



# SANDY SPRINGS™

GEORGIA

## REQUEST FOR PROPOSALS #20-061 HOUSING NEEDS ASSESSMENT

### PRE-PROPOSAL MEETING:

**April 3, 2020; 10:00 a.m.**

### Proposals are due:

**April 16, 2020; no later than 2:00 p.m.**

Sealed Proposals must be received no later than **April 16, 2020, 2:00 p.m. EST**. The City of Sandy Springs will only accept online submissions for this RFP through the Bonfire Portal at <https://sandysprings.bonfirehub.com/projects/view/24903>. Any Proposal submitted in any other format (e-mail, paper, fax, mail, etc.) will not be accepted for any reason.

#### General Information:

1. All communications regarding this procurement must be with the assigned Procurement Officer, Charise Glass, Purchasing Manager at [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/24642>

Questions are due no later than **April 8, 2020, 5:00 p.m. EST**. 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 this procurement will be posted on Bonfire website at <https://sandysprings.bonfirehub.com/projects/view/24642>. It is the Offeror's responsibility to check the Bonfire portal for any addenda or other communications related to this procurement.
4. The form of contract ("Model Contract") the City intends to execute with the selected Offeror is included as Attachment A for 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 RFP Checklist is provided for your convenience below. This checklist is provided for assistance only and should not be submitted with the Proposal.

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

- Scope of Services and/or Contractor Proposal
- Cost Proposal
- 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

PROPOSAL SIGNATURE AND CERTIFICATION

I certify that this Proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Proposal ("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: \_\_\_\_\_

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

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

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

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

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 governing body, 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 \_\_\_\_\_, 2020.

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

(Seal)

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

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

## OFFEROR'S RFP CHECKLIST

### 10 Critical Things to Keep in Mind When Responding to an RFP 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 Officer's name, address, phone numbers and e-mail address.** This is the only person you are allowed to communicate with regarding the RFP 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 RFP. This conference is voluntary, but all potential Offerors are strongly encouraged to attend.
4. \_\_\_\_\_ **Take advantage of the "question and answer" period.** Submit your questions to the Procurement Officer by the due date listed in the RFP and view the answers given in any formal "addenda" issued for the RFP. All addenda issued for an RFP will be distributed by e-mail to Offerors.
5. \_\_\_\_\_ **Follow the format required in the RFP** when preparing a Proposal. 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. Proposals are evaluated based on the information and materials provided in response to the RFP.
7. \_\_\_\_\_ **Use the forms provided**, e.g. cover page, reference questionnaire, etc.
8. \_\_\_\_\_ **Review the RFP document again** to make sure that you have addressed all requirements. The original Proposal and the requested copies must be identical and complete. The copies are provided to the Evaluation Committee members and will be used to evaluate Proposals.
9. \_\_\_\_\_ **Submit the Proposal on time.** Note all the dates and times listed in this RFP, and be sure to submit all required items on time. Late Proposals will not be accepted.

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

## SECTION 1: BACKGROUND AND GENERAL INFORMATION

The seventh most populous city in Georgia, Sandy Springs' location in the center of the Atlanta metropolitan region makes it an attractive place to live and work. The City of Sandy Springs ("Sandy Springs" or "City"), along with the Perimeter Center, is a top office submarket for the region, especially for headquarters, finance, technology, insurance, and other professional industries.

As noted in the City's Next Ten Comprehensive Plan, there are low concentrations of high-income renters and low-income owners, but there is also a notable lack of households in the \$65,000 to \$100,000 income category, whether renters or owners, of any age. The median home value in Sandy Springs is \$505,800<sup>1</sup>, almost twice as much as the Atlanta metropolitan statistical area ("MSA").

## SECTION 2: SCOPE OF SERVICES

The City seeks a qualified firm ("Consultant") to develop a comprehensive housing needs assessment ("Assessment"). The goal of the Assessment is to provide a better understanding of the existing housing market and needs of current and future Sandy Springs residents ("Project"). The results of the Assessment will help elected officials, City staff, stakeholders, and community members develop a meaningful sense of the housing market, recognize key housing issues, and understand how these issues impact the City.

The Assessment is a data-driven study. Analysis should include an assessment of existing housing conditions, demographic and market demands, housing gaps and issues, current and anticipated unmet housing needs, and an outlook of anticipated housing demands over the next ten (10) years. When possible, citywide data should be broken down into smaller, consistent geographic components. The City anticipates the Assessment will create a framework and knowledge base to create a Strategic Housing Action Plan.

The selected Consultant will interview key stakeholders. As appropriate, the selected Consultant will coordinate with the business community and major Sandy Springs employers to develop a more robust profile of commuting patterns, residency, etc.

