



SANDY SPRINGS™

GEORGIA

REQUEST FOR PROPOSALS #20-056 NANCY CREEK WATERSHED SUPPLEMENTAL STUDY AND IMPLEMENTATION PLAN

PRE-PROPOSAL MEETING:

April 2, 2020; 1:00 p.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/24642>. 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, Jason Frazee, 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 9, 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.

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

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: _____

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

Background

The City of Sandy Springs (“City”) seeks Proposals from qualified firms (“Offerors”) to perform and deliver a Supplemental Study and Implementation Plan (“Study”) for the Nancy Creek watershed contained within the City limits (“Project”). The Nancy Creek watershed experiences recurring flooding during important rain events, which causes damage to public and private property. While only a very short segment of Nancy Creek runs through the City, nearly 3,800 acres of its basin and several of its tributaries are within City limits. Mount Paran Road, Glenridge Drive and Mount Vernon Highway NE follow the ridge that delineates the northwestern limit of the watershed. The study area for the Project, attached hereto as (“Study Area”), includes most of the Nancy Creek watershed in the City, east of Forrest Lake Drive and south of I-285.

SECTION 2: PROJECT OBJECTIVES, REQUIREMENTS AND OTHER INFORMATION

Project Objectives

The objective of the Project is to reduce flooding vulnerability, build resilience capacity, increase stream corridor health and create public greenspace. The City will assemble a Technical Review Team (“Team”) composed of staff with expertise in stormwater management, environmental science, land use planning and public policy. A Project manager will lead the Team and facilitate communication with the entity selected for contract award (“Consultant”). Bi-weekly meetings will be conducted in person, by phone or videoconference and are required to keep the Project manager abreast of progress.

The Consultant will lead all public outreach efforts with the support of City staff. Rather than being confined to a finite phase, public communication is expected to last throughout the duration of the Project. The community at large should be involved in the process, but the Consultant must devise a strategy to target the active participation of the residents of the Nancy Creek watershed in particular. Applicants are encouraged to propose non-traditional outreach tools, such as online participation and on-site presence.

Three (3) public meetings should be planned, including:

- Introductory meeting, to discuss the nature of the Project and schedule
- Progress meeting, to share findings, address concerns and validate priorities
- Final meeting, to discuss the proposed implementation strategies and design concepts

Public engagement deliverables:

- Participation engagement plan, including details on outreach efforts and schedule
- Presentation materials and agendas for each meeting
- Collateral materials for selected outreach tools for each meeting
- Meeting summaries for posting on the City website

The primary objectives of the Study are to:

1. Assess the existing stormwater infrastructure, both publicly and privately owned, and determine its adequacy and level of performance. While this should mostly consist of desk work on GIS, some field verifications may be required. A large quantity of photographs taken during the latest stream assessments will be available.

2. Review prior studies that assessed the condition of the creek and its tributaries, and listed recommended improvement projects, as some of the data is aging and the validity of the proposed projects needs to be revisited. Additionally, green infrastructure is a new priority that was not considered in depth in the past.

3. Weigh the potential interventions based on selected criteria including environmental benefit, water quality improvement, land ownership, monetary cost, etc. Structural and nonstructural interventions should be listed.

4. For the five (5) highest priority projects, prepare conceptual designs at a sufficient level detail to be used to create construction documents.

5. At its discretion, the City may offer to extend the contract with the Consultant to produce construction documents for one (1) or all projects listed in the Study.

The Project scope of services is more particularly described in Section 3 of this RFP.

SECTION 3: SCOPE OF SERVICES

Scope of Services

The scope of services for this Project includes the following tasks:

Task 1 – Analysis of the Existing Framework

1a. Assess Existing Infrastructure Capacity

The Study will assess the existing stormwater infrastructure, both publicly and privately owned, and determine its adequacy and level of performance. While this should consist primarily of desk work on GIS, some field verifications may be required. A large quantity of photographs taken during the latest stream assessments will be available.

1b. Assess the Potential Impacts of the City Development Code (“Development Code”)

The Consultant will review the regulations contained in the Development Code to determine their impact on stormwater management and stream corridor health. These regulations include protection of natural grade, impervious surface setback and maximum impervious surface coverage.

Task 1 Deliverables:

- Summary of existing conditions including major challenges and opportunities
- Evaluation of regulations in place and text amendment considerations

Task 2 – Validation of Projects

Prior studies assessed the condition of Nancy Creek and its tributaries, and listed recommended improvement projects; however, some of the data is aging and the validity of the proposed projects needs to be revisited. Additionally, green infrastructure is a new priority that was not considered in depth in the past.

2a. Watershed Model

The Consultant will prepare a watershed model to understand current dynamics and the impact of the proposed projects.

2b. Validation of Listed Projects

Using the watershed model, the Consultant will validate the projects listed in the most recent plans, including points of maintenance. The City is aware of several blockages in the creeks, from fallen trees and accumulation of debris, but the contribution of the damming effect to flooding is misunderstood.

2c. Green Infrastructure and Other Additional Projects

The Consultant will identify viable opportunities for the implementation of green infrastructure – bioswales, constructed wetland, etc. – and other projects, as necessary, that have not yet been listed in planning documents.

Deliverables:

- Summary and details on modeling methodology
- Comprehensive evaluation of prior studies
- List and map of opportunities for green infrastructure

Task 3 – Implementation Plan

3a. Cost/Benefit Analysis

The Consultant will weigh the potential interventions based on selected criteria including environmental benefit, water quality improvement, land ownership, monetary cost, etc. Structural and nonstructural interventions should be listed.

3b. Scenario Modeling

The Consultant will prepare three scenarios based on different levels of intervention: the status quo (if no improvements were conducted); the minimal effort scenario (where improvements requiring the least amount of work and investment are made); and the complete Study scenario.

3c. Project Prioritization

All proposed interventions will be organized according to priority, based on the results of cost/benefit analysis and modeling. The Consultant will break down the list of projects based on short-term implementation (0-5 years), mid-term (6-10 years) and long-term (11 years+).

3d. Construction Approach

The City has never conducted large-scope work on private property. The Consultant is expected to provide assistance with devising a legal strategy to enter and work on private property without acquisition of permanent easements.

Deliverables:

- Cost/benefit matrix
- Scenario modeling results and discussion
- List and map of recommended improvement projects
- Construction approach

Task 4 – Conceptual Design

For the five (5) highest priority projects, the Consultant will prepare conceptual designs at a sufficient level detail to be used to create construction documents.

Deliverables:

- Concept designs for five (5) projects
- Probable construction cost

Task 5 – Construction Documents (Optional)

At its discretion, the City may offer to extend the contract with the Consultant to produce construction documents for one (1) or all the projects listed in the Study.

Deliverable:

- Construction drawings
- Specifications
- Cost estimate

Data Availability

- GIS Open Data portal (<https://data-coss.opendata.arcgis.com>).
- Development Code and Technical Manual: https://library.municode.com/ga/sandy_springs
- Nancy Creek Watershed Improvement Plan (2010):
<http://www.sandyspringsga.gov/city-services/natural-resource-protection/stormwater>
- Nancy Creek Consolidated Watershed Based Plan (2018)
- Impaired Waters Phase II Plan (2019)
- CoSS Stormwater Management Plan (2019)
- Long-Term Habitat and Biological Monitoring (2018)

SECTION 4: SUBMITTALS

Proposals shall be submitted through the Bonfire portal at:

<https://sandysprings.bonfirehub.com/opportunities/24642>

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 5: CONTENTS OF PROPOSAL AND CRITERIA EVALUATION

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 3. 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.

Contents of Proposal

A Proposal shall contain two (2) components: (1) Technical Proposal; and (2) Fee Proposal. The Technical Proposal and Fee Proposal 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. Any change orders shall be first approved by the City and shall be paid in accordance with approved prices. The City may issue a Notice to Proceed at any time once Proposals have been received.

1. Technical Proposal Requirements. Please keep Proposals concise and no more than twenty-five (25) pages, exclusive of cover, organizational chart, schedule, prequalification matrix, certificates, and resumes. A Project schedule is required. The Technical Proposal shall include the following:

a. **Project Team:** Provide information on the level of experience and education of the individuals to be assigned to the project. The multidisciplinary character of the assembled team should be emphasized. Submittal: Maximum one (1) page per person.

b. **Relevant Experience:** Demonstrate the level of expertise of the firm(s) by presenting projects (maximum five (5)) with a similar size and scope. The selected projects should be completed and have demonstrated success. Include a project description, location, cost, contact information. Submittal: Maximum ten (10) pages

c. **Project Understanding/Approach:** Describe the proposed process to successfully complete the Project, including schedule. Suggestions for cost control should be included in this section. Propose in broad terms a preliminary methodology for the assessment and modeling. Schedule organized in a simple table format preferred. Submittal: Maximum five (5) pages.

d. **Reference:** Provide a list of maximum five (5) clients who can provide feedback on working with your team. Include the name of the client company, responsible individual, telephone number and e-mail address; project name, completion date and fee charged. Municipal clients preferred. Submittal: Maximum one (1) page

2. Fee Proposal Requirements. The Fee Proposal should be a reasonable and realistic cost for performing the Project. The Fee Proposal should include a fee schedule, hour estimate and total fee for the Project described in Section 3 of this RFP.

Evaluation Criteria

Proposals will be scored and ranked based upon how well the Offeror demonstrates its knowledge and understanding of the evaluation criteria 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: Project Team; Relevant Experience; Project Understanding/Approach; References. The following weighting will be given each element:

CRITERIA FOR TECHNICAL PROPOSALS	WEIGHT IN EVALUATION
Project Team	25%
Relevant Experience	40%
Project Understanding/Approach	25%
References	10%
TOTAL	100%

Fee Proposals will be reviewed for reasonableness and realism against the City’s independent assessment following evaluation of Technical Proposals.

SECTION 6: 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/24642>

or directed to: purchasing@sandyspringsga.gov.

Questions are due no later than **April 9, 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/24642>

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

SECTION 7: 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 by no later than **April 9, 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, Jason Frazee, Senior Contract Specialist for the City. Mr. Frazee can be reached via e-mail at 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 8: SCHEDULE OF EVENTS*

EVENT	DATE
RFP Released	March 18, 2020
Pre-Proposal Meeting	APRIL 2, 2020, 1:00 p.m.
Deadline for Receipt of Inquiries	April 9, 2020, 5:00 p.m.
Deadline for Posting Written Answers to Inquiries	April 11, 2020, 5:00 p.m.
Proposal Due Date	April 16, 2020, 2:00 p.m.
Proposal Evaluations Completed	April 27, 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 9: 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 Jason Frazee, Senior Contract Specialist 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:

Jason Frazee, Senior Contract Specialist
City of Sandy Springs
1 Galambos Way
Sandy Springs, Georgia 30328
E-mail: 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 right to:

a. Cancel or terminate this RFP at any time. A notice of cancellation will be issued if the RFP is cancelled. Preparation of a Proposal is the Offeror's sole financial responsibility. The City will not reimburse any Offeror for preparation of its Proposal. Proposals may be returned upon request, if unopened;

b. 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;

c. Waive and/or amend any undesirable, inconsequential, or inconsistent provisions/specifications of this RFP which would not have significant impact on any Proposal;

d. Make partial award or no award if it is in the best interest of the City to do so; and

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

SECTION 10: CONTRACT INFORMATION

The form of service agreement ("Model Contract") the City intends to execute with the selected Respondent 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 question and answer period. 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 11: ATTACHMENTS

ATTACHMENT A

Sample Model Contract



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 watershed supplemental study and implementation plan for municipalities to be used to implement to reduce flooding vulnerability, build resilience capacity, increase stream corridor health and create public greenspace

WHEREAS, Sandy Springs has a need to acquire a watershed supplemental study and implementation plan services 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

FEE SCHEDULE

Task No.	Description	Fee
1	Analysis of the Existing Framework	
2	Validation of Projects	
3	Implementation Plan	
4	Conceptual Design	
5	Construction Documents (Optional)	

Grand Total Cost/Price: _____.

The Fee Estimate shall include all estimated costs, expenses, and pricing (direct and indirect) along with a timeline/schedule showing the completion of the project. Please use the above form to provide all cost/pricing.

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.