



**REQUEST FOR QUALIFICATIONS  
RFQC #20-051  
ON-CALL LANDSCAPE AND ARCHITECTURAL DESIGN SERVICES  
RESPONSE DUE DATE: APRIL 9, 2020, 2:00 PM EST**

The City of Sandy Springs (“City” or “Sandy Springs”) uses a procurement portal powered by Bonfire Interactive (“Bonfire”) for accepting and evaluating bids, statements of qualification, and proposals digitally, found by using the link below:

<https://sandysprings.bonfirehub.com/opportunities/23407>

Any response submitted (“Response”) in any other format (e-mail, paper, fax, mail, etc.) will not be accepted for any reason.

Please contact Bonfire at [Support@GoBonfire.com](mailto:Support@GoBonfire.com) for technical questions related to your registration or submissions. You can also visit Bonfire’s help forum at [bonfirehub.zendesk.com/hc](https://bonfirehub.zendesk.com/hc)

**VOLUNTARY PRE-SUBMITTAL CONFERENCE**

March 12, 2020, 1:00 PM EST

City of Sandy Springs

1 Galambos Way

Sandy Springs, Georgia 30328

**Barfield Training Conference Room**

Information concerning this solicitation may be found electronically at:

<https://sandysprings.bonfirehub.com/opportunities/23407>

The Bonfire website will contain this Request for Qualifications (“RFQC”), any addenda, clarifications, schedule changes and other important information regarding the solicitation. Parties submitting Responses (“Respondents”) should check these electronic pages daily.

The City reserves the right, among others, to reject all Responses and to waive technicalities and informality, to make award in the best interest of the City, or to cancel this solicitation at any time.

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## RESPONDENT'S RFQC CHECKLIST

### 10 Critical Things to Keep in Mind When Responding to an RFQC 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, if any (e.g. bonding and insurance requirements).
2. \_\_\_\_\_ **Note the Procurement Manager's name, address, phone numbers and e-mail address.** This is the only person you are allowed to communicate with regarding the RFQC and is an excellent source of information.
3. \_\_\_\_\_ **Attend the pre-submittal conference.** These conferences provide an opportunity to ask questions, obtain a better understanding of the Project, or to notify the City of any ambiguities, inconsistencies, or errors in the RFQC. This conference is voluntary, but all potential Respondents are strongly encouraged to attend.
4. \_\_\_\_\_ **Take advantage of the "question and answer" period.** Submit your questions to the Procurement Manager by the due date listed in the RFQC and view the answers given in any formal "addenda" issued for the RFQC. All addenda issued for an RFQC will be distributed by e-mail to Respondents.
5. \_\_\_\_\_ **Follow the format required in the RFQC** when preparing a 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 or Evaluation Committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the City. Responses are evaluated based on the information and materials provided in response to the RFQC.
7. \_\_\_\_\_ **Use the forms provided**, e.g. cover page, reference questionnaire, etc.
8. \_\_\_\_\_ **Review the RFQC document again** to make sure that you have addressed all requirements. The original Response and the requested copies must be identical and complete. The copies are provided to the Evaluation Committee members and will be used to evaluate Responses.
9. \_\_\_\_\_ **Submit the Response on time.** Note all the dates and times listed in this RFQC, and be sure to submit all required items on time. Late Responses will not be accepted.

***This checklist is provided for assistance only and should not be submitted with your Response.***

## SECTION 1: INTRODUCTION, PURPOSE AND BACKGROUND

### INTRODUCTION

The City of Sandy Springs (“City”) seeks Responses to this RFQC from highly qualified firms experienced in landscape and architectural design services (“Services”) to provide all personnel, materials and services necessary for various City projects.

### PURPOSE

This is a qualifications based procurement. Firms that respond to this RFQC and are determined by the City to be sufficiently qualified may be invited to make formal presentations to individuals tasked with evaluating responses. All Respondents are subject to instructions communicated in this document, and are cautioned to review the entire RFQC and follow instructions carefully. The City reserves the right to reject any or all Responses and to waive technicalities and informalities at the discretion of the City. Utilizing criteria described herein, the selected Respondent(s) will assist the City in the implementation of various landscape design projects

### BACKGROUND

Located in Fulton County, north of the City of Atlanta area and less than an hour from the world’s busiest airport, Sandy Springs is the metro area’s second-largest city. It is the sixth-largest city in the State of Georgia. The City balances the best of urban southern living with high-rise towers, riding stables, world-class medical centers, national river corridor, international consulates, and neighborhoods that resemble botanical gardens.