The Assessment should address:

### 1. Terms, Definitions, and General Information

- Include a discussion of the relationships between different housing types and public school performance, crime, traffic generation, and property values.

### 2. Demographic and Economic Factors

- Include specific data relevant to population, household, housing and employment statistics including, but not limited to, historical and population growth trends, demographic data, household data, and employment data.
- Conduct population forecasting for the City.
- Identify concentrated areas of poverty, homelessness, sensitive populations, elderly, disabled, etc.
- Discuss employment trends (i.e. employment growth, labor force, commuting patterns, existing business mix, major employers, etc.)

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<sup>1</sup> 2018 ACS 1-Year Estimates

- Provide an overview of Sandy Springs commuting patterns, including assessments of residents commuting out of the City for work and non-residents commuting into the City for work.
- Include an analysis of impacts of transportation costs, taxes, and other factors on housing affordability. Include a discussion of the number of Sandy Springs residents – both renters and owners – who are cost-burdened.

### **3. Housing Stock, Trends, Market Analysis, and Projections**

- Utilize existing housing data, including regional resources.
- Review current housing inventory and provide specific metrics for the City regarding housing condition, ownership, type of dwelling, age of units, multi-family units, vacancy rates, neighborhood character, availability of utilities, access to services, etc.
  - Provide an inventory of existing subsidized housing, including availability, new or future subsidized housing, and other dwellings that serve as transitional and emergency housing.
  - Include the market rate and availability of rental units across the City. Units shall be distinguished by type, number of bedrooms, size, location and price in the analysis.
  - Include a discussion of turnover rates for renters.
  - Include a discussion of whether or not renters are being priced out of the Sandy Springs rental market.
- Categorize existing housing stock into a tiered system of affordability based upon the area median income (rentals and ownership). Provide a discussion by housing type and general geographic location.
- Study residential real estate trends for all types of housing, including an analysis of past residential sales prices, length of time on the market, and other relevant real estate metrics.
  - Rental Market Analysis (i.e. property quantities, occupancy, pending developments, etc.)
  - For Sale Market Analysis (i.e. current supply, resale by value, pending developments, etc.)
- Include an analysis of obstacles to homeownership for current Sandy Springs renters and workers who commute into the City.
- Analyze and identify existing housing needs and provide a detailed discussion by housing type and cost.
- Provide a summary of housing market trends, historical data and future projections. Historical data of ten (10) years shall be included, and a period of ten (10) years should be included for futuristic projections and Housing Demand Analysis (i.e. estimated demand for sale property, estimated demand for rental property, etc.)
- Include a comparison of housing costs to other metro Atlanta municipalities.
- Include a summary of all agencies, nonprofits, and other organizations that are currently supporting Sandy Springs residents to meet housing needs or are currently serving other social services functions.
- Provide an overview of available funding and the number of residents assisted by each organization.

### **Deliverables**

1. The Assessment will include a detailed written report. This report should include:
  - a. Abbreviated fact sheets;
  - b. Associated data;
  - c. Graphics and creative data visualization;
  - d. An appendix with detailed information on data collection methods;

- e. Where possible, interactive story maps and other GIS data should be provided.
2. The Consultant will publicly present its findings at a City Council meeting.

### SECTION 3: SUBMITTALS

Proposals shall be submitted through the Bonfire portal at:

<https://sandysprings.bonfirehub.com/opportunities/24903>

no later than 2:00 p.m. EST on April 16, 2020.

**A Proposal 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 Offeror's sole responsibility to submit its Proposal before the required deadline. Hard copy, electronic and facsimile submittals will not be accepted.**

### SECTION 4: CONTENTS OF PROPOSAL AND EVALUATION CRITERIA

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

#### **A. Contents of Proposal**

A Proposal shall contain two (2) components: (1) Technical Proposal; and (2) Cost Proposal. The Technical and Cost Proposals shall contain the information described below. It is not necessary or desirable to prepare an elaborate or extensive Proposal for this Project; detailed brochures, documentation, artwork, or other superfluous embellishments are unnecessary and are, in fact, discouraged.

#### **The Technical Proposal shall include the following:**

1. Cover Sheet (not to exceed one (1) page)
2. Table of Contents (not to exceed one (1) page)
3. Project Summary (not to exceed two (2) pages). This summary should concisely describe the Project, its goals, and the proposed implementation plan including detailed Project timeline.
4. Offeror Description and Project Team (not to exceed six (6) pages)
  - a. Brief history of Offeror organization;
  - b. Description of experience and capacity to manage projects of the size and scope of the Project;
  - c. Description of what makes the Offeror uniquely qualified for this Project;
  - d. Description of the Project team, including individual members, professional profile, credentials, and relevant experience;
  - e. Specific assignments for each Project team member and primary point of contact for Offeror. \
5. Description of Similar Experience and References (not to exceed one (1) page per reference)

- a. Provide at least three (3) but no more than five (5) references for relevant projects completed by the Offeror and/or team members have completed in the past five (5) years.
- b. Each reference should include:
  - i. Project description and link to review the subsequent report, if available.
  - ii. Location, cost, and name of agency for which work was performed;
  - iii. Population of jurisdiction, if applicable;
  - iv. Agency contact information including current title, phone number, and email address.

