41 Perimeter Center East, Suite 250
Dunwoody, Georgia 30346
P (678) 382-6700 **F** (678) 382-6701
dunwoodyga.gov

REQUEST FOR PROPOSALS

RFP 13-16

DESIGN AND BUILD SIDEWALKS:
HENSLEY ROAD, MOUNT VERNON WAY, PEACHFORD ROAD, DUNWOODY PARK, AND ROBERTS DRIVE

Michael G. Davis Mayor

Denis Shortal City Council Post 1
Adrian Bonser City Council Post 2
Doug R. Thompson City Council Post 3

Terry Nall City Council Post 4
Lynn Deutsch City Council Post 5
John Heneghan City Council Post 6

REQUEST FOR PROPOSALS (RFP) 13-16
DESIGN AND BUILD SIDEWALKS: HENSLEY ROAD, MOUNT VERNON WAY, PEACHFORD ROAD, DUNWOODY PARK, AND ROBERTS DRIVE.

The City of Dunwoody, hereinafter called "City", is seeking competitive proposals from qualified contractors to design and construct concrete sidewalks along five roadway segments. Proposals which meet the criteria established in the Request for Proposals, at the sole discretion of the City, may be considered for Contract award.

Pending approval by The City Council on February 24th, 2014, it is anticipated that work will commence by March 3rd, 2014.

A technical proposal must be submitted in a sealed envelope which shall be clearly marked RFP 13-16 One (1) printed and signed unbound original, three (3) bound copies, one (1) electronic disc copy in PDF, and one (1) copy of the cost proposal should be submitted in a **separate**, **sealed envelope** from the technical proposal. **Proposals shall be submitted no later than 2:00pm, Thursday January 23, 2014.** At which time noted, all proposals received will be publicly opened and read. The City reserves the right to extend the date or time scheduled for the opening of proposals.

Proposal must be addressed as follows: Purchasing Department
City of Dunwoody
41 Perimeter Center East, Suite 250
Dunwoody, GA 30346

Proposals are legal and binding when submitted. No Proposal may be withdrawn for a period of sixty (60) days after the time and date scheduled (or subsequently rescheduled) for proposal opening.

A **Pre-Proposal Conference will be held at Dunwoody City Hall, 1st Floor Courtroom at 10:00 am on Monday, January 6, 2014** at the City of Dunwoody Courtroom, 41 Perimeter Center East, First Floor, Dunwoody, Georgia 30346. The conference will include a review of the proposal documents, and a question and answer period. Interested parties are expected to be familiar with the proposal documents and to provide the City with any questions regarding the proposal documents at the Pre-Proposal conference or by the deadline for questions to be submitted.

The full cost of the proposal preparation is to be borne by the proposing firm. Sole responsibility rests with the contractor to see that the proposal(s) are received on time at the stated location. Any proposal received after the time and date specified for the opening of the proposals will not be considered, but will be returned unopened. Failure to submit the cost proposal in a separate, sealed envelope may result in your proposal being deemed non-responsive. Proposals sent by facsimile and/or electronic devices are not acceptable and will be rejected upon receipt. Contractors are expected to allow adequate time for delivery of their proposal either by hand delivery, postal service, or other means.

The City's staff will review all proposals submitted. The City reserves the right to waive any informalities or irregularities of proposals or in the RFP procedure, to request clarification or

information submitted in any proposal, to request additional information from any proposer, to reject any or all proposals, or to re-advertise for proposals. The City may, by direct negotiation, finalize terms with the service provider who is selected for award based on proposals. The City reserves the right to reject any or all responses for any reason, to waive technicalities, and to make an award in whole or in part and as deemed in its best interest. The written proposal documents supersede any verbal or written prior communications between the parties.

The City, at its sole discretion, may short-list firms that are deemed to best meet the City's requirements, taking into consideration all criteria listed in the RFP. Negotiations will be conducted and may take place in person or via telephone with the most qualified firm as identified by the City or, if short-listing occurs, with all of the short-listed proposers. Proposers that participate in the negotiations may be given an opportunity to submit their best and final offers. City staff may, at its discretion, request formal presentations from the short-listed firms (at proposer's expense at the City's site).

The City of Dunwoody reserves the right to be the sole judge of the responsibility of any proposer and the suitability of the materials and/or services to be rendered. The City requires pricing to remain firm for the duration of the contract. Failure to agree to hold firm pricing for the duration of the contract will be sufficient cause for the City to declare a proposal non-responsive.

To ensure the proper and fair evaluation of proposals, the City highly discourages any communication initiated by a proposer or its agent to an employee of the City evaluating or considering the proposal during the period of time following the issuance of the RFP and prior to the time a decision has been made with respect to the Contract award. An appropriate Purchasing employee of the City may initiate communication with a proposer in order to obtain information or clarification needed to develop a proper and accurate evaluation of the proposal. Any communication initiated by proposer during evaluation should be submitted in writing and delivered to the City of Dunwoody, Purchasing Office, 41 Perimeter Center East, Suite 250, Dunwoody, Georgia 30346, or by e-mail to purchasing@dunwoodyga.gov or facsimile to (678) 533-0712 **no later than 2:00pm Friday, January 10th, 2014**. Unauthorized communication by the proposer may disqualify the proposer from consideration.

The proposer awarded the Contract must provide proof of liability insurance in the amount of one million dollars ($1,000,000.00), along with any other required insurance coverage and evidence of business or occupational license, as outlined in the Proposal Documents.

TABLE OF CONTENTS

PART ONE – GENERAL DESCRIPTION …… 5

PART TWO – BASIS OF DESIGN ……..…..……..… 5

PART THREE –CONTRACTOR RESPONSIBILITIES…….…….…... 9

PART FOUR – CITY'S RESPONSIBILITIES…….16

PART FIVE – PROPOSAL FORMAT..……..…..…….…. 17

PART SIX – EVALUATION OF PROPOSALS..……...…….….. 18

PROPOSAL FORM …….…….…...…20

INSTRUCTIONS TO PROPOSERS …….…….…….24

APPENDIX A No Bid Response ……...……..…… 32

APPENDIX B Sample Contract and General Conditions …….…...….. 33

1. PART ONE – GENERAL DESCRIPTION

1.1. BACKGROUND

In March 2011, the City of Dunwoody adopted its first Comprehensive Transportation Plan which outlines the community's transportation objectives and funding priorities. The plan identifies the importance of providing sidewalks to facilitate pedestrian travel and promoting the health, safety, and connectivity of the community. Working towards this objective and building upon its existing sidewalk network, this project will construct sidewalks on Hensley Drive, Mount Vernon Way, Peachford Road, Dunwoody Park, and Roberts Drive. This project will be funded locally.