Sandy Springs was incorporated in 2005, the first new city in Georgia in more than 50 years. Based on 2019 Census estimates, the City is home to more than 108,000 residents, with the population more than doubling during the business day due to the heavy concentration of businesses located in Sandy Springs. Among the many Fortune 500 and 1,000 companies, which call the City home, are UPS, Newell Rubbermaid, Mercedes-Benz USA, Veritiv, Graphic Packaging, Beazer Homes USA, First Data, WestRock, and Intercontinental Exchange (parent company of the New York Stock Exchange). Among the business reasons, Sandy Springs is a desirable city in which to location a business: An interstate road network connecting goods and people to the Eastern U.S. in hours – not days; Abundant intellectual capital as Georgia Tech, Emory, the University of Georgia, Georgia State and Kennesaw State all sit at our front door; A location in the economic heartbeat of the Metro Atlanta area.

Sandy Springs also excels as a place to live with amenities that stress an enhanced quality of life. More than 950 acres of parkland surround Sandy Springs, and residents and visitors of all ages can enjoy the many activities found in any one of the City’s sixteen (16) parks. The City’s Recreation and Parks Department, in partnership with the National Park Service, maintain beautiful trails for hiking and exploring along the City’s twenty-two (22) miles of the Chattahoochee River shoreline. Sandy Springs also encourages embracing arts and culture. In 2018, the Sandy Springs Performing Arts Center at City Springs opened, adding performance and visual arts from jazz to musical theatre to rock concerts to dance, to sculpture and rotating galleries. City Springs features the 1,100 seat Byers Theatre, Studio Theatre, Sandy Springs Conference Center, and the event-programmed City Green.

## SECTION 2: SCOPE OF WORK

The City intends to contract with one (1) or more approved qualified consultants/firms (“Awarded Consultant”) to expedite future projects that may include landscape, architectural, structural, mechanical, and electrical or renovation design and/or any combination thereof on an as needed basis.

Projects may include, but are not limited to, the following: landscape design, pavilions, park concessions, sports fields, entire park layouts, surveys, park projects, water line/plumbing, development of plans, specifications and cost estimates for improvements along gateways including median landscaping, drainage (if needed), streets, greenways, trails, river/creek systems, roadway areas and sidewalk lighting, street trees, and other corridor amenities such as benches, footpaths, viewing areas and interpretive signs in City-owned open space areas.

The City will contact the Awarded Consultant to obtain proposals/quotes, as needed, for various City projects. The City seeks consultants that have a minimum of three (3) years’ experience in all aspects of landscape and architectural design.

## SECTION 3: COMMUNICATIONS

**From the date this RFQC is issued until a contract is awarded, Respondents shall not communicate with any staff or elected officials of the City regarding this procurement except the single point of contact noted below.** Any unauthorized contact may disqualify the Respondent from further consideration of contract award.

A. **Single Point of Contact:** Contact information for the single point of contact is as follows:

Senior Contract Specialist:	Jason Frazee
Address:	1 Galambos Way Sandy Springs, Georgia 30328
Telephone Number:	770-730-5600
E-mail Address:	<a href="mailto:purchasing@sandyspringsga.gov">purchasing@sandyspringsga.gov</a>

B. **Inquiries:** Respondents with questions or requiring clarification or interpretation of any section of this RFQC shall address such matters in writing. All questions or requests for clarification shall be sent via Bonfire under:

**Message - Opportunity Q&A:** <https://sandysprings.bonfirehub.com/opportunities/23407>

Questions are due **no later than March 17, 2019 at 2:00 PM EST**. Questions received after this date and time may not be answered. **Each question shall provide clear reference to the RFQC section, page, and item in question. Questions received after the deadline may not be considered.**

C. **Answers:** Questions and clarifications will be answered by the City 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 the Bonfire website no later than **March 23, 2020** at:

<https://sandysprings.bonfirehub.com/opportunities/23407>

Respondents shall be responsible for checking the Bonfire portal frequently for any addenda or other communications related to this solicitation.

**D. Addenda:** The City may revise this RFQC by issuing an addendum prior to submission of Responses. All addenda will be posted on the Bonfire website no later than **March 30, 2020** at:

<https://sandysprings.bonfirehub.com/opportunities/23407>

Addenda will become part of the RFQC documents and subsequent contract. Respondents shall sign and return any and all addenda with their Responses. Failure to submit a posted addendum in accordance with RFQC instructions may be cause for rejection. In unusual circumstances, the City may postpone an opening in order to notify vendors and to give them sufficient time to respond to the addendum.

