. Subcontractor Control.

(A) Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of Contract terms and conditions (e.g., extent of liability for loss, theft, damage or destruction of City Property).

(B) Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine that the subcontractor's Property management system meets the standards of Contractor's Contract requirements with the City.

vi. Reports. Contractor shall have a process to create and provide reports of discrepancies; loss, theft, damage or destruction; physical Inventory results; audits and self-assessments; corrective actions; and other Property related reports as directed by the City Manager.

(A) Loss, theft, damage or destruction. Unless otherwise directed by the City Manager, Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, theft, damage or destruction to the City Manager as soon as the facts become known or when requested by the City.

- (B) Such reports shall, at a minimum, contain the following information:
  - (1) Date of incident (if known)
  - (2) The name, commercial description, manufacturer, model number, and National Stock Number (if applicable)
  - (3) Quantity
  - (4) Unique-item identifier (if available)
  - (5) Accountable Contract number
  - (6) A statement indicating current or future need
  - (7) Acquisition Cost, or if applicable, estimated scrap proceeds, estimated repair or replacement cost
  - (8) All known interests in commingled Property of which the City Property is a part
  - (9) Cause and corrective action taken or to be taken to prevent recurrence
  - (10) A statement that the City will receive any reimbursement covering the loss, theft, damage or destruction in the event Contractor was or will be reimbursed or compensated
  - (11) Copies of all supporting documentation
  - (12) Last known location
  - (13) A statement that the Property did or did not contain sensitive or hazardous material, and if so, that the appropriate agencies were notified

vii. Relief of Stewardship Responsibility. Unless the Contract provides otherwise, Contractor shall be relieved of stewardship responsibility for City Property when:

(A) Such Property is consumed, expended or disposed, reasonably and properly, or otherwise accounted for, in the performance of the Contract, including reasonable Inventory adjustments of Material as determined by the City Manager; or

(B) The City Manager granted relief from responsibility for loss, theft, damage or destruction of City Property.

viii. Utilizing City Property.

(A) Contractor shall utilize, consume, move, and store City Property only as authorized under this Contract. Contractor shall promptly disclose and report City Property in its possession that is excess to Contract performance.

(B) Unless otherwise authorized in this Contract or by the City Manager, Contractor shall not commingle City Material with Material not owned by the City.

ix. Maintenance. Contractor shall properly maintain City Property. Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. Contractor shall disclose and report to the City Manager the need for replacement and/or capital rehabilitation.

x. Property Closeout. Contractor shall promptly perform and report to the City Manager Contract Property closeout, to include: reporting, investigating and securing closure of all loss, theft, damage or destruction cases; physically inventorying all Property upon termination or completion of this Contract; and disposing of items at the time they are determined to be excess to Contract needs.

b. Contractor shall establish and maintain City accounting source data, as may be required by this Contract, particularly in the areas of recognition of acquisitions and dispositions of Material and Equipment.

c. Contractor shall establish and maintain published procedures necessary to assess its Property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to City Property shall be made available to the City Manager.

7. Systems Analysis.

a. The City shall have reasonable access to Contractor's premises and all City Property, at reasonable times, for the purposes of reviewing, inspecting and evaluating Contractor's Property management plan(s), systems, procedures, records, and supporting documentation that pertains to City Property. This access includes all site locations associated with the performance of Services under this Contract including, with Contractor's consent, all subcontractor premises associated with the performance of Services under this Contract.

b. Records of City Property shall be readily available to authorized City personnel and shall be appropriately safeguarded.

c. Should it be determined by the City that Contractor's (or subcontractor's) Property management practices are inadequate or not acceptable for the effective management and control of City Property under this Contract, or present an undue risk to the City, Contractor shall prepare a corrective action plan when requested by the City Manager and take all necessary corrective actions as specified by the schedule within the corrective action plan.

d. Contractor shall ensure City access to subcontractor premises and all City Property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's Property management plan, systems, procedures, records, and supporting documentation that pertains to City Property.

8. Contractor Liability for City Property. Contractor assumes the risk of, and shall be responsible for, any loss, theft, damage or destruction of City Property upon its delivery to Contractor as City-Furnished Property. However, Contractor is not responsible for reasonable wear and tear to City Property or for City Property

properly consumed in performing this Contract.

9. Equitable Adjustment. Equitable adjustments under this section shall be made in accordance with the procedures of Section Y, Changes; however, the City shall not be liable for breach of Contract for the following:
  - a. Any delay in delivery of City-Furnished Property.
  - b. Delivery of City-Furnished Property in a condition not suitable for its intended use.
  - c. An increase, decrease, or substitution of City-Furnished Property.
  - d. Failure to repair or replace City Property for which the City is responsible.

**E. Audit and Inspection Rights.**

1. The City may, at reasonable times, and for a period of up to three (3) years following the date of final performance of Services by Contractor under this Contract, audit, or cause to be audited, those books and records of Contractor that are related to Contractor's payroll and performance under this Contract. Contractor agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Contract. Contractor shall make all necessary books and records available for audit in Fulton County, Georgia.
2. The City may, at reasonable times during the term hereof, inspect Contractor's facilities and perform such inspections and process reviews as the City deems reasonably necessary to determine whether the Services required to be provided by Contractor under this Contract conform to the terms of this Contract. Contractor shall make available to the City all reasonable facilities and assistance to facilitate the performance of inspections by the City's representatives.

**F. Relationship of Parties.**

1. Independent Contractors. Nothing contained herein shall be deemed to create any relationship other than that of independent contractor between the City and Contractor. This Contract shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement between the City and Contractor. It is expressly agreed that Contractor is acting as an independent contractor and not as an employee in providing the Services under this Contract.

The City shall exercise no control over the means and methods of accomplishing the work of any Contractor personnel under the Contract. Contractor shall retain control over and be responsible for the details of how the Services under this Contract are to be performed by all Contractor personnel.

2. Employee Benefits. Contractor shall not be eligible for any benefit available to employees of the City including, but not limited to, workers' compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, pension plans, or savings plans.
3. Payroll Taxes. No income, social security, state disability or other federal or state payroll tax will be deducted from payments made to Contractor under this Contract. Contractor shall be responsible for all FICA, federal

and state withholding taxes and workers' compensation coverage for any individuals assigned to perform the Services for the City.

**G. Representations and Warranties of Contractor.**

Contractor hereby warrants, represents and agrees as follows:

1. No approval, authorization, clearance, declaration, or order of or to any other person or entity is required in order to permit Contractor to perform the Services under this Contract.

2. Neither the execution of this Contract nor the consummation of the transactions contemplated hereby will cause, or give any person ground to cause, the maturity, acceleration, or increase of any liability or obligation of Contractor and will not conflict with, violate, or constitute default under any contract, agreement, duty, obligation, or instrument to which Contractor is a party or to which Contractor is bound.

3. Contractor, by execution hereof, does hereby represent to the City that the Contractor, through the signature of the officials contained in this Contract, has full power and authority to make and execute this Contract to the effect that the making and execution hereof shall create a legal obligation upon Contractor, which shall be legally binding upon Contractor.

4. Nothing contained or any obligation on the part of Contractor to be performed hereunder shall in any way be contrary to or in contravention of any policy of insurance or surety bond required of Contractor pursuant to the laws of the State of Georgia.

**H. Contractor Responsibilities Regarding Contractor Personnel.**

1. General. Contractor shall be solely responsible for all compensation, benefits, insurance and rights of Contractor employees during the course of or arising or accruing as a result of any employment, whether past or present, with Contractor, as well as all legal costs including attorneys' fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. Accordingly, the City does not assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits under O.C.G.A. §34-9-1, et seq., or any other benefits or amenities of employment to any of Contractor employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

2. Background Checks. Prior to assigning any employee to the City, Contractor shall subject each of its employees prospectively considered for assignment to provide Services to the City to a full background check. Current Contractor employees shall be subjected to complete background checks every two (2) years or as otherwise agreed by the parties. The background check shall include, but not be limited to, the following:

- a. Fingerprint check
- b. Motor vehicle records
- c. Criminal records
- d. Credit records
- e. Educational records
- f. Past and current employers
- g. References
- h. Military records

- i. State licensing records, when applicable

Based upon information obtained from a background check, the City Manager shall have the right to approve any person to work with the City, exclude any person from working with the City, or take action to effectuate the termination of any person's relationship with the City at any time during the term of this Contract if, in the City Manager's opinion, that person's background check reveals behavior that demonstrates the person is not fit or would not meet industry standards in performing the duties assigned under this Contract. In addition, the City shall have the right, with respect to any person, to approve, deny, restrict, or remove access to a City vehicle or other City Property.

Contractor shall further exclude any person from working with the City, or take action to terminate such person's relationship with the City, at any time during the term of this Contract whose background check reveals that the person has exhibited behavior that demonstrates that the person is not fit or would not meet industry standards in performing the duties to which they are assigned under this Contract.

3. **Contractor Key Personnel.** Contractor shall promptly notify the City Manager and CMR prior to making any changes in key staff assigned to Services for the City as indicated in Contractor's Proposal attached hereto as Exhibit A.

All Contractor notifications must provide the name and departure date for the incumbent leaving, a complete resume for the proposed substitute, and any other pertinent information requested by the City Manager. The City Manager shall be provided the opportunity to review and approve or reject the proposed substitution.

The City Manager reserves the right at any time to request the removal of key personnel for any reason which could, in the City Manager's opinion, affect performance under this Contract. If such a request is made by the City Manager, Contractor shall remove the personnel as directed by the City Manager, and Contractor shall propose a substitute as provided above.

Contractor shall not remove any key personnel before the key personnel's position is filled by a substitute approved and authorized by the City Manager; provided, however, if the key personnel is removed pursuant to a request by the City Manager as provided above, Contractor shall fill such key personnel's position within thirty (30) days from the date such position is vacated.

This section does not, in any way, abrogate Contractor's authority to hire or assign personnel as it sees fit, or its responsibility to fill key personnel positions with qualified personnel.

**I. Term.**

This Contract shall become effective as of the date of its execution. The term of this Contract shall be until project completion

**J. Termination for Convenience of City.**

The City, upon thirty (30) days' written notice, may terminate this Contract, in whole or in part, when it is in the City's interest. In the event of full or partial termination, the City shall be liable only for payment under the payment provisions of this Contract for Services rendered before the effective date of termination.

**K. Default.**

1. An event of default shall mean a material breach of this Contract. Without limiting the generality of the

foregoing, an event of default shall include the following:

- a. Contractor fails to perform the Services within the time specified in this Contract or any extension.
- b. Contractor has refused or failed, except in the case for which an extension of time is provided, to supply properly skilled personnel.
- c. Contractor has failed to obtain the approval of the City where required by this Contract.
- d. Contractor has made a representation or warranty hereunder that was false or inaccurate in any material respect when made, or which materially and adversely affects the legality of this Contract or the ability of either party to carry out its obligations hereunder.
- e. Contractor fails to perform any of the other provisions of this Contract, subject to any right to cure, or resolve a dispute.
- f. Contractor has been adjudged as bankrupt or Contractor makes a general assignment for the benefit of creditors, appoints a receiver on account of insolvency, or files a petition to take advantage of any debtor's act.

2. In the event of a default, this Contract may be terminated by the City after written notice to Contractor of the default, which notice shall specify the default, provide both a demand to cure the default and a reasonable time to cure the default and state a date upon which the Contract shall be terminated if there is a failure to timely cure the default. For purposes of this section, "reasonable time" shall be ten (10) calendar days except when the failure to perform Services affects the public health, safety or welfare, in which case reasonable time may be less than ten (10) days. A failure to cure a default within the specified time shall result in termination of the Contract on the date set forth in the notice of default if such notice of default has not been removed in writing by the City. Contractor's right to cure pursuant to this subparagraph shall not be applicable to a default under the provisions of Section W.3, Failure to Comply with Provisions.

3. The Contractor shall be liable for all damages resulting from the default.

4. If this Contract is terminated in whole or in part, the City may acquire, under the terms and in the manner the City Manager considers appropriate, Services similar to those terminated, and the Contractor will be liable to the City for any excess costs for those Services; however, the Contractor shall continue the work not terminated.

5. If this Contract is terminated in whole or in part, the Contractor shall protect and preserve Property in its possession in which the City has an interest, until the Contractor is relieved of this need.

6. The Contractor shall not be deemed in violation of this Contract if it is prevented from performing its obligations under the Contract for any reason beyond its control including, but not limited to, acts of God, civil or military authority, acts of public enemies, accidents, fires, explosions, earthquakes, floods or catastrophic failures of public transportation; provided, however, that nothing herein shall relieve or be construed to relieve the Contractor from performing its obligations hereunder in the event of riots, rebellions or legal strikes.

7. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

8. The rights and remedies of the City in this section are in addition to any other rights and remedies available

to the City at law or in equity or under this Contract. The exercise of one (1) remedy shall not be deemed a waiver of the right to exercise any other remedy.

**L. Transition.**

In the event of full or partial termination or expiration of this Contract, Contractor shall cooperate in good faith to effect a smooth and harmonious transition from Contractor to the City, or to any other person or entity the City may designate, and to maintain during such period of transition the same quality Services otherwise afforded to the residents of the City pursuant to the Contract.

**M. Termination of Services and Return of Property.**

Upon the expiration or earlier termination of this Contract, Contractor shall immediately terminate the Services hereunder and shall deliver promptly to the City all property relating to the Services and any Work Product (as defined below), patents or copyrights covered by this Contract. Work Product shall include, but not be limited to, all hardware and software, written, graphical, and recorded material, and any copies, abstracts or summaries thereof.

**N. Standard of Performance and Compliance with Applicable Laws.**

Contractor warrants and represents that it possesses the special skill and professional competence, expertise and experience to undertake the Services and the obligations imposed by this Contract. Contractor agrees to perform in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the profession, and to otherwise perform as is necessary to undertake the Services required by this Contract, including the requirements set forth in the Certification of Contractor - Georgia Security and Immigration Compliance Act attached hereto as Exhibit C, in the Certification of Sponsor Drug Free Workplace attached hereto as Exhibit D, and in the Affidavit Verifying Status for City Public Benefit Application attached hereto as Exhibit E, Contractor Affidavit under O.C.G.A. § 13-10-91(b)(1) attached hereto as Exhibit F, and agrees to execute and provide such certifications to the City, which are incorporated into and made a part of this Contract.

Contractor warrants and represents that it will, at all times, observe and comply with all federal, state, local and municipal ordinances, rules, regulations, relating to the provision of the Services to be provided by Contractor hereunder or which in any manner affect this Contract.

Contractor shall maintain in good standing at all times during the term of this Contract all required licenses, certifications, and permits required under local, state and federal laws necessary to perform the Services required.

Contractor shall comply with and shall require its Subcontractors to comply with the regulations for compliance with Title VI of the Civil Rights Act of 1964, as amended, and 23 CFR 200, as stated in EXHIBIT H, NOTICE TO CONTRACTORS - COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, attached hereto and incorporated herein.

**O. Public Records.**

The public shall have access, at all reasonable times, to all documents and information pertaining to the City, subject to the provisions of O.C.G.A. §50-14-1, et seq. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this section shall result in the immediate termination of the Contract by the City. Contractor agrees to retain all public records in accordance with the City's records retention and disposal policies, O.C.G.A. § 50-18-92, et seq., and the Georgia Administrative Code.

**P. Conflicts of Interest.**

Contractor warrants and represents that:

1. the Services to be performed hereunder will not create an actual or apparent conflict of interest with any other work it is currently performing; and
  2. Contractor is not presently subject to any agreement with a competitor or with any other party that will prevent Contractor from performing in full accord with this Contract; and
  3. Contractor is not subject to any statute, regulation, ordinance or rule that will limit its ability to perform its obligations under this Contract; and
1. Contractor shall be free to accept other work during the term hereof; provided, however, that such other work shall not interfere with the provision of Services hereunder.

**Q. Proprietary Information; Non-Solicitation.**

Contractor acknowledges that it may have access to and become acquainted with confidential and other information proprietary to the City including, but not limited to, information concerning the City, its operations, customers, citizens, business and financial condition, as well as information with respect to which Contractor has an obligation to maintain confidentiality (collectively referred to herein as "Proprietary Information"). Contractor agrees not to disclose, directly or indirectly, to anyone or to use or to allow others to use, for any purpose whatsoever, any Proprietary Information of any type, whether or not designated confidential or proprietary, acquired in the course of performing under this Contract. The obligations of Contractor under this section shall survive the termination of this Contract.

**R. Public Release of Information.**

1. All materials which relate to the Services performed by Contractor under this Contract shall be submitted to the City Manager for review and approval prior to release to the public. Subcontractor public information materials shall be submitted for approval through the prime Contractor to the City Manager. At a minimum, these materials may be technical papers, presentations, articles for publication and speeches or mass media material including, but not limited to, press releases, photographs, fact sheets, advertising, posters, compact discs, and videos.
2. The City Manager will notify Contractor of the City's final decision regarding the status of the request.
3. Contractor shall submit a written statement to the City Manager as far in advance of the proposed release date as is possible, including:
  - a. To whom the material is to be released;
  - b. Desired date for public release;
  - c. Statement that the material has been reviewed and approved by officials of Contractor or the subcontractor, for public release; and
  - d. The Contract number.

4. The items submitted must be complete. Photographs shall have captions.

5. Outlines, rough drafts, marked-up copy (with handwritten notes), or incorrect distribution statements will not be accepted or cleared.

6. Abstracts or abbreviated materials may be submitted if the intent is to determine the feasibility of going further in preparing a complete paper for clearance. However, clearance of abstracts or abbreviated materials does not satisfy the requirement for clearance of the entire paper.

7. Once information has been cleared for public release, it is in the public domain and shall always be used in its originally cleared context and format. Information previously cleared for public release but containing new, modified or further developed information must be submitted again for public release following the steps outlined above.

**S. Insurance.**

Contractor shall procure and maintain for the duration of this Contract, and for three (3) years thereafter, at its sole cost and expense such insurance as will fully protect it and the City and the City's council, boards, officials, directors, officers, employees, agents and volunteers from incidents, accidents and claims for personal injury, bodily injury, and property damage which may arise from or in connection with the performance of the work and for Contractor's professional liability (errors and omissions) under this Contract, whether such services and work are performed by Contractor, its agents, representatives, employees, or by any subcontractor or any tier directly employed or retained by either. The following is the minimum insurance and limits that Contractor must maintain. If Contractor maintains higher limits than the minimums shown below, the City requires and shall be entitled to coverage for the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Contractor shall not commence work under this Contract or continue performance of the Services unless and until Contractor has obtained and continues to carry all minimum insurance. Insurance requirements are attached hereto as Exhibit G and incorporated herein by this reference.

**T. Indemnification.**

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 attorneys' fees, arising out of or resulting from the negligence of Contractor, its employees, or its agents.

2. 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. 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 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 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.

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.

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 as a result of Contractor's negligence. 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.

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.

6. 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.

7. 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.

**U. Non-Discrimination.**

During performance of this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender, national origin, age, disability, or military or veteran status,

or any other status or classification protected by applicable federal, state and local laws. This practice shall apply to all terms and conditions of employment, including but not limited to, hiring, placement, promotion, termination, layoff, recall, transfer, leave of absence, compensation, and training.

Contractor shall undertake equal employment opportunity efforts to ensure that applicants and employees are treated without regard to their race, color, religion, sex, sexual orientation, gender, national origin, age, disability, or military or veteran status, or any other status or classification protected by applicable federal, state and local laws. Contractor's equal employment opportunity efforts shall include, but not be limited to, all terms and conditions of employment, including but not limited to, hiring, placement, promotion, termination, layoff, recall, transfer, leave of absence, compensation, and training.

Contractor shall, in all solicitations or advertisements for employees placed by, or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, sexual orientation, gender, national origin, age, disability, or military or veteran status, or any other status or classification protected by applicable federal, state and local laws.

Contractor shall cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials

**V. Assignment.**

Contractor shall not assign this Contract or the rights and obligations created herein without the prior express written consent of the City. Any attempted assignment by Contractor without the prior express written approval of the City may, at the City's sole option, result in the termination of this Contract without any notice to Contractor of such termination.

**W. Points of Contact.**

Notwithstanding Contractor's responsibility for total management during performance of this Contract, administration of the Contract will require maximum coordination between the City and Contractor. The following individuals will be the City's points of contact during performance of this Contract:

1. City Manager. All Contract administration will be effected by the City Manager, and communication pertaining to Contract administration should be addressed to the City Manager only. No changes, deviations, or waivers shall be effective without a modification of the Contract executed by the City Manager or duly authorized representative authorizing such changes, deviations, or waivers. The City Manager is:

Name:	John McDonough
Telephone Number:	(770) 730-5600
Email Address:	<a href="mailto:jmcdonough@sandyspringsga.gov">jmcdonough@sandyspringsga.gov</a>

2. City Manager's Representative ("CMR"). The City Manager may designate a CMR at any time during the term of this Contract. Whenever a CMR is designated by the City Manager, Contractor shall be notified in writing of such designation.

3. Failure to Comply with Provisions. As stated in subparagraph 1 above, all communication pertaining to Contract administration shall be addressed to the City Manager only. Any communication to City officials other than the City Manager regarding administration of this Contract including, but not limited to, performance, personnel matters,

delivery of Services, extensions, and Services shall constitute a violation of this Contract. In the event of a first violation of this section, the City Manager shall notify Contractor within a reasonable time. If, in Contractor's opinion, an alleged violation does not in fact constitute a violation, it may dispute the allegation by notifying the City Manager in writing within two (2) working days after receiving notice of violation. The matter shall be subject to the Disputes provision in this Contract. A second violation, subject to notice by Contractor and Contractor's right to dispute the alleged second violation, shall constitute a material breach of the provisions of this Contract subject to the Default provisions of this Contract, pursuant to which the City, in addition to any other remedies it may have at law or in this Contract, may terminate the Contract.

4. Contractor's Point of Contact. Contractor shall designate to the City Manager an individual with decision-making authority for Contractor, with current job title, telephone contact, and email address. Such individual shall act as a single point of contact for Contractor and be available by telephone or in person at the request of the City Manager on an as-needed basis.

**X. Technical Direction.**

1. Services to be performed under this Contract are subject to the written Technical Direction of the City Manager. "Technical Direction," as used in this section, means a directive to Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to Contractor. Technical Direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements of the Scope of Services.

2. The City Manager does not have authority to, and shall not, issue any verbal instruction purporting to be Technical Direction, nor a written Technical Direction, that:

- a. Constitutes an assignment of additional work outside the Contract Scope of Services;
- b. Constitutes a change as defined in Section Y, Changes;
- c. Constitutes a basis for any increase or decrease in the total estimated Contract cost, the fixed fee (if any), or the time required for Contract performance;
- d. Changes any of the expressed terms, conditions, or specifications of the Contract; or
- e. Interferes with Contractor's rights to perform the terms and conditions of the Contract.

3. All Technical Direction shall be issued in writing by the City Manager, including via email correspondence.

4. Contractor shall proceed promptly, but in any event not later than forty-eight (48) hours, with the performance of Technical Direction duly issued by the City Manager. If, in Contractor's opinion, any instruction or direction by the City Manager falls within any of the categories defined in paragraph 2 of this section, Contractor shall not proceed but shall notify the City Manager orally immediately and in writing within two (2) working days after receiving it and shall request the City Manager to take required corrective action. Upon receiving this notification, the City Manager shall either issue an appropriate Contract modification within a reasonable time or advise Contractor in writing within thirty (30) days that the instruction or direction is:

- a. Rescinded in its entirety; or

b. Within the requirements of the Contract and does not constitute a change under Section Y, Changes, and that Contractor should proceed promptly with its performance.

5. A failure of Contractor and the City Manager to agree that the instruction or direction is both within the requirements of the Contract and does not constitute a change under Section Y, Changes, or a failure to agree upon the Contract action to be taken with respect to the instruction or direction, shall be subject to the Dispute provisions of this Contract.

6. Any action(s) taken by Contractor in response to any direction given by any person other than the City Manager or the CMR shall be at Contractor's risk.

**Y. Changes.**

1. **General Information.** Changes within the general scope of this Contract may be accomplished after execution of the Contract, and without invalidating the Contract, by written change order ("Change Order") or written change directive ("Change Directive"). General scope changes may include, without limitation, changes in the:

- a. Description of Services to be performed;
- b. Time of performance (i.e., hours of the day, days of the week);
- c. Place of performance of the Services; and/or
- d. Quantity and/or quality of the Services.

A Change Order shall be based upon agreement between the City and Contractor; a Change Directive may be issued by the City alone and may or may not have the written agreement of Contractor.

Changes in the Services shall be performed under applicable provisions of the Contract, and Contractor shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

2. **Change Order.** A Change Order is a written instrument prepared by either party and signed by the City Manager and Contractor stating their agreement upon all of the following:

- a. The change to be made to the Contract;
- b. The amount of the adjustment, if any, to the Contract amount ("Contract Amount"); and
- c. The amount of the adjustment, if any, in the Contract term ("Contract Time").

3. **Change Directive.** A Change Directive is a written order prepared and signed by the City Manager directing a change in the Contract prior to agreement on adjustment, if any, in the Contract Amount or Contract Time, or both. The City Manager may by Change Directive, without invalidating the Contract, order changes in the Contract within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Amount and Contract Time being adjusted accordingly.

a. A Change Directive may be issued by the City Manager at any time in the absence of a written agreement with Contractor on the terms of a Change Order.

b. Upon receipt of a Change Directive, Contractor shall promptly commence and proceed with the

prescribed change(s) to the Services involved.

c. If the Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on one of the following methods:

- i. A reasonable lump sum including a reasonable fixed fee or percentage fee properly itemized and supported by sufficient substantiating data to permit evaluation;
- ii. Unit prices stated in the Contract or as subsequently agreed upon;
- iii. Reasonable cost plus a reasonable fixed fee or percentage fee; or
- iv. As provided in Section Y.3.e below.

d. A Change Directive that is signed by Contractor indicates Contractor's agreement therewith, including adjustment in Contract Amount and Contract Time or the method for determining them. Such agreement shall be recorded as a Change Order.

e. If Contractor disagrees with the method for adjustment in the Contract Amount or Contract Time, or both, set forth in the written Change Directive, Contractor shall promptly, but in no event later than forty-eight (48) hours from date of receipt of the written Change Directive, give written notice of its disagreement. In such event, the City Manager shall determine the adjustment on the basis of reasonable additional costs or savings resulting from the Services attributable to the change including, in the case of an increase in the Contract Amount, an amount for overhead and profit as set forth in the Contract, or if no such amount is set forth in the Contract, a reasonable amount. In such case, under Section Y.3.c.iii, Contractor shall keep and present, in such form and manner as the City Manager may prescribe, an itemized accounting of costs together with appropriate supporting data.

Failure to provide written notice of disagreement or objection within the proscribed time period set forth in this section shall be deemed a waiver of any such disagreement or objection.

f. Pending final determination of the total cost of a Change Directive to the City, Contractor may request payment for Services completed under the Change Directive. The City Manager will make an interim determination for purposes of payment for Pending final determination of the total cost of a Change Directive to the City, Contractor may request payment for Services completed under the Change Directive. The City Manager will make an interim determination for purposes of payment for those costs and certify for payment the amount that the City Manager determines to be reasonably justified. The City Manager's interim reasonable determination of cost shall adjust the Contract Amount on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with the Disputes provision of this Contract.

g. When Contractor agrees with a determination made by the City Manager concerning the adjustments in the Contract Amount and Contract Time, or otherwise reaches agreement upon the adjustments, such agreement shall be effective immediately and the City Manager will prepare a Change Order. Change Orders may be issued for all or any part of a Change Directive.

h. Any disputes arising from adjustments made pursuant to Section Y.3.e shall be resolved pursuant to Section CC, Disputes; however, nothing in this section shall excuse Contractor from proceeding with the performance of work under the Change Directive pending resolution of the dispute.

i. No Services for which an additional cost or fee will be charged by Contractor shall be furnished without prior written authorization of the City Manager.

j. If Contractor's assertion of its right to an adjustment includes the cost of Property made obsolete or excess by the change, the City Manager shall have the right to prescribe the manner of the disposition of the Property.

**Z. Notices.**

All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given when delivered personally in hand, or when mailed by certified or registered mail, return receipt requested with proper postage prepaid, addressed to the appropriate party at the following address or such other address as may be given in writing to the parties:

If to the City:

With copies to:

John McDonough, City Manager  
1 Galambos Way  
Sandy Springs, Georgia 30328

Dan Lee, City Attorney  
1 Galambos Way  
Sandy Springs, Georgia 30328

If to Contractor:

With copies to:

Contractor Contact, Title  
Name and Title  
Address

**AA. Governing Law and Consent to Jurisdiction.**

This Contract is made and entered into in the State of Georgia and this Contract and the rights and obligations of the parties hereto shall be governed by and construed according to the laws of the State of Georgia without giving effect to the principles of conflicts of laws. The Courts in Fulton County, Georgia shall have jurisdiction over any litigation arising out of this Contract.

**BB. Waiver of Breach.**

The waiver by either party of a breach or violation of any provision of this Contract shall not operate or be construed to constitute a waiver of any subsequent breach or violation of the same or other provision thereof.

**CC. Disputes.**

Except as otherwise provided herein, all disputes arising under or relating to this Contract shall be resolved under the provisions of this section.

1. "Claim," as used in this section, means a written demand or written assertion by a contracting party seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or relating to this Contract. A written demand or written assertion by Contractor must be accompanied

by supporting documentation and verified by Contractor's designated representative. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a Claim; however, the same may be converted to a Claim by complying with the provisions of this section, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

a. A Claim by Contractor shall be made in writing and, unless otherwise stated in this Contract, submitted within thirty (30) days after accrual of the Claim to the City Manager for a written decision. A Claim by the City against Contractor shall be subject to a written decision by the City Manager. Failure to submit any such written Claim within the prescribed time period set forth in this section shall be deemed to be a waiver of such Claim.

b. Verification

i. Contractor shall provide the verification specified in paragraph (1) of this section when submitting any Claim.

ii. The verification shall be by oath administered by a notary public and shall state as follows: "I swear or affirm that the Claim is made in good faith; that the supporting documentation is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the Contract adjustment for which Contractor believes the City is liable; and that I am duly authorized to certify the Claim on behalf of Contractor."

2. The City Manager shall, within thirty (30) days of receipt of a properly submitted verified Claim and all necessary supporting documentation and information, decide the Claim and give Contractor a written statement of the decision.

3. The City Manager's decision shall be final unless Contractor disputes the decision as set forth below, in which case the parties shall follow the procedures for Alternative Dispute Resolution.

4. Alternate Dispute Resolution. For Contractor to dispute a decision of the City Manager, Contractor shall file, within fifteen (15) days of the date of the City Manager's written decision, a notice in writing of the Claim which is disputed. The parties shall be required to proceed with alternate dispute resolution by the following procedure.

a. Negotiation. The parties shall attempt in good faith to resolve any Claim arising out of or relating to this Contract promptly through negotiations between representatives of the parties who have authority to settle the same. The parties shall make every effort to meet as soon as reasonably possible at a mutually agreed upon time and place and shall attempt to resolve the matter through negotiation within a period of thirty (30) days of receipt of notice of claim.

b. Mediation. If good faith negotiations have not resulted in a resolution of a Claim within the specified time, the parties shall attempt in good faith to settle the Claim in an amicable manner through a neutral party by non-binding mediation administered by the American Arbitration Association under its Commercial Mediation Rules, or a mutually acceptable mediator selected by the parties within a period of thirty (30) days from date of failure of negotiation.

c. Arbitration. If the Claim has not been resolved pursuant to the aforesaid mediation procedure within sixty (60) days of the receipt of the notice of claim, or if either party fails to participate in a mediation, the Claim shall be resolved exclusively by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment

upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Each party shall appoint one (1) arbitrator and the appointed arbitrators shall select a third arbitrator who shall serve as chairperson of the arbitration panel. The decision of the arbitration panel shall be final and binding. Each party shall pay fifty percent (50%) of the third party costs of mediation and arbitration.

5. Contractor shall not be excused from performance of the Contract, pending final resolution of any request for relief, Claim, appeal, or action arising under or relating to the Contract, and shall comply with any decision of the City Manager and the requirements of the Contract.

6. Contractor, by entering into this Contract, does hereby waive its rights to file, or seek relief, in a state or federal court of competent jurisdiction for any Claim of damages or monetary relief, except as to the enforcement of the decision of the binding arbitration.

**DD. Severability.**

If any provision of this Contract is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Contract, which shall remain in full force and effect, and enforceable in accordance with its terms.

**EE. Entire Agreement.**

This Contract contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, representations and understandings, whether oral or written.

**FF. Headings.**

This Contract shall not be interpreted by reference to any of the titles or headings to the sections or paragraphs of this Contract, which have been inserted for convenience purposes only and are not deemed a part hereof.

**GG. Interpretation of Exhibits and Exclusion of External References.**

The provisions of the main body of this Contract shall govern the relationship between the City and Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, including, but not limited to, those provided by Contractor, the provisions of the main body of this Contract shall control. Website links inserted by Contractor into exhibits or attachments to this Contract shall not govern, alter, control or otherwise affect the provisions of this Contract and shall be of no force or effect in the construction or interpretation of this Contract.

**HH. Copyright, Trademark and Patent Indemnification.**

Contractor warrants it has the rights to use and license all products, software and services provided under this Contract. Contractor further agrees to defend and save harmless the City against any claims brought by a third party including, without limitation, reasonable attorneys' fees and costs, arising out of or in connection with a claim that the Software, Products and Services used in the scope of this Contract violated a third party's trademark, copyright or patent. Copyright, Trademark and Patent Indemnification shall survive the termination, cancellation or expiration of this Contract.

**IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized agents, have signed and sealed this Contract.**

CITY OF SANDY SPRINGS, GEORGIA

By: \_\_\_\_\_  
John McDonough, City Manager

\_\_\_\_\_ Date of Execution

ATTEST:

By: \_\_\_\_\_  
City Clerk

Approved as to Form:

(SEAL)

By: \_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
CONTRACTOR NAME

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

\_\_\_\_\_ Date of Execution

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

ATTEST:

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

(SEAL)

\_\_\_\_\_  
Witness

## EXHIBITS

EXHIBIT A	Contractor Proposal (Scope of Services)
EXHIBIT B	Fee Schedule (Contractor's Cost/Price Proposal/Budget and Final Fee Schedule)
EXHIBIT C	Certification of Contractor - Georgia Security and Immigration Compliance Act
EXHIBIT D	Certification of Consultant - Drug-Free Workplace
EXHIBIT E	Affidavit Verifying Status for City Public Benefit Application
EXHIBIT F	Contractor Affidavit under O.C.G.A. § 13-10-91(b) (1)
EXHIBIT G	Insurance Requirements
EXHIBIT H	Notice to Contractors - Compliance with Title VI of the Civil Rights Act of 1964

**EXHIBIT A  
CONTRACTOR PROPOSAL  
(SCOPE OF SERVICES)**

**EXHIBIT B  
FEE SCHEDULE**

**(Contractor's Cost/Price Proposal / Budget and Final Fee Schedule to be inserted)**

**EXHIBIT C**  
**CERTIFICATION OF CONTRACTOR**  
**GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT**

I hereby certify that I am a principal and duly authorized representative of \_\_\_\_\_ (“Contractor”), whose address is \_\_\_\_\_, \_\_\_\_\_.

Contractor hereby agrees to comply with all applicable provisions and requirements of the Georgia Security and Immigration Compliance Act of 2006 (the “Act”), as codified in O.C.G.A. Sections 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program," accessed at <http://www.dol.state.ga.us>, as further set forth below.

Contractor agrees to verify the work eligibility of all of newly hired employees through the U.S. Department of Homeland Security’s *Employment Eligibility Verification (EEV) / Basic Pilot Program*, accessed through the Internet at <https://www.vis-dhs.com/EmployerRegistration>, in accordance with the provisions and timeline found in O.C.G.A. 13-10-91 and Rule 300-10-1-.02 of the Rules and Regulations of the State of Georgia. As of July 1, 2007, the verification requirement applies to contractors and subcontractors with five-hundred (500) or more employees.

Contractor understands that Contractor and subcontractor requirements of the Act apply to contracts for, or in connection with, the physical performance of services within the State of Georgia.

Contractor understands that the following contract compliance dates set forth in the Act apply to the Contract, pursuant to O.C.G.A. 13-10-91:

On or after July 1, 2007, to public employers, contractors, or subcontractors of 500 or more employees;

On or after July 1, 2008, to public employers, contractors, or subcontractors of 100 or more employees; and

On or after July 1, 2009, to all other public employers, their contractors, and subcontractors.

To document the date on which the Act is applicable to Contractor, and to document Contractor’s compliance with the Act, the undersigned agrees to initial one of the three (3) lines below indicating the employee number category applicable to Contractor, and to submit the indicated affidavit with the Contract if Contractor has 500 or more employees.

Contractor has:

\_\_\_\_\_ 500 or more employees [Contractor must register with the *Employment/Eligibility Verification/Basic Pilot Program* and begin work eligibility verification on July 1, 2007];

\_\_\_\_\_ 100-499 employees [Contractor must register with the *Employment Eligibility Verification/Basic Pilot Program* and begin work eligibility verification by July 1, 2008]; or

\_\_\_\_\_ 99 or fewer employees [Contractor must begin work eligibility verification by July 1, 2009].

Contractor further agrees to require O.C.G.A. Sections 13-10-90 and 13-10-91 compliance in all written agreements with any subcontractor employed by Contractor to provide services connected with the Contract, as required pursuant to O.C.G.A. 13-10-91.

Contractor agrees to obtain from any subcontractor that is employed by Contractor to provide services connected with the Contract, the subcontractor's indication of the employee number category applicable to the subcontractor.

Contractor agrees to secure from any subcontractor engaged to perform services under this Contract an executed "Subcontractor Affidavit," as required pursuant to O.C.G.A. 13-10-91 and Rule 300-10-1-.08 of the Rules and Regulations of the State of Georgia, which rule can be accessed at <http://www.dol.state.ga.us>.

Contractor agrees to maintain all records of the subcontractor's compliance with O.C.G.A. Sections 13-10-90 and 13-10-91 and Chapter 300-10-1 of the Rules and Regulations of the State of Georgia.

CONTRACTOR:

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

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT D  
CERTIFICATION OF CONSULTANT  
DRUG-FREE WORKPLACE**

I hereby certify that I am a principle and duly authorized representative of \_\_\_\_\_ (“Consultant”), whose address is \_\_\_\_\_ and I further certify that:

1. The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the “Drug-Free Workplace Act” have been complied with in full; and

2. A drug-free workplace will be provided for Consultant’s employees during the performance of the Contract; and

3. Each subcontractor hired by Consultant shall be required to ensure that the subcontractor’s employees are provided a drug-free workplace. Consultant shall secure from that subcontractor the following written certification: “As part of the subcontracting agreement with Consultant, \_\_\_\_\_ certifies to Consultant that a drug-free workplace will be provided for the subcontractor’s employees during the performance of this Contract pursuant to paragraph (7) of subsection (b) of the Official Code of Georgia Annotated, Section 50-24-3”; and

4. The undersigned will not engage in unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

CONSULTANT:

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

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT E**  
**AFFIDAVIT VERIFYING STATUS FOR CITY PUBLIC BENEFIT APPLICATION**

By executing this affidavit under oath, as an applicant for a City of Sandy Springs, Georgia Business License or Occupation Tax Certificate, Alcohol License, Taxi Permit, execution of contract or other public benefit as referenced in O.C.G.A. Section 50-36-1, I am stating the following with respect to my application for a City of Sandy Springs license/permit and/or contract for  
[Name of natural person applying on behalf of individual, business, corporation, partnership, or other private entity]

1) \_\_\_\_\_ I am a United States citizen

OR

2) \_\_\_\_\_ I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States. \*

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of Code Section 16-10-20 of the Official Code of Georgia.

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

\*Alien Registration number for non-citizens \_\_\_\_\_

**\*\*PLEASE INCLUDE A COPY OF YOUR PERMANENT RESIDENT CARD, EMPLOYMENT AUTHORIZATION, GREEN CARD, OR PASSPORT WITH A COPY OF YOUR DRIVER'S LICENSE IF YOU ARE A LEGAL PERMANENT RESIDENT (#2).**

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_.

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

\*Note: O.C.G.A. § 50-36-1(e)(2) requires that aliens under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, provide their alien registration number. Because legal permanent residents are included in the federal definition of "alien", legal permanent residents must also provide their alien registration number. Qualified aliens that do not have an alien registration number may supply another identifying number below:

\_\_\_\_\_

**EXHIBIT F**  
**CONTRACTOR AFFIDAVIT UNDER O.C.G.A. § 13-10-91(b) (1)**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the City of Sandy Springs has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to Contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Name of Project

\_\_\_\_\_  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ in \_\_\_\_\_ (City), \_\_\_\_\_ (state).

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS  
THE \_\_\_\_\_ DAY OF \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**EXHIBIT G**  
**INSURANCE REQUIREMENTS**

Within ten (10) days of Notice of Award, and at all times that this Contract is in force, Contractor shall obtain, maintain and furnish the City Certificates of Insurance from licensed companies doing business in the State of Georgia with an A.M. Best Rating A-10 or higher and acceptable to the City covering:

1. Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance in compliance with the applicable Workers' Compensation Act(s) of the state(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statutes. Employer's Liability Insurance, with limits of liability of not less than \$1,000,000 per accident for bodily injury or disease.
2. Commercial General Liability Insurance. Commercial General Liability Insurance, including contractual liability insurance, product and completed operations, personal and advertising injury, and any other type of liability for which this Contract applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate for personal injury, bodily injury, and property damage. Commercial General Liability Insurance shall be written on an "occurrence" form.
3. Automobile Liability Insurance. Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage if automobiles are to be used in the delivery of or in the completion of services and work or driven onto the City's property. Insurance shall include all owned, non-owned and hired vehicle liability.
4. Umbrella Insurance. Umbrella Insurance with limits of liability excess of Employer's Liability Insurance, Commercial General Liability Insurance and Automobile Liability Insurance in the amount of not less than \$3,000,000.
5. Environmental Insurance. Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits not less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
6. Professional (Errors and Omissions) Insurance. Professional (Errors and Omissions) Insurance for Professional Services and for all Design/Build Projects with limits of liability of not less than \$3,000,000 per occurrence or claim / \$3,000,000 policy aggregate. Such policy shall also include coverage for losses arising from the breach of information security or cyber liability (including Errors and Omissions, Security and Privacy Liability and Media Liability), whether combined with the Professional Liability policy or placed as a separate policy, but carrying the same limits of liability. Such coverage shall insure damage, injury and loss caused by error, omission or negligent acts, including all prior acts without limitation, related to the professional services to be provided under this Contract. The policy shall be amended to include independent contractors providing professional services on behalf of or at the direction of Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. Further, coverage shall be afforded for fraudulent acts, misappropriation of trade secrets, internet professional services, computer attacks, personal injury, regulatory actions, wrongful acts, contractual liability, privacy policy, and insured versus insured. Contractor shall ensure that coverage under this policy continues for a period of thirty-six (36) months after

completion of services.

7. Fidelity Bond. Fidelity Bond (Employee Dishonesty) in the sum of not less than \$50,000.

All such insurance shall remain in effect until final payment is made and the Project is accepted by the City. If Contractor receives notice of non-renewal or material adverse change of any of the required coverages, Contractor shall promptly advise the City in writing. Failure of Contractor to promptly notify the City on non-renewal or material adverse change of any of the required coverages terminates the Contract as of the date that Contractor should have given notification to the City. The insurance policies shall contain or be endorsed to contain, the following provisions:

1. A provision that coverage afforded under such policies shall not expire, be canceled or altered without at least thirty (30) days prior written notice to the City.
2. Workers' Compensation and Employer's Liability and Property insurance policies shall contain a waiver of subrogation in favor of the City and the City's boards, officials, directors, officers, employees, representatives, agents, and volunteers.
3. Commercial General Liability, Automobile Liability Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) insurance policies shall include an endorsement making the City and the City's boards, officials, directors, officers, employees, representatives, agents, and volunteers. Additional Insureds under such policies.

A copy of these endorsements shall be provided to the City.

Certificates of Insurance showing that such coverage is in force shall be filed under this Contract by Contractor to the City.

The obligations for Contractor to procure and maintain insurance shall not be construed to waive or restrict other obligations and it is understood that insurance in no way limits liability of Contractor whether or not same is covered by insurance.

Certificate Holder should read: City of Sandy Springs, 1 Galambos Way, Sandy Springs, Georgia 30328.

**EXHIBIT H**  
**NOTICE TO CONTRACTORS**  
**COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

During the performance of this Contract, Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. Compliance with Regulations: Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of the Contract.

2. Nondiscrimination: Contractor, with regard to the work performed by it afterward and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontracts including procurements of materials and leases of equipment. Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when contract covers a program set forth in Appendix B of the Regulations. In addition, Contractor will not participate either directly or indirectly in discrimination prohibited by 23 CFR 710.405 (b).

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, national origin or sex.

4. Information and Reports: Contractor shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Department of Transportation shall impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (a) Withholding of payments to Contractors under the Contract until Contractor complies, and/or
- (b) Cancellation, termination or suspension of the Contract, in whole or in part.

6. Incorporation of Provisions: Contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instruction issued pursuant thereto. Contractor will take such action with respect

to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as result of such direction, Contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, Contractor may request the United States to enter into such litigation to protect the interest of the United States.