1.1. PROJECT DESCRIPTION

This contract involves the construction of the following sidewalk segments:

- West side of Mount Vernon Way from Mount Vernon Road to Withmere Close (from existing sidewalk to existing sidewalk)
- East side of Hensley Drive from Vanderlyn Drive to Trumbull Drive
- South side of Peachford Road from approximately 700 feet east of North Shallowford Road to North Peachtree Road (from existing sidewalk to existing sidewalk)
- South side of Dunwoody Park from Dunwoody Park North to approximately 350 feet east (from existing sidewalk to bank driveway)
- West side of Roberts Drive from Aurora Court to the Limits of the City, approximately 490 feet south of Spalding Drive.

It is the City's intention to install all of the sidewalk segments listed. However, the City is under no obligation to do so.

1.2. DESIGN BUILD

1.2.1. The Design-Build Firm shall work to design, permit, and build the project. Any reference to Contractor shall mean prime Design-Build Firm or joint venture and any reference to Design-Build Firm shall mean Contractor.

1.2.2. The work covered under this RFP includes the furnishing of all materials, labor, tools, and equipment required for the design, permitting, and construction of the sidewalk projects indicated in this RFP. Bids on these projects shall reflect this. No design exceptions or design variances shall be assumed by the Contractor.

2. PART TWO – BASIS OF DESIGN

2.1. PROJECT DESCRIPTIONS

2.1.1. Mount Vernon Way (Mount Vernon Road to Withmere Close)

- The City has not developed any plans for this project.
- The project is approximately 3,850 LF.
- The project is to be constructed on the east side of Mount Vernon Way.
- Mount Vernon Way is a residential road with a posted speed of 25 mph. The City is interested in incorporating traffic calming measures on this road.

- Tie in to the existing sidewalk along Mount Vernon Road at the southern end of the project. Improve both of the existing sidewalk ramps on the northern side of Mount Vernon Road to meet GDOT Special Detail A3.
- At the northern end of the project, tie into the existing sidewalk for Withmere Close.
- As an alternate provide for a raised crosswalk across Mount Vernon Way immediately south of Withmere Way with sidewalk and ramp connection to Withmere Way.
- ADA Ramps are to be installed at all cross streets.
- As part of the land disturbance permit, City of Dunwoody MS4 requirements will need to be met and structures and/or treatment areas are required. See hydrology study for approved options for stormwater quality.

2.1.2. Hensley Drive (Vanderlyn Drive to Trumbull Drive)

- The City has not developed any plans for this project.
- The project is approximately 1,750 LF.
- The project is to be constructed on the east side of Hensley Drive.
- Hensley Drive is a residential road with a posted speed of 25 mph. The City is interested in incorporating traffic calming measures on this road.
- At the southern end of the project, add an ADA ramp on the north side of Vanderlyn Drive to meet GDOT Special Detail A3 and connect with the existing crosswalk. The existing crosswalk across Vanderlyn Drive is to be restriped.
- At the northern end of the project, a pedestrian crosswalk is to be constructed including, but not limited to, pedestrian ramps on both sides of Trumbull Road and a marked crosswalk.
- It is anticipated that a retaining wall will be required along the inside curve near 5101 Hensley Dr. and 5069 Hensley Dr.
- As an alternate provide for a mid-block raised crosswalk across Hensley to align with the City's access parcel, which connects Stratham Drive and Hensley Drive, located between 5102 and 5112 Hensley Drive.
- As part of the land disturbance permit, City of Dunwoody MS4 requirements will need to be met and structures and/or treatment areas are required. See hydrology study for approved options for stormwater quality.

2.1.3. Peachford Road (from approximately 700 feet east of North Shallowford Road to North Peachtree Road)

- The City has not developed any plans for this project.
- The project is approximately 3,550 LF
- The project is to be constructed on the south side of Peachford Road.
- Peachford Road is characteristically a non-residential road and has a posted speed of 35 mph.
- Clear zone requirements should be met where the right of way limits allow.
- At the eastern end of the project, tie into the existing sidewalk along North Peachtree Road.
- At the western end of the project, tie into the existing sidewalk.

- The sidewalk should avoid the streetlights along Peachford Road wherever possible. If necessary, the contractor shall coordinate pole relocation with Georgia Power.
- As part of the land disturbance permit, City of Dunwoody MS4 requirements will need to be met and structures and/or treatment areas are required. See hydrology study for approved options for stormwater quality.

2.1.4. Dunwoody Park (from the MARTA bus stop across from Dunwoody Park North to approximately 350 feet east)

- The City has not developed any plans for this project.
- The project is approximately 350 LF
- The project is to be constructed on the south side of Dunwoody Park.
- Dunwoody Park is characteristically a non-residential road with a posted speed of 35 mph.
- Clear zone requirements should be met where the right of way limits allow.
- At the eastern end of the project, add a ramp at the driveway that is aligned with the existing ramp on the other side of this driveway.
- At the western end of the project, tie into the existing sidewalk at the MARTA bus stop.
- Because the impervious area of this project will be less than 5,000 sf in area, this project will not require a land disturbance permit. Erosion and sediment control will be required.

2.1.5. Roberts Drive (Aurora Court to the Limits of the City)

- The City has developed plans for this project, but has not submitted the plans for permit review. They are provided as part of this RFP. The City will consider and may approve construction alternatives for those shown on the provided plans.
- The project is approximately 2,250 LF. See plans.
- The project is to be constructed on the west side of Roberts Drive. See plans.
- Roberts Drive is a minor collector road with a residential character and with a posted speed of 35 mph.
- Some curb and gutter and drainage will be required. See plans.
- At the southern end of the project, ADA ramps are to be installed. See plans.
- At the northern end of the project, terminate the sidewalk at the City limits. See plans.
- As part of the land disturbance permit, City of Dunwoody MS4 requirements will need to be met and structures and/or treatment areas are required. See hydrology study for approved options for stormwater quality. The hydrology study was done after the plans were prepared. Any required stormwater management installations will need to be added to the plans.

2.2. DESIGN CRITERIA

2.2.1. The design must comply with the latest Americans with Disabilities Act (ADA) requirements.

2.2.2. At a minimum, the latest editions and applicable addenda of the following standards shall be utilized for the project:

- Georgia Department of Transportation (GDOT) Design Policy Manual

- Georgia Department of Transportation (GDOT) Standards, Details, and Specifications
- Applicable AASHTO Standards, Manuals, and Design Guides
- Manual on Uniform Traffic Control Devices (MUTCD)
- Georgia Soil and Water Conservation Commission Manual for Erosion and Sediment Control in Georgia
- City of Dunwoody Code of Ordinances