#### SECTION 4: SUBMITTAL OF RESPONSE

Responses shall be submitted through the Bonfire portal at:

<https://sandysprings.bonfirehub.com/opportunities/23407>

no later than 2:00 PM EST on April 9, 2020.

**A Response received after this date and time or at any other location will not be accepted or considered. The City is not responsible for delays caused for any reason. It is the Respondent's sole responsibility to submit its Response before the required deadline. Hard copy, electronic and facsimile submittals will not be accepted.**

#### SECTION 5: QUALIFICATIONS AND CONSULTANT REQUIREMENTS

All Responses shall be submitted in accordance with the format detailed in this section.

##### **Landscape and Architectural Qualifications:**

The selected Consultant should have:

- Experience with landscaping design of parks, gardens, turf replacement projects and sports fields, landmark locations, greenways or equivalent and use of landscaping to establish a public brand.
- Experience in renovating existing facilities, including structural, mechanical, electrical and architectural design.
- Availability to attend meetings with the ad-hoc committee during the design development phase and make presentations of the design to City Council, the general public and the business community.
- Technical understanding and in-the-ground built examples of projects designed and built using sustainable landscape practices and principles.
- Technical knowledge and experience in designing and specifying high efficiency irrigation systems that meet water efficiencies.

- Familiarity with and understanding of storm water low impact development design elements.
- Ability to design landscape plans that meet all applicable ordinance and building permit requirements.
- Experience with state and federal permitting agencies such as GDOT, FEMA, GEMA, MRPA, etc.

**Consultant Requirements:**

- The team/Project lead shall have a philosophy, design approach, and demonstrated practice of “environmentally sensitive landscaping and park renovation.” The firm’s project history should demonstrate commitment to enhancing the environmental quality, and long-term performance of its design projects.
- The Consultant shall provide detailed demonstration of understanding of creative and sustainable projects within strict budget limitations and demonstrated knowledge of native plants, native plant associations, sustainable building materials, weather appropriate irrigation systems, etc.

**SECTION 6: CONTENTS OF RESPONSE, EVALUATION CRITERIA AND SELECTION PROCESS**

**GENERAL INFORMATION**

The RFQC and Responses will enable the City to gather additional information and identify qualified companies to perform the Services described in the Scope of Work (Section 2) and specifications. The City will conduct a comprehensive, fair and impartial evaluation of all Responses received. An evaluation committee (“Evaluation Committee”) will be established by the City to evaluate Responses. The City reserves the right, among others, to determine that no qualified Responses have been received and reject all Responses.

**CONTENTS OF RESPONSE**

It is not necessary or desirable to prepare an elaborate or extensive Response to this RFQC; detailed brochures, documentation, artwork, or other superfluous embellishments are unnecessary and are, in fact, discouraged. The Response shall include the following:

- A. Company overview (one (1) page).
- B. Names and resumes of proposed Project team members, and their roles and responsibilities (one (1) to two (2) pages)
- C. Description of Respondent’s suitability for City projects based on the qualifications and requirements described in this RFQC.
- D. Examples of three (3) to five (5) other government or similar entities projects the firm and/or team members have worked on in the past seven (7) years and client reference contact information (one (1) page for each similar project). Client reference contact information shall include agency name and address, contact name, contact phone number and contact e-mail

address.

- E. Brief discussion of Respondent’s approach to the work in order to meet City project goals (three (3) to five (5) pages).
- F. Information regarding the firm’s financial history and stability. Please submit the most recent two (2) years of audited financial statements (will be submitted as a separate exhibit).
- G. Hourly rate schedule for team members (will be submitted as a separate exhibit)

**EVALUATION CRITERIA/SCORING**

The City will evaluate Responses based on criteria stated within this RFQC. A Respondent’s qualifications and experience will be assigned a value including but not limited to the following technical qualifications and requirements:

<b>Quality of team proposed to manage City Projects</b>	The credentials and experience of the person(s) assigned to our relationship and management team. Provide professional qualifications and description of experience for principal project staff. The Project manager’s resume must be included. (At this stage, firms are asked for information on lead staff only, but may list qualifications and experience on more than one lead individual who are being proposed for services to the City. (If the firm is selected as a finalist, the City may request detailed information on the exact proposed expanded team and their relevant experience).	<b>25 points</b>
<b>Suitability – Capability/Resources</b>	Provide any information that may serve to differentiate your firm from other firms in suitability for city projects:  A. Describe firm’s philosophy, design approach, and demonstrated practice of “environmentally sensitive landscaping and park renovation.” The firm’s project history should demonstrate commitment to enhancing the environmental quality, and long-term performance of their design projects.  B. Demonstrate firm’s understanding of creative and sustainable projects within strict budget limitations and demonstrated knowledge of native plants, native plant associations, sustainable building materials, weather appropriate irrigation systems, etc.	<b>25 points</b>
<b>Experience with a Similar Entity</b>	Provide information on the firm’s experience for multi-jurisdictional clients of similar type, size, function, and complexity. Describe no more than five (5) accounts, in order of most relevant to least relevant, which demonstrate the firm’s capabilities to perform services for the City. For each account, the following information should be provided:	<b>25 points</b>

	<p>A. Client name, locations and dates during which services were performed.</p> <p>B. Clear description of overall project and services performed by your firm.</p> <p>C. Exact length of service performed by your firm, and overall project budget.</p> <p>D. Client’s stated satisfaction in service of your firm. (Include letters from clients, if available). Client (s) current contact information.</p> <p>E. Letters of reference from at least two (2) of those clients for projects of similar sizes and scopes. Contact names and telephone numbers must be included. (Letters of reference should describe the work completed, and contain some specific examples on how quality products were delivered on schedule and within budget.)</p>	
<b>Methodology and Approach</b>	Approach Consultants are required to describe the procedures and methods that the firm will use to achieve landscape designs for the City. The scope of this Project anticipates and encourages innovative landscape design solutions.	<b>25 points</b>

**SELECTION PROCESS**

Project teams that the Evaluation Committee feels can best meet the requirements of this RFQC may be invited to participate in an interview process. Final selection of a firm or forms for contract award will be made by City Council following recommendation of the RFQC Evaluation Committee. The City will make contract award(s) in its best interests.”

The process for selection of a firm for contract award shall be as follows:

- A. Based on information provided in the Responses, a firm or firms will be selected for further consideration.
- B. Presentations / interviews with selected firms may be conducted, and a final selection will be made after the interviews are concluded and the Evaluation Committee has had an opportunity to evaluate all information received.

**SECTION 7: SCHEDULE OF EVENTS (SUBJECT TO CHANGE)**

<b>EVENT</b>	<b>DATE</b>
RFQC Released	February 19, 2020
Pre-Qualification Conference	March 12, 2020 (11:00 AM)
RFQC Deadline for Receipt of Inquiries	March 17, 2020 (2:00 PM)

RFQC Deadline for Posting Written Answers to Inquiries	March 23, 2020
RFQC Response Due Date	April 9, 2020 (2:00 PM)
RFQC Evaluations Completed	April 14, 2020
Presentations/Interviews	April 23, 2020
Final Selection	April 2020

\*This proposed schedule of events is informational and is subject to change at the discretion of the City.

**SECTION 8: TERMS AND CONDITIONS**

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

- A. All applicable federal, state and local laws, ordinances, licenses and regulations of all agencies having jurisdiction shall apply to this procurement and are incorporated herein.
- B. Professionals requiring special licenses shall be licensed in the State of Georgia, and shall be responsible for obtaining licenses for applicable portions of the work as may be required by law.
- C. No Response shall be accepted from, and no contract shall 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 reserves the right to request of Respondents satisfactory evidence that they have the necessary financial resources to accomplish the requirements of this procurement.
- E. From the date this RFQC is issued until a firm is selected, Respondents shall not communicate with any staff or elected officials of the City regarding this procurement, except at the direction of Jason Frazee, Purchasing Agent for the City and Procurement Manager for this solicitation. Any unauthorized contact may disqualify the Respondent from further consideration. Contact information for this single point of contact is as follows:

Jason Frazee, Senior Contract Specialist  
City of Sandy Springs  
1 Galambos Way  
Sandy Springs, Georgia 30328  
E-mail Address: [purchasing@sandyspringsga.gov](mailto:purchasing@sandyspringsga.gov)

- F. All costs for developing and delivering a Response or other materials in connection with this RFQC and any subsequent interviews or presentations of a Response as requested by the City are entirely the responsibility of the Respondent. The City shall not be liable for any expense incurred by the Respondent in the preparation and presentation of its Response.

G. While the City has every intention to make an award as a result of this solicitation, issuance of the RFQC 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 solicitation at any time. If the City terminates the solicitation, notice of cancellation will be issued. In such event, the City will not reimburse any Respondent for preparation of its Response. Responses may be returned upon request if unopened;
2. Reject any or all Responses received, make a contract award based directly on the Responses received in the best interest of the City, in its sole discretion, or enter into further discussions with one (1) or more Respondents;
3. Waive and/or amend any undesirable, inconsequential, or inconsistent provisions/specifications of this RFQC which would not have significant impact on any Response;
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.

H. The contract term shall be as stated in the contract awarded as a result of this procurement.

I. The successful Respondent will be the prime contractor if a contract is awarded and shall be responsible, in total, for all work of any subcontractors. All subcontractors, if any, shall be listed in the Response. The City reserves the right to approve all subcontractors. The successful Respondent shall be responsible to the City for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the successful Respondent. Further, nothing contained within this document or any contract documents created as a result of any contract award derived from this procurement shall create any contractual relationships between any subcontractor and the City and its partners.

J. The City reserves the right to award multiple contracts for the Scope of Work described in this procurement. If the contract awarded pursuant to this procurement is terminated for any reason, the City reserves the right to request from an eligible Respondent a cost proposal and an executed contract for consideration of award. The City also reserves the right to request such other documents at that time as deemed necessary to consider whether or not to make a contract award, or it may determine to pursue other methods available to it to procure required services.

## **SECTION 9: CONTRACT INFORMATION**

The form of service agreement (“Model Service Agreement”) the City intends to execute with the selected Respondent is included in this RFQC as an Exhibit. Respondents are urged to read this Model Service Agreement carefully prior to submitting a Response.

In general the City is unable to negotiate or revise contract provisions. If a Respondent believes certain contract provisions are out of date, not applicable or place an undue burden or cost on the Respondent or the City, the Respondent must address these concerns in writing during the question and answer period. The Purchasing Manager will review and determine the appropriate response. If the City

determines a change is warranted; an addendum will be posted to this RFQC. If a firm is unwilling to execute the Model Contract, whether modified by addendum or not, a Proposal should not be submitted.

The City may deem any Response containing contract changes or exceptions non-responsive and reject the Response.

This RFQC document, together with its addenda, amendments, attachments, modifications, Respondent's Response, including any amendments, a "best and final offer," and any clarification question responses, when executed, becomes part of the contract between the parties. The City does not intend to accept alternate terms and conditions to the Model Service Agreement. All questions are due in writing no later than the date stated on the first page of this RFQC. Questions received after this date and time may not be answered.

Prior to award, the apparent selected Respondent may be required to enter into discussions with the City to resolve any contractual differences before an award is made. These discussions shall be finalized and all exceptions resolved within one (1) week of notification; if not, the Response may be rejected and discussions initiated with the second highest scoring Respondent.

The selected Respondent shall not begin performance of services requested by this RQC prior to the execution of a formal service agreement (based on the Model Service Agreement) by the City and Respondent. Any Respondent beginning performance prior to the execution of a service agreement shall be deemed to be proceeding at Respondent's risk, and shall not be entitled to any compensation for such performance. In addition, the City reserves the right to withdraw or cancel an award.

The City may, by written notice to the selected Respondent, terminate any resulting service agreement without cause. The City must give notice of termination to the selected Respondent at least thirty (30) days prior to the effective date of termination.

SECTION 10: EXHIBITS



ON CALL LANDSCAPE AND ARCHITECTURAL DESIGN SERVICES

MODEL SERVICE AGREEMENT

This Service Agreement (hereinafter "Agreement") is made as of the execution date between \_\_\_\_\_ (hereinafter "Contractor") located at \_\_\_\_\_ and the **City of Sandy Springs**, Georgia (hereinafter "Sandy Springs").

WITNESSETH:

**WHEREAS**, Contractor is engaged in the business of providing On-Call Landscape Design & Engineering Services and

**WHEREAS**, Sandy Springs has a need to acquire the services described in the Contractor Proposal attached hereto as Exhibit A (hereafter "Services"); and

**WHEREAS**, Contractor is willing and able to render the Services and wishes to perform the Services for Sandy Springs; and

**WHEREAS**, Sandy Springs 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:

1. **Services.**

Contractor hereby agrees to render the Services to Sandy Springs 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 *project manager* 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.

2. **Compensation.**

a. **Fee.** As consideration for the Services, Sandy Springs shall pay to Contractor the fees described in Exhibit B attached hereto and incorporated herein by this reference.

b. **Manner of Payment.** Contractor shall, on a monthly basis, prepare and submit to the Sandy Springs Finance Department an invoice, indicating work performed and approved and additional equipment expenses incurred during the applicable time period, together with such supporting documentation as may be required by Sandy Springs. Each compliant invoice shall be paid within thirty (30) days after submission of an invoice.

3. **Relationship of Parties.**

a. **Independent Contractors.** Nothing contained herein shall be deemed to create any relationship other than that of independent contractor between Sandy Springs and Contractor. This Agreement shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement between Sandy Springs 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 Agreement.

b. **Employee Benefits.** Contractor shall not be eligible for any benefit available to employees of Sandy Springs 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.

c. **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 Agreement. 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 Sandy Springs.

4. **Term**

This Agreement initial term shall become effective as of the date of its execution, shall continue in effect until June 30, 2021. The term of the contract will be three (3) annual years with an option to renew for an additional one-year period contingent upon annual appropriations of funds by the City of Sandy Springs City Council. The contract will terminate at the close of each calendar year, but will automatically renew absent any positive action by the City.

5. **Termination.**

Either party shall have the right to terminate this Agreement if the other party is in default of any obligation hereunder and such default is not cured within ten (10) days of receipt of a notice from the other party specifying such default. "Default" shall mean:

a. If Sandy Springs fails to make payments when due or fails to perform or observe any of its duties or obligations under the terms of this Agreement;

b. If Contractor fails to perform or observe any of its duties or obligations under the terms of this Agreement;

c. If Sandy Springs or Contractor shall have made any warranty or representation in connection with this Agreement which is found to have been false at the time such warranty or representation was made and is materially harmful to the other party.

This Agreement may also be terminated by either party by giving written notice thirty (30) days prior to the effective date of termination.

If this Agreement is terminated pursuant to this paragraph, Contractor shall be exclusively limited to receiving only compensation for the work performed and appropriately documented to and including the effective date identified in the written termination notice.

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

Upon the expiration or earlier termination of this Agreement, Contractor shall immediately terminate the Services hereunder and shall deliver promptly to Sandy Springs all property relating to the Services and any Work Product (as defined below), patents or copyrights covered by this Agreement. 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.

**7. 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 Agreement. Contractor agrees to perform in a diligent, efficient, competent and skillful manner commensurate with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances, and to otherwise perform as is necessary to undertake the Services required by this Agreement, 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 Sandy Springs, which are incorporated into and made a part of this Agreement.

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 Agreement.

The 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.

**8. Conflicts of Interest.**

Contractor warrants and represents that:

- a. 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
- b. 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 Agreement; and
- c. Contractor is not subject to any statute, regulation, ordinance or rule that will limit its ability to perform its obligations under this Agreement; and
- d. 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.

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

Contractor acknowledges that it may have access to and become acquainted with confidential and other information proprietary to Sandy Springs including, but not limited to, information concerning Sandy Springs, 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 Agreement. The obligations of Contractor under this section shall survive the termination of this Agreement.

10. **Insurance and Indemnification**

Contractor agrees to defend, indemnify and hold harmless the City of Sandy Springs, to the extent allowed by applicable law, from and against any and all claims, losses, liabilities or expenses (including, without limitation, attorneys' fees) which may arise due to the Contractor's negligent performance of the Services or Contractor's breach of its responsibilities under this Agreement. Insurance requirements are attached hereto as Exhibit G and incorporated herein by this reference.

11. **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 Agreement 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

**12. Assignment.**

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

**13. Notices.**

All notices or other communications required or permitted to be given under this Agreement 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 Sandy Springs:**

Andrea Surratt, City Manager  
1 Galambos Way  
Sandy Springs, Georgia 30328

**With copies to:**

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

**If to Contractor:**

\_\_\_\_\_  
Contractor Contact, Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

**With copies to:**

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

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

This Agreement is made and entered into in the State of Georgia and this Agreement 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 agreement.

15. **Waiver of Breach.**

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

16. **Disputes**

No civil action with respect to any dispute, claim or controversy arising out of or relating to this Contract may be commenced without first giving fourteen (14) calendar day's written notice to Sandy Springs of the claim and the intent to initiate a civil action.

17. **Severability**

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

18. **Entire Agreement.**

This Agreement 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.

19. **Heading**

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

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

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

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

Contractor warrants it has the rights to use and license all products, software and services provided under this agreement. Contractor further agrees to defend and save harmless Sandy Springs

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 agreement violated a third party's trademark, copyright or patent. Copyright, Trademark and Patent Indemnification shall survive the termination, cancellation or expiration of this agreement.

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

**CITY OF SANDY SPRINGS, GEORGIA**

By: \_\_\_\_\_  
Andrea Surratt, City Manager

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

ATTEST:

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

Approved as to Form:

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

(SEAL)

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_ Date of Execution \_\_\_\_\_

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

\_\_\_\_\_  
Title

ATTEST:

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

(SEAL)

\_\_\_\_\_  
Witness

This Agreement to be executed in one (1) origin

**EXHIBITS**

<b>EXHIBIT A</b>	Scope of Services
<b>EXHIBIT B</b>	Response to RFQC
<b>EXHIBIT C</b>	Project Team Hourly Rate Schedule
<b>EXHIBIT D</b>	Certification of Contractor - Georgia Security and Immigration Compliance Act
<b>EXHIBIT E</b>	Certification of Sponsor Drug-Free Workplace
<b>EXHIBIT F</b>	Affidavit Verifying Status for City Public Benefit Application
<b>EXHIBIT G</b>	Contractor Affidavit under O.C.G.A. § 13-10-91(b) (1)
<b>EXHIBIT H</b>	Insurance Requirements
<b>EXHIBIT I</b>	Notice to Contractors Compliance with Title VI of the Civil Rights Act of 1964
<b>EXHIBIT J</b>	Corporate Certificate
<b>EXHIBIT K</b>	Addendums

**EXHIBIT A**  
**SCOPE OF SERVICES**

**EXHIBIT B  
RESPONSE TO RFQC**

**EXHIBIT C**  
**PROJECT TEAM HOURLY RATE SCHEDULE**

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

I hereby certify that I am a principle 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 the 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 Agreement, 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, 2010, 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 Agreement if the 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, 2010].

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 Agreement, 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 Agreement, 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 Agreement 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 E  
CERTIFICATION OF SPONSOR  
DRUG-FREE WORKPLACE**

I hereby certify that I am a principle and duly authorized representative of \_\_\_\_\_, (“Contractor”), 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 Contractor’s employees during the performance of the Agreement; and
- (3) Each Subcontractor hired by Contractor shall be required to ensure that the subcontractor’s employees are provided a drug-free workplace. Contractor shall secure from that subcontractor the following written certification: “As part of the subcontracting agreement with Contractor, \_\_\_\_\_ certifies to Contractor that a drug-free workplace will be provided for the Subcontractor’s employees during the performance of this Agreement 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 Agreement.

CONTRACTOR:

\_\_\_\_\_  
Signature

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

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

**EXHIBIT F**  
**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. §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 O.C.G.A. §16-10-20.

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, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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 G**  
**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 the 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 \_\_\_\_\_, 20\_\_.

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

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

**EXHIBIT H**  
**INSURANCE REQUIREMENTS**

Within ten (10) days of Notice of Award, and at all times that this Agreement 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-6 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,** 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** 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** 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. **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** 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 the 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. The Contractor shall ensure that coverage under this policy continues for a period of thirty-six (36) months after completion of services.

7. 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 the Contractor receives notice of non-renewal or material adverse change of any of the required coverages, the Contractor shall promptly advise the City in writing. Failure of the Contractor to promptly notify the City on non-renewal or material adverse change of any of the required coverages terminates the Agreement as of the date that the Contractor should have given notification to the City. The insurance policies shall contain or be endorsed to contain, the following provisions:

(a) 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.

(b) 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.

(c) 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 the Contractor to the City.

The obligations for the 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 the Contractor whether or not same is covered by insurance.

Certificate Holder should read:

The City of Sandy Springs  
1 Galambos Way  
Sandy Springs, GA 30328

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

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

1. Compliance with Regulations: The 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: The 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. The 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, the 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 the Contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Contractor of the 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: The Contractor will 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, the 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 the 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 the Contractors under the Contract until the Contractor complies, and/or
  - (b) Cancellation, termination or suspension of the Contract, in whole or in part.

6. Incorporation of Provisions: The 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. The 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, the Contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.