6. Outline of Services (not to exceed five (5) pages)

- a. Describe Offeror’s overall approach, engagement strategy for key stakeholders, and work plan for the Project;
- b. Describe the tools and methodologies the Offeror intends to use to complete the Project on time and within scope and budget.
- c. Proposed Schedule (not to exceed two (2) pages). Provide a detailed schedule of the Offeror’s work plan for the Project.

**The Cost Proposal shall be submitted separately and shall include the following:**

- 1. A pricing sheet that incorporates all direct and indirect cost associated with the Project;
- 2. Narrative demonstrating that Cost Proposal is competitive and innovative;
- 3. A discussion of any proposed items not included in the Scope of Services and separate pricing for those items.

**B. Evaluation Criteria**

Proposals will be scored and ranked based upon how well the Offeror demonstrates its knowledge and understanding of the evaluation criteria for the Technical Proposal described herein. The City reserves the right to short list and conduct interviews should the need arise to complete the selection process.

The Technical Proposal evaluation criteria consists of the following: Offeror Description and Project Team; Similar Experience and References; and Outline of Services and Proposed Schedule. The following weighting will be given each element:

CRITERIA FOR TECHNICAL PROPOSALS	WEIGHT IN EVALUATION
Offeror Description and Project Team	25%
Similar Experience and References	25%
Outline of Services and Proposed Schedules	50%
<b>TOTAL</b>	<b>100%</b>

Cost Proposals will be reviewed for reasonableness and realism against the City’s independent assessment following evaluation of Technical Proposals. Cost Proposals will be considered for technically qualified Proposals after the technical evaluation is completed.

## SECTION 5: PRE-SUBMITTAL INQUIRIES

All questions or requests for clarification shall be sent via Bonfire under Message - Opportunity Q&A:

<https://sandysprings.bonfirehub.com/projects/view/24903>

or directed to: [purchasing@sandyspringsga.gov](mailto:purchasing@sandyspringsga.gov).

Questions are due no later than **April 8, 2020, 5:00 pm EST**. 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 this procurement will be posted on the Bonfire website at:

<https://sandysprings.bonfirehub.com/projects/view/24903>

It is the Offeror's responsibility to check the Bonfire portal frequently for any addenda or other communications related to this procurement.

## SECTION 6: COMMUNICATIONS

Questions or comments regarding this procurement shall be submitted in writing via e-mail 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; however, they must be submitted no later than **April 8, 2020, 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, Charise Glass, Purchasing Manager for the City. Ms. Glass can be reached via e-mail at [purchasing@sandyspringsga.gov](mailto:purchasing@sandyspringsga.gov). Until a Consultant 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 7: SCHEDULE OF EVENTS\*

EVENT	DATE
RFP Released	March 18, 2020
Pre-Proposal Meeting	April 3, 2020, 10:00 a.m.
Deadline for Receipt of Inquiries	April 8, 2020, 5:00 p.m.
Deadline for Posting Written Answers to Inquiries	April 10, 2020, 5:00 p.m.
Proposal Due Date	April 16, 2020, 2:00 p.m.
Proposal Evaluations Completed	April 24, 2020
Presentations/Interviews	May 8, 2020
Final Selection	May, 2020

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

## SECTION 8: TERMS AND CONDITIONS

All Proposals and supporting materials as well as correspondence relating to this procurement 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:

1. 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.
2. Professionals requiring special licenses shall be licensed in the State of Georgia, and shall be responsible for those portions of the work as may be required by law.
3. No Proposal 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.
4. 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.
5. From the date this RFP is issued until a Consultant 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, Purchasing Manager in charge of this procurement. Any unauthorized contact may disqualify the Offeror from further consideration. Contact information for the single point of contact is as follows:

Charise Glass, Purchasing Manager  
City of Sandy Springs  
1 Galambos Way  
Sandy Springs, Georgia 30328  
E-mail: [purchasing@sandyspringsga.gov](mailto:purchasing@sandyspringsga.gov)

6. While the City has every intention to make an award as a result of this procurement, 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 following rights:

- a. The City may cancel or terminate this RFP at any time. A notice of cancellation will be issued if the RFP is cancelled. Proposals may be returned upon request, if unopened.
- b. The City will not reimburse any Offeror for preparation of its Proposal. Preparation of a Proposal is the Offeror's sole financial responsibility.
- c. The City may reject any or all Proposals received, make a contract award based directly on the Proposals received in the best interest of the City, in its sole discretion, or enter into further discussions with one (1) or more Offerors;
- d. Waive and/or amend any undesirable, inconsequential, or inconsistent provisions/specifications of this RFP which would not have significant impact on any Proposal:
- e. Make partial award or no award if it is in the best interest of the City to do so; and
- f. Terminate any contract if the City determines adequate funds are not available.

## **SECTION 9: CONTRACT INFORMATION**

The form of service agreement ("Model Contract") the City intends to execute with the selected Consultant is included in this RFP as an Exhibit. Respondents are urged to read this Model Contract carefully prior to submitting a Proposal.

In general the City is unable to negotiate or revise contract provisions. If an Offeror believes certain contract provisions are out of date, not applicable or place an undue burden or cost on the Offeror or the City, the Offeror must address these concerns in writing during the inquiry period shown in the Schedule of Events. The Procurement Officer will review and determine the appropriate response. If the City determines a change is warranted, an addendum will be posted to this RFP. 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 Proposal containing contract changes or exceptions as non-responsive and reject the Proposal.

This RFP document, together with its addenda, amendments, attachments, modifications, Offeror's Proposal, 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 Contract. All questions are due in writing no later than the date stated on the first page of this RFP. Questions received after this date and time may not be answered.

Prior to award, the apparent selected Offeror 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 Proposal may be rejected and discussions initiated with the second highest scoring Offeror.

The selected Offeror shall not begin performance of services requested by this RFP prior to the execution of a formal service agreement (based on the Model Contract) with the City. Any Consultant beginning performance prior to the execution of a service agreement shall be deemed to be proceeding at Consultant'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 Offeror, terminate any resulting service agreement without cause, upon notice at least thirty (30) days' prior to the effective date of termination.

**SECTION 10: ATTACHMENTS**

ATTACHMENT A

Sample Model Contract



**SANDY SPRINGS™**  
GEORGIA

**AGREEMENT**

This Agreement (“Agreement”) is made as of execution date by the City and between \_\_\_\_\_ (“Contractor”), located at \_\_\_\_\_ and the City of Sandy Springs, Georgia (“Sandy Springs”).

**WITNESSETH:**

**WHEREAS**, Contractor is engaged in the business of conducting and delivering Housing Needs Assessments for municipalities to be used to provide a better understanding of the existing housing market and the needs of current and future Sandy Springs residents; and

**WHEREAS**, Sandy Springs has a need to acquire a Housing Needs Assessment described in the Scope of Services and/or Contractor Proposal attached hereto as Exhibit A (“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 and/or Contractor Proposal attached hereto as Exhibit A and incorporated herein by this reference (“Project”). 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 fee 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 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 shall become effective as of the date of its execution, shall continue in effect until the completion of the work stated in Exhibit A, Scope of Services and/or Contractor Proposal. The term of the Agreement will be contingent upon annual appropriations of funds by the City of Sandy Springs City Council. The Agreement will terminate at the close of the Project.

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.

d. 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 In the Service Agreement.**

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 in 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 the Notice to Contractors - Compliance with Title VI of the Civil Rights Act of 1964, attached hereto as Exhibit H 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 shall indemnify the City, its officers, agents, servants and employees from and against any and all liability for damages, losses, or expenses to the extent caused by or resulting from the negligence, recklessness, or intentionally wrongful conduct of the Contractor or other persons employed or utilized by the Contractor in the Performance of the Agreement.

11. **Non-Discrimination.**

During performance of this Agreement, 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 copy to:**

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

**If to Contractor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**With copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 Agreement 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 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.

[Signatures on Following Page]

**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

(SEAL)

Approved as to Form:

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

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

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

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

ATTEST:

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

(SEAL)

\_\_\_\_\_  
Witness

## **EXHIBITS**

- EXHIBIT A**      Scope of Services and/or Contractor Proposal
- EXHIBIT B**      Cost Proposal
- EXHIBIT C**      Certification of Contractor – Georgia Security and Immigration Compliance Act
- EXHIBIT D**      Certification of Sponsor 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**

**SCOPE OF SERVICES AND/OR CONTRACTOR PROPOSAL**

**EXHIBIT B**  
**COST PROPOSAL**

**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 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 D**

**CERTIFICATION OF SPONSOR  
DRUG-FREE WORKPLACE**

I hereby certify that I am a principal 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 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. § 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 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 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 G

### 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 & 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:

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, 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.