2.2.3. It is the City's intention to construct this project within the limits of the existing right of way.

TYPICAL SECTION

2.2.4. The City's sidewalk standard is 5 feet in width, 4 inches thick, Class B or 3,000 psi concrete.

2.2.5. The City desires to maximize the landscape buffer between the curb and the sidewalk while taking into consideration stormwater management, available right of way, existing mature trees, utilities, masonry mailboxes, or other permanent or semi-permanent objects. On Hensley Drive and Mount Vernon Way the landscape buffer shall be 2 feet. On Peachford Road and Dunwoody Park the minimum buffer width shall be 4 feet. The City routinely allows an increase in the buffer width to avoid conflicts provided that the sidewalk shall remain within the existing right of way. The City highly values the benefits that the landscape buffer provides and will only consider requests to decrease the buffer width for short distances after all other options have been considered. The City will consider a decrease in the buffer only in the following situations:

a) The sidewalk would conflict with a utility that is cost prohibitive to relocate. A single distribution pole would not be considered cost prohibitive. A communications panel or box likely would be cost prohibitive. A relocation cost estimate shall be obtained and provided to the City where a decrease in the landscape buffer is proposed.
b) The sidewalk would require removal of a specimen type tree(s) and the tree could be preserved by reducing the buffer for a short distance.
c) The sidewalk would require extensive grading beyond the right of way or a retaining wall. Before reducing the buffer the feasibility to steepen slopes up to a maximum of 2:1 would be considered.
d) The sidewalk would require significant removal of a resident's formal landscaping (i.e. heavily planted beds or gardens).
e) In general more flexibility will be granted reducing the landscape buffer in residential areas such as on Hensley Drive and Mount Vernon Way.

2.2.6. Slopes shall typically be no steeper than 4:1 slopes. Slopes up to 2:1 will be allowed with approval from the City in areas that will not be planted with grass. In order to minimize grading, the City will allow the sidewalk to "follow the grade" to some extent rather than require a constant elevation relative to the adjacent roadway. This is allowable provided that:

a) All ADA requirements are met
b) The landscape buffer slope meets the guidelines above
c) The sidewalk drainage is directed into the roadway

2.2.7. Where slopes must be steeper than 3:1 (for drops 6 ft or more) or 2:1 (for drops 4 ft or more), pedestrian handrail must be installed. See handrail detail provided with this RFP.

2.2.8. Any walls visible from roadways or residences shall have a granite façade.

DRIVEWAYS

2.2.9. Sidewalk shall be constructed to meet ADA requirements at all crossings including, but not limited to, cross streets, driveways, and other pedestrian sidewalks or walkways whether owned by the City or otherwise. The sidewalk shall be aligned on either side of all crossings.

2.2.10. Residential driveways should be preserved whenever possible with new sidewalk graded to meet the existing driveway. Driveways shall be replaced if the existing driveway surface is uneven or cracked to the point that it presents a tripping hazard. Driveways shall also be replaced where necessary to meet ADA cross slope requirements whenever feasible. Feasibility will be determined by the ability to reconstruct the driveway within the existing right of way or obtain a temporary construction easement for tie-in off of the right of way.

2.2.11. If modifications to driveways are necessary, they are to be designed and constructed using GDOT Details A-1 or A-2 and shall provide adequate clearance between the driveway and the bottom of all applicable vehicle(s). If necessary, contractor shall allow the resident to drive upon the subgrade to ensure that there is adequate clearance. Wherever possible brick or other existing decorative driveway elements should be left undisturbed. If decorative driveway elements need to be modified they shall be replaced in kind. Where driveways are to be modified, it is to be assumed that the gutter along the driveway is to also be replaced.

3. PART THREE –CONTRACTOR RESPONSIBILITIES

COORDINATION AND COMMUNICATION

3.1.1. The contractor shall attend a pre-construction meeting and punch list inspection.

3.1.2. Once the Notice to Proceed has been issued, the Contractor shall provide a design and construction schedule to the City for the entire timeline of the project and provide a project organizational chart with a primary point of contact.

3.1.3. Early in the design process, the contractor shall provide plans for review of the proposed layout and compliance with design criteria. The plan set shall consist of the existing conditions, proposed sidewalk layout, limits of construction and cross sections. If the City at any time during design determines that the design work is not in conformance with the City's standards, specifications, or good engineering practice, the City reserves the right to stop work at the Contractor's expense, until resolution of the issue(s) has occurred. Work stoppages(s) caused by the Contractor that have an adverse effect on the project schedule will not be grounds for a clam(s).

3.1.4. Monthly progress meetings shall be held for the duration of the project (this frequency may be increased or decreased at the discretion of the City at any time as needed to facilitate the completion of the project). Attendees shall include representatives from the City, the contractor (including engineer(s) knowledgeable in regards to the proposed design, issues to be settled, and with authority to make

decisions needed to keep project on schedule and budget), and others as deemed appropriate by the City.

3.1.5. The Contractor shall provide a 2-month "look ahead" schedule that includes design and construction at each progress meeting.

3.1.6. During construction the Contractor shall provide a weekly update listing specific tasks intended to be accomplished for the week. This weekly update shall include a punch list of incomplete items detailing who is responsible for completing them and when they are expected to be addressed.

3.1.7. The Contractor shall provide a minimum 14 calendar day notice to the City prior to beginning construction on each street.

3.1.8. The Contractor shall provide 48-hour advance notification to any property owner or tenant whose driveway access will be impacted. Such notification shall provide contact information of the construction foreman and City representative and shall provide any special instructions to be followed and provide contact information.

3.1.9. The Contractor shall give supervision to the work and have a responsible foreman continuously on the job. There shall be at least one person in a position of responsibility on the site at all times who is capable of communicating in English.

<u>DESIGN</u>

3.1.10. Plans shall be prepared by qualified and experienced firms that are pre-qualified with the Georgia Department of Transportation in Area Class 3.13.

3.1.11. The design shall be prepared under the direct supervision of licensed design professionals. A member of the design-build firm, who is a Professional Engineer licensed to practice engineering in the State of Georgia, shall seal the final plans. Their seal on the drawings shall represent certification that the design meets all applicable codes, is of good engineering practice and standards, and includes no Design Exception or Design Variances. It shall be the responsibility of the Contractor to check and certify the design and all drawings, including any intermediate submittals.

3.1.12. The contractor shall provide survey of existing features and topography as necessary to prepare a complete set of plans for permitting and to ensure the proposed sidewalk is constructed within the existing right of way. All property research is to be performed at cost to the Contractor. The survey shall locate all trees within 10 feet of the limits of disturbance that are 4-inch in diameter at breast height or larger and indicate their diameter and species.

3.1.13. Plans shall be prepared to the level of detail and shall contain all necessary information required for the project construction and review and/or approval by the City. These may include, but are not limited to, the following items:

- Plan, profile, and cross sections that show the centerline, demolition or resetting of existing features, construction of infrastructure, limits of construction, and right-of-way limits
- Driveway profiles
- Drainage improvements
- Signing and marking
- Right of way plans, if applicable, including plan revisions as required during right of way negotiations. Conduct required property research and prepare right-of-way and easement plats, if required.

- Utility plans including coordination with utility companies regarding existing and proposed utility plans. Erosion and sediment control plans
- Special provisions and other specifications as required
- All other necessary information required to construct the project

3.1.14. Upon issuance of the Land Disturbance Permit for the segment, the Contractor will provide two complete, signed sets of full-size plans and specifications, two half-size copies of the plans and an electronic copy of the plans in both PDF and CADD format to the City prior to construction.

3.1.15. Upon completion or termination of the project, all original drawings, specifications, CADD files, field notes, computations, etc. shall become the property of the City of Dunwoody. Design computations shall be neatly and clearly prepared, bound in a booklet format and submitted to the City.

3.1.16. Upon completion of the project the Contractor will provide 2 complete, signed sets of as-built drawings and record documents. Record documents shall include one unbound reproducible version of the modified design documents and electronic PDF and CADD versions.

PERMITTING

3.1.17. The contractor shall obtain a Land Disturbance Permit (LDP) for non-residential projects from the City. Each location will be permitted as a standalone project. All permitting fees required by the City of Dunwoody will be waived. A copy of the City's Land Disturbance Permit Application Package checklist may be found online at:

http://www.dunwoodyga.gov/Departments/community_development/Building-Permits/CommercialLDP.aspx.

3.1.18. Projects with over one (1) acre disturbed or more within the City of Dunwoody have to be submitted to the State for Erosion Control plan review and permitting.

CONSTRUCTION

3.1.19. All services provided by contractor shall be performed in a workmanlike and professional manner to the satisfaction of the City. Contractor warrants that all material, equipment, and workmanship furnished hereunder shall be free from fault or defect and suitable in appearance without cracks or degradation and for the purposes for which they were installed, and agrees, at its expense, to promptly remedy any failure of such material, equipment, or workmanship to comply with such warranty, if such failure is discovered, and contractor is notified thereof in writing, within two (2) years.

3.1.20. Contractor shall adequately protect workers, land owners or tenants, adjacent property, and the public during construction operations. The contractor shall plan and conduct the construction of the sidewalk projects to comply with local, state, and federal laws, rules and regulations and to exercise the highest degree of care to safeguard persons and property from injury.

3.1.21. Contractor will perform all services in compliance with applicable Federal Health and Safety laws currently in effect. Neither the giving of such special instructions by the City Representative nor the adherence thereto by contractor shall relieve contractor of the sole responsibility to maintain safe and efficient working conditions.

3.1.22. Contractor shall require its employees to wear protective clothing, reflective vests, masks, eye protections, etc. during any operation as required or directed by applicable laws, regulations, ordinance, and/or direction by manufacturer of materials or equipment.

3.1.23. Contractor is responsible for maintaining a clean and safe sidewalk project area. Contractor shall remove and dispose of all trash and debris removed from the area on a daily basis.

3.1.24. Contractor is responsible for providing all traffic management for the project in accordance with the Manual of Uniform Traffic Control Devices (MUTCD). Any road closures shall be coordinated in advance with the City.

3.1.25. Contractor shall purchase and provide all equipment, materials, supplies, and labor to timely complete the services to the City's satisfaction. The risk of loss or damage to any such materials, supplies, or equipment due to fire, theft, vandalism, or any other cause whatsoever shall remain with and be borne by the contractor.

3.1.26. It is understood that the Contractor's proposed construction schedule is based on a normal 5-day work week, less recognized holidays. The Contractor shall obtain prior approval from the City for weekend work.

3.1.27. No payment will be made for any portion of the project for which temporary erosion, sedimentation, and pollution controls are not properly maintained. Any fines or delays for non-compliance of erosion control measures levied by any agency will be the responsibility of the Contractor.

3.1.28. As part of grading complete, the contractor shall remove dirt, obstacles, debris, etc. from the project area and prepare soil for installation of sidewalk to City of Dunwoody standards.

3.1.29. Construction testing is to be paid for by the City. Coordination of testing is the responsibility of the Contractor. The Contractor shall schedule inspections at least 24 hours in advance.

3.1.30. If unsuitable soils are found, a recommendation is to be obtained by the inspector for their mitigation. Costs to remove unsuitable soils removed without direction from the engineer will not be considered for reimbursement.

<u>EXISTING FEATURES</u>

3.1.31. Contractor shall make every effort to ensure private property is not disturbed. Any disturbance of property outside right of way shall require City of Dunwoody and the property owner's written approval by way of a signed temporary construction easement.

3.1.32. Any utilities, public property, or private property damaged during construction shall be replaced at the contractor's expense.

3.1.33. Any areas that are disturbed by construction will be returned to original condition. Ground cover shall be replaced in kind (i.e. Bermuda sod shall be replaced with Bermuda sod, pine straw beds shall be replaced with pine straw, etc.).

3.1.34. Mailboxes are to reset or replaced in kind. Brick mailboxes are deemed to provide justification to modify the typical section.

3.1.35. Irrigation Systems, even within the City's right of way, are to be reset behind the back of the sidewalk as necessary. Irrigation systems shall not be considered a justification to modify the typical section to avoid impacts to them.

3.1.36. As part of grading complete, the contractor shall raise any utility boxes, valve covers, etc. to finish grade of proposed sidewalk. Whenever possible utility boxes

should be located outside of the sidewalk. Otherwise boxes shall be adjusted flush with the sidewalk surface.

3.1.37. Contractor shall add, replace, remove, and/or reset existing roadway signs, as necessary, to comply with the MUTCD.

3.1.38. Any trees or vegetation removed is to be paid for under Grading Complete.

3.1.39. Any tree with a caliper 4" or greater within 10 feet of the limits of disturbance will need to be located. Any modifications to the tree removal or protection plan shall be documented by the Contractor.

STORMWATER

3.1.40. The City's stormwater management requirements must be met as outlined in Chapter 16 of the City's Code of Ordinances.

3.1.41. When determining the disturbed areas, each sidewalk segment is considered to be its own project.

3.1.42. As part of the stormwater management requirements, hydrology studies have been prepared for these projects and are included as part of this RFP. Based on the prepared hydrology studies, it is anticipated that water quality treatment is required and that stormwater detention will not be required. The treatment options provided are not intended to be comprehensive. The Contractor shall provide treatment that effectively meets the requirements of this RFP and the City code considering initial and life-cycle maintenance costs.

3.1.43. The City anticipates that water quality treatment can be accomplished using proprietary treatment devices. Where proprietary devices are to be installed, Contractor shall select and install a device that meets the guidelines of the Georgia Stormwater Management Manual. The selected proprietary device must be proven to prevent re-release of captured pollutants during high-flow storm events. The Contractor is to indicate within their bid package the selected proprietary manufacturer and device and provide specifications for the product in their bid package that show that the selected product has been certified by a third party to remove 80% post-development suspended solids loading.

3.1.44. The contractor is encouraged to consider any other cost effective treatment options such as bioswales or infiltration trenches within the right of way outside of neighborhoods. However, any treatment that requires re-grading and/or detaining surface water in front of residences will not be practical.

3.1.45. On residential streets, the City is open to the use of landscaped chicanes designed to provide water quality treatment through the use of a proprietary devices while also providing a traffic calming benefit.

RIGHT OF WAY

3.1.46. All sidewalk or other structures must be constructed within the existing right of way. If slopes or driveway tie-ins extend beyond the right of way, the City will obtain temporary construction easements for grading. The contractor is responsible for any necessary exhibits and/or property research. The Contractor shall provide any necessary exhibits at least 30 days prior to construction in order to allow time for the City to obtain the easements.

3.1.47. As necessary, the contractor, at its own expense, is responsible for the acquisition of any necessary temporary easements for storage, and maintenance purposes.

3.1.48.

UTILITIES

The Contractor shall have the responsibility of coordinating the projects construction with all utilities that may be affected. Including but not limited to the following:

3.1.49. The Contractor shall design the projects to avoid utility conflicts as practical and minimize conflicts where avoidance is not possible.

3.1.50. Utility coordination will be required of the Contractor including, but not limited to, Georgia Power Distribution, Georgia Power Lighting Services, DeKalb County Watershed Management, AT&T, Comcast and Atlanta Gas Light.

3.1.51. The Contractor shall initiate early coordination with all Utility Owners located within the project limits.

3.1.52. The contractor shall alert the City to any utility conflicts as soon as possible to determine the need for relocation, if any. The Contractor shall be responsible for the cost of utility coordination and the cost for relocation of any Georgia Power facilities.

3.1.53. The Contractor shall contact each Utility Owner to advise of the proposed project; provide supplemental verification of locations of existing utility facilities (including the employment of additional Overhead/underground Subsurface Utility Engineering investigations (SUE); and determine the requirements for relocation or adjustment of facilities.

3.1.54. The Contractor shall provide all Utility Owners two copies of preliminary plans as soon as the project impacts are established to allow all Utility Owners to review the impacts and prepare mark-ups of existing facilities, as well as begin preparing and relocation plans.

3.1.55. The Contractor will be responsible for collecting all Utility Relocation Plans or a Letter of No Conflict from each Utility Owner located within the project limits. All relocation plans and letters of no conflict must be received prior to construction beginning.

3.1.56. The Contractor will be responsible for reviewing all Utility Relocation Plans to ensure that there are not conflicts with the proposed project improvements as well as no conflicts between each of the Utility Owners relocation plans.

3.1.57. The Contractor will be responsible for collecting a Utility Adjustment Schedule from each Utility Owner with relocations within the project limits.

3.1.58. The Contractor shall compile and submit to the City for review, all Utility Relocation Plans, SUE analysis, Utility Adjustment Schedules, and Letters of No Conflict. This information shall be compiled and submitted in a format that is clear, easy to follow and will require minimal review. Each Utility Relocation Plan shall be accompanied by a letter from the Contractor certifying that the proposed relocations will not conflict with the proposed project, or with the other utility relocations. All utility relocations shall receive prior authorization from the City before any work shall begin.

3.1.59. The Contractor will be required to call in all utility locates as required by GA Law, and keep copies of all utility locate tickets.

3.1.60. At the time when the projects are complete and ready for final inspection, the Contractor shall certify in writing that all utilities have been identified, relocations completed and any claims associated with the projects have been settled with the Utility Owner.

SCHEDULE

3.1.61. It is anticipated, but not mandatory, that the Contractor will obtain permits and initiate construction for the Roberts Drive project while designing the other projects.

3.1.62. No land disturbing activities shall occur at each project location until the following requirements have been met for that location:

- Plans have been approved for construction by the City
- All permits have been obtained
- Notice of Intent has been submitted to EPD for any locations with a disturbed area greater than one acre
- Proper notice has been given to the City so that adjacent property owners can be notified

3.1.63. Once construction begins in an area, the contractor shall work diligently without delay to complete the work in order to minimize disruption to the residents. Delay in completion of the project results in additional management and testing costs to the City and erosion of public confidence and goodwill. Each project will have a specified number of calendar days for completion as follows:

Location	Days for Completion
Roberts Drive	60
Mount Vernon Way	90
Hensley Drive	60
Peachford Road	90
Dunwoody Park Drive	30

The time for each project will start from the first day of construction activity (e.g. silt fence installation) at that location and will end upon final site restoration.

Should the Contractor fail to complete The Work within the time stipulated or within such extra time that may be allowed, charges of $225 per day shall be assessed against any money due or that may become due the Contractor.

For each day or Available Day, as specified, that any work shall remain uncompleted after the contract time specified for the completion of the Work required by the Contract, the sum specified in the Contract will be deducted from any money due the Contractor, not as a penalty, but as liquidated damages; provided however, that due account shall be taken of any adjustment of the contract time for completion of the work previously agreed to by both parties, as may be required from time to time. The amount of such charges is hereby agreed upon as fixed liquidated damages due the City of Dunwoody after the expiration of the time for completion specified in the Contract. The Contractor shall be liable for liquidated damages in excess of the amount due the Contractor on the final payment. These fixed liquidated damages are not established as a penalty but are calculated and agreed upon in advance by the the City of Dunwoody and the Contractor due to the uncertainty and impossibility of making a determination as to the actual and consequential damages which are

incurred by the City and the general public as a result of the failure on the part of the Contractor to complete The Work on time.

4. PART FOUR - CITY RESPONSIBILITIES

4.1. The City will provide its GIS data including aerial photography, parcel, stormwater system and topographic information. The contractor is responsible for verification of all existing facilities and conditions. No claims will be considered due to decisions or assumptions made by the Contractor based on "existing conditions" reflected in GIS data.

4.2. All City permit fees will be waived.

4.3. The City will secure temporary construction easements where required with the Contractor providing any necessary exhibits.

5. PART FIVE - PROPOSAL FORMAT

5.1. The **cost proposal** shall be submitted in a **SEPARATE,** sealed envelope from the technical proposal. Do not include the Cost Proposal Form in the technical proposal. *[Including cost information in your technical proposal may result in your proposal being deemed non-responsive.]* Cost should be indicated as a lump sum not to exceed amount.

5.2. A copy of the Excel spreadsheet "2013 Sidewalk DB Properties.xls" should be filled out, as appropriate, to highlight any known and/or potential issues for the parcels along these projects. This document, in addition to information presented in the technical proposal, should be used to demonstrate the bidding team's project understanding and knowledge of the intended scope. An editable copy of this spreadsheet shall be submitted on a disk along with the PDF copy of the proposal.

5.3. The technical proposal shall be submitted in a sealed envelope. To aid in thorough and consistent review, the technical proposal shall be submitted on no more than 20, one-sided 8½" x 11" pages in no smaller than 10-pitch font and shall be organized and numbered to correspond to Section I through Section V. Tabs and required forms will not be counted towards the 20 page limit.

SECTION I – Each proposal shall include a Title Page. The Title Page should identify the project; the names of the Contractor firm and Design firm if different; and the name of the firm's primary contact, address, telephone number, fax number and email address. The Table of Contents shall contain the sections and corresponding page number for the items listed below. All pages of the proposal must be clearly identified and consecutively numbered and correspond to the Table of Contents. The title page will not be counted in the total page title.

SECTION II – Each proposer shall provide with its proposal a summary Project Plan that describes the proposer's approach to the successful implementation of the proposed services. The following topics should be addressed as appropriate:

a. Demonstrate the work plan for the project. The work plan will describe how the consultant proposes to complete the project. The work plan must be sufficiently detailed for staff to determine the effectiveness of the proposal and should spell out how this work can be performed in a cost effective manner. Include sufficient detail to determine how each task shall be accomplished.
b. Demonstrate the availability of the team.
c. Describe the contractor's understanding of the proposed project as described in the Request for Proposals. Demonstrate an understanding of the magnitude of the task, the constraints and the desired outcomes for the project.
d. If there are any gaps between what the proposer believes should be the proper scope of the services given all information known at the time of this RFP, the proposer should clearly state these gaps in this section and clearly mark these concerns as such;
e. Discussion of the assumptions relating to the responsibilities and/or commitments the proposer is expecting of the City throughout the life of this project.

SECTION III –Include a single-page schedule for timely completion of the scope of work. Include information on the amount of time for each task including brief descriptions of the key tasks, key milestones, and key deliverables.

SECTION IV – Each proposer shall provide three single-page case histories of recent similar projects completed by the firm and include appropriate references for each project. The projects presented must have been performed by at least in part by staff shown in Section V of the proposal. For each of these case histories list the current staff members or sub consultants and their primary role. List and describe your firm's projects worked on in the past five years that best match the scope and design of this project. Identify unique constraints or challenges associated with those projects and how you addressed those in order to deliver a successful project. The City may request samples of comparable work during the proposal review process.

SECTION V – Provide information on personnel to be assigned to this project. Personnel should have experience from similar projects and in fields necessary to complete this proposed work. Each proposer shall document its staff, experience and qualifications by providing in its proposal a Staffing Plan describing the manner in which it plans to manage and staff the awarded contract, including the resumes of key and critical personnel, to successfully complete the project objectives on a timely basis and within the agreed upon budget. Include a one page org chart. The Staffing Plan should include, as a minimum, the proposed project manager, construction superintendent, engineer of record and key functional and technical team members and their related roles and shall provide, at a minimum, the following for each team member:

a. Qualifications, including experience in the proposed project methodology and public sector and/or municipal experience;
b. Summary of experience, including the number of years of relevant experience, years with the firm, and representative project experience with project name, client, and date performed;
c. Other supporting documentation which demonstrates the ability to successfully perform the work;
d. The intent, if any, to subcontract implementation personnel. Specifically, describe the functions to be subcontracted and the expertise and credentials required from the subcontractor and include the subcontractor's company name;
e. The proposer's assurance, to the extent possible, that the proposed team members will be available and remain on the project until its completion. Include the availability of replacement team members in the event the proposed team members become unavailable prior to the commencement of or during the project;

SECTION VI – Each proposer may, but is not required to, include references, qualifications, resumes and any other materials deemed necessary but not provided otherwise (such as promotional literature, white papers, etc.) They should be clearly marked "Additional Materials" and will not be included with the 20-page maximum guideline for the proposal length. Note that these materials may or may not be reviewed by all evaluators and will not be part of the official evaluation except to the extent they support qualifications and experience. Any out-of-scope services not covered in other sections should be included here with a description of the personnel likely to be involved,

and the resources brought to bear (including costs and/or hourly rates) should be provided.

6. PART SIX - EVALUATION OF PROPOSALS

6.1 After reviewing the proposals, staff may, at its discretion, invite to interview and demonstrate performance (at proposer's expense at the City's site) one or more of the proposers whose proposals appear to best meet the City's requirements. The purpose of such an interview would be for all proposers to elaborate upon their proposal before a recommendation for ranking of the proposals is made. Interview responses, and performance, along with the written proposal and samples (if any), will become part of proposer's submission to be evaluated pursuant to the evaluation criteria. The City reserves the right to short-list proposers for further consideration.

6.2 The City's staff will review all proposals submitted. The City, in its discretion, may award the Contract to the responsible and responsive proposer submitting the proposal which is deemed to be the most advantageous to the City, price and other factors being considered. The following are the evaluation criteria the City will consider in determining which proposal is most advantageous to the City:

a) Project Understanding and Approach.
b) Scope of Work.
c) Schedule.
d) Project Personnel.
e) Similar Experience.
f) Pricing.

6.3 After consideration of the above criteria, the value of each proposal will be compared against the other qualified proposals. The City is more interested in obtaining proposals that provide good value, demonstrate an understanding of the city's needs and provide a scope that meets or exceeds the requirements of this RFP than proposals that have scopes tailored to fit within the stated budget.

6.4 The evaluation criteria do not have any specific predetermined relative weight, nor will a weighing scale be developed at a later date. The consideration of individual criterion is merely a tool to assist the City in determining which Proposal is most advantageous, as a whole, to the City, price and other factors being considered. The relative advantages of a Proposer's responses with respect to one criterion may outweigh shortcomings of that Proposer's responses in one or more other criterion, depending on the relative disparities in the qualities of the responses in each criterion and the relative importance of certain criteria to each other, as determined in the exclusive discretion of the City.

* * * * * * * END OF SPECIFICATIONS * * * * * * *

PROPOSAL FORM

RFP 13-16 DESIGN AND BUILD SIDEWALKS: HENSLEY ROAD, MOUNT VERNON WAY, PEACHFORD ROAD, DUNWOODY PARK, AND ROBERTS DRIVE.

The undersigned, as Proposer, hereby declares that this Proposal is in all respects fair and submitted in good faith without collusion or fraud. Proposer represents and warrants to the City that: (i) except as may be disclosed in writing to the City with its Proposal, no officer, employee or agent of the City has any interest, either directly or indirectly, in the business of the Proposer, and that no such person shall have any such interest at any time during the term of the Contract should it be awarded the Contract; and (ii) no gift, gratuity, promise, favor or anything else of value has been given or will be given to any employee or official of the City in connection with the submission of this Proposal or the City's evaluation or consideration thereof.

The Proposer further represents that it has examined or investigated the site conditions if necessary, and informed itself fully in regard to all conditions pertaining to the place where the work is to be done; that it has examined the Contract Documents and has read all Addendum(s) furnished by the City prior to the opening of the Proposals, as acknowledged below, and that it has otherwise fully informed itself regarding the nature, extent, scope and details of the services to be furnished under the Contract.

The Proposer agrees, if this Proposal is accepted, to enter into the written Contract with the City in the form of Contract attached (properly completed in accordance with said Proposal Documents), and the Contract Documents for RFP 13-16 Design and Build Sidewalks: Hensley Road, Mount Vernon Way, Peachford Road, Dunwoody Park, and Roberts Drive, in the City of Dunwoody, and to furnish the prescribed evidence of a valid business license, insurance, and all other documents required by these Contract Documents. The Proposer further agrees to commence work and to perform the work specified herein within the time limits set forth in the Contract Documents, which time limits Proposer acknowledges are reasonable.

The undersigned further agrees that, in the case of failure or refusal on its part to execute the said contract, provide evidence of specified insurance, a copy of a valid business or occupational license and all other documents required by these Contract Documents within ten (10) business days after being provided with Notice of Intent to Award the contract (or such earlier time as may be stated elsewhere in these Proposal Documents), the Proposal award may be offered by the City to the next ranked Proposer, or the city may re-advertise for Proposals, and in either case the City shall have the right to recover from the Proposer the City's costs and damages including, without limitation, attorney's fees, to the same extent that the City could recover its costs and expenses from the Proposer under section 10 of the Instructions to Proposers if the Proposer withdrew or attempted to withdraw its Proposal.

The Proposer further agrees, if it fails to complete the work according to the Specification within the scheduled time or any authorized extension thereof, that damages may be deducted from the Contract price otherwise payable to the Proposer.

Acknowledgement is hereby made of the following Addendum(s) received since issuance of the Contract Documents (identified by number)

Addendum No.	Date	Addendum No.	Date	Addendum No.	Date
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Company Name:_____

It shall be the responsibility of each Proposer to visit the City Purchasing Department's website to determine if addendum(s) were issued and, if so, to obtain such addendum(s). Failure to acknowledge an addendum above shall not relieve the Proposer from its obligation to comply with the provisions of the addendum(s) not acknowledged above.

Work is to commence on or about February 2014.

The City of Dunwoody requires pricing to remain firm for the duration of the initial term of the contract. Failure to hold firm pricing for the initial term of the contract will be sufficient cause for the City to declare bid non-responsive.

Termination for Cause: The City may terminate this agreement for cause upon ten days prior written notice to the Consultant of the Consultant's default in the performance of any term of this agreement. Such termination shall be without prejudice to any of the City's rights or remedies by law.

Termination for Convenience: The City may terminate this agreement for its convenience at any time upon 30 days written notice to the Consultant. In the event of the City's termination of this agreement for convenience, the Consultant will be paid for those services actually performed. Partially completed performance of the agreement will be compensated based upon a signed statement of completion to be submitted by the Consultant, which shall itemize each element of performance.

Termination for fund appropriation: The City may unilaterally terminate this Agreement due to a lack of funding at any time by written notice to the Consultant. In the event of the City's termination of this Agreement for fund appropriation, the Consultant will be paid for those services actually performed. Partially completed performance of the Agreement will be compensated based upon a signed statement of completion to be submitted by the Service Provider which shall itemize each element of performance.

Files, plans, and specifications referenced in this Request for Proposals can be retrieved from:

https://dunwoodyga.sharefile.com/d/see3c1c8d4684d0c9
and are available for viewing at City Hall.

The contractor agrees to provide all work to complete the project described in this document for the amount listed below.

Roberts Road Project Cost: _____lump sum

Mount Vernon Way Project Cost: _____lump sum

Hensley Drive Project Cost _____lump sum

Peachford Road Project Cost_____lump sum

Dunwoody Park Project Cost _____lump sum

Total Project Cost excluding items listed below _____lump sum

Cost for add alternate for Hensley speed table _____lump sum

Cost for add alternate for Mount Vernon Way raised crosswalk

_____lump sum

Unit Prices

1. Graded Aggregate Base _____/Ton
2. No. 57 stone _____/Ton
3. Excavation of unsatisfactory materials and replacement w/suitable soil material _____/CY
4. Excavation of unsatisfactory materials and replacement w/ #57 crushed stone _____/CY

Legal Business Name_____

Federal Tax ID_____

Address_____

_____

Does your company currently have a location within the City of Dunwoody? Yes____ No____

Representative Signature_____

Printed Name _____

Telephone Number _____

Fax Number_____

Email Address _____

INSTRUCTIONS TO PROPOSERS

1. INTENT

It is the intent of these Instructions to establish guidelines for the proper completion of the Proposal Forms. These Instructions to Proposers provide guidance and explanation for subsequent Proposal Forms and Contract Documents. Please read all Instruction paragraphs.

2. GENERAL

2.1 The City's goal is that all the terms and conditions stated in the Proposal Documents will constitute the terms of the final Contract between the City and the successful Proposer, without significant or material change to such terms or conditions. Exceptions to any of the terms of the agreement to which a Proposer will not or does not agree must be presented by the proposer in writing as provided in this section and directed to: purchasing@dunwoodyga.gov. Such exceptions must be specific, and the Proposer must state a reason for each exception and propose alternative language, if appropriate. The purpose of the exception process is to permit the City to correct, prior to the opening of the proposals, any technical or contractual requirement, provision, ambiguity or conflict in the solicitation and related documents, which may be unlawful, improvident, unduly restrictive of competition or otherwise inappropriate. Any corrections will be made via an addendum issued prior to the submission deadline. Unless timely submitted as an exception and amended with an addendum, any such ambiguity, conflict or problem shall be resolved in favor of the City of Dunwoody. Proposers shall not substitute entire agreements or sets of terms and conditions but discuss separately each term or condition that they take exception to or desire to change.

2.2 The Contract work shall not be divisible, and shall be awarded, if an award is made, to a single Proposer. The City will award only one contract for the services required under this solicitation. If the successful Proposer intends to provide any services through another company, the successful Proposer must serve as the City's prime Contractor and shall have full responsibility to the City for all obligations under the Contract.

2.3 A Proposer's Proposal prices shall remain firm for 180 days from the submission deadline. Any anticipated increases in Proposer's costs during the initial term of the Contract must be reflected in its prices set forth in its Proposal. The City shall not be obligated to renegotiate or increase any price for any work during the initial term of the Contract based on a Proposer's mistake or miscalculation of prices, underestimation of costs, or for any other reason. All of the Proposer's overhead costs, including, but not limited to, costs of travel and the required bonds and insurance coverage, shall be included in such Proposer's prices listed in its Proposal.

2.4 The Contract, if awarded, shall not be construed to create unto the Contractor any exclusive rights with respect to any of the City's requirements. The City may in its sole discretion award any additional or similar services to any third party, or if the Contract is for the provision of services, the City may elect to perform all or a portion of the services by its own employees.

2.5 There shall be no reimbursables or travel expenses associated with this project regarding any category or term. Without limiting the generality of the foregoing, all of the Proposer's overhead costs related to travel shall be included in such Proposer's prices in its Proposal.

2.6 The City will contract with the successful Proposer to provide services indicated in the Specifications throughout the duration of the Contract at the price submitted. The City will not price a contract for hourly rates.

3. ENVIRONMENTAL SUSTAINABILITY

The City of Dunwoody is committed to environmental sustainability. The City believes we have a unique opportunity to further expand our leadership in the area of environmentally preferable purchasing, and through our actions, elicit changes in the marketplace. By further incorporating environmental considerations into public purchasing, the City of Dunwoody will positively impact human health and the environment, remove unnecessary hazards from its operations, reduce costs and liabilities, and improve the environmental quality of the region. As such the City encourages the incorporation of environmental sustainability into proposals.

4. EXAMINATION OF PROPOSAL/CONTRACT DOCUMENTS

All prospective Proposers shall thoroughly examine and become familiar with the Proposal package and carefully note the items which must be submitted with the Proposal. (These Instructions to Proposers, the Request for Proposal, the Proposal Forms, the Contract, the General Conditions, and the Specifications are referred to herein as the "Proposal Documents" or the "Contract Documents.") Submission of a Proposal shall constitute an acknowledgment that the Proposer has read and understands the Proposal Documents. The failure or neglect of a Proposer to receive or examine any Proposal Document shall in no way relieve it from any obligations under its Proposal or the Contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge or understanding of any of the Contract Documents or the scope of work.

5. ADDENDUM(S)-CHANGES WHILE PROPOSING

Other than during the Pre-Proposal Conference, the City shall not be required to provide to any Proposer verbal interpretations as to the meaning of any portion of the Proposal Documents. Requests for interpretation, clarification or correction of Proposal Documents, forms or other material in this Proposal Package should be made in writing and delivered to the City, Purchasing Office, 41 Perimeter Center East, Suite 250, Dunwoody, Georgia 30346, or by e-mail to purchasing@dunwoodyga.gov or facsimile to (678)533-0712 at least five (5) business days before the date and time announced for the Proposal opening. Any response by City to a request by a Proposer for clarification or correction will be made in the form of a written Addendum. All parties to whom the Proposal packages have been issued will be sent a notification of the issuance of an Addendum either by e-mail and/or by facsimile. The Addendum may be electronically downloaded by visiting the City web site at http://www.dunwoodyga.gov. However, prior to submitting its response, it shall be the responsibility of each Proposer to visit the City website to determine if addendum(s) were issued and, if so, to obtain such addendum(s).

6. PREPARATION OF PROPOSALS

6.1 Proposals shall be submitted on reproduced copies of the attached Proposal Forms including any revised or additional Proposal Forms supplied by Addendum(s). If an award is made, the completed Proposal Forms shall constitute a part of the Contract Documents and will be incorporated in the final Contract between the City and the successful Proposer. All blank spaces in the Proposal Forms should be filled in legibly and correctly in ink or type.

6.2 All Proposals shall contain the name and business address of the individual, firm, corporation, or other business entity submitting the Proposal and shall be subscribed by either the individual, a general partner, a member of a member-managed LLC, a manager of a manager-managed LLC, or an authorized officer or agent of a Corporation or business entity, and should be properly witnessed or attested. If any officer or agent other than the signatories described in the preceding sentence shall sign any Contract Document on behalf of the Proposer, the City should be furnished with satisfactory evidence of such officer's or agent's authority to bind the Proposer with respect to the contents of the subject Proposal Documents so signed by him or her. If the Proposer is an LLC, the Proposer should submit with its Proposal its Articles of Organization or other evidence satisfactory to the City, indicating whether the LLC is member-managed or manager-managed, and indicating that the person executing the Proposal is authorized to bind the LLC.

6.3 If the Proposer is a partnership, joint venture, or sole proprietorship, the City, reserves the right to require the Proposer to submit to the City at any time the name and business address of each owner, principal, partner, or member of the Proposer having an ownership or management position with the Proposer.

6.4 If the Proposer is a corporation or other state-chartered business entity, the City reserves the right to require the Proposer to submit to the City at any time, the name and business address of each officer, director and holder of 10% or more of the stock or other ownership interests of such corporation or other business entity. If the Proposer is a corporation, the Proposal should have the corporate seal affixed and include the name of the State in which it was incorporated. If the Proposer is a foreign corporation or other state-chartered business entity and is the successful Proposer, the Proposer will be required to submit evidence prior to the execution of the Contract, if awarded, that the corporation or other state-chartered business entity is authorized to do business in the State of Georgia and the City. If the Proposer elects to use a fictitious name in its Proposal, a copy of the Proposer's fictitious name registration should be provided to City.

7. PROPOSAL GUARANTY

A Proposal Guaranty shall not be required for this Contract.

8. DELIVERY OF PROPOSALS

8.1 All Proposals shall be submitted in sealed envelopes bearing on the outside the name of the Proposer, address, and the Purchasing Proposal #. Each Proposal shall consist of (i) an executed copy of the Proposal Form, along with all other documents or information required to be submitted pursuant to the terms of the Proposal Documents (together, the "Proposal"). The documents comprising the Proposal must be completed and signed on the forms provided herein, or on exact reproductions thereof.

8.2 All Proposals shall be submitted pursuant to the terms outlined in these Instructions to Proposers. Any Proposals received after the time and date specified in the solicitation document for the opening of the Proposals will not be considered, but will be returned unopened.

8.3 Each Proposer's response shall be at the sole cost and expense of the Proposer and such Proposer shall have no right or claim against the City for costs, damages, loss of profits, or to recover such costs, damages, or expenses in the event the City exercises its right to reject any or all Proposals or to cancel an award pursuant to a provision hereof for any reason.

8.4 Submission of a Proposal shall constitute authorization for the City and its representatives and agents to make such copies of the Proposal or portions thereof and to distribute such copies as may be necessary or desirable to carry out the City's objectives or requirements.

9. COMMUNICATIONS REGARDING EVALUATION OF PROPOSALS

To ensure the proper and fair evaluation of Proposals, the City highly discourages any oral communication initiated by a Proposer or its agent to an employee of the City evaluating or considering the Proposal during the period of time following the issuance of the solicitation document, the opening of Proposals and prior to the time a decision has been made with respect to the Contract award. An appropriate Purchasing employee of the City may initiate communication with a Proposer in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Proposal. Any communication initiated by Proposer during evaluation should be submitted in writing and delivered to the City of Dunwoody, Purchasing Office, 41 Perimeter Center East, Suite 250, Dunwoody, Georgia 30346, or by e-mail to purchasing@dunwoodyga.gov or facsimile to (678) 533-0712. Unauthorized communication by the Proposer may disqualify the Proposer from consideration.

10. WITHDRAWAL OF PROPOSALS

No Proposal may be withdrawn after it is submitted unless the Proposer makes a request in writing and such request is confirmed as received prior to the time set for opening of Proposals. No Proposal may be withdrawn after the scheduled Proposal opening time for a period of one hundred and eighty (180) days. Any Proposer withdrawing or attempting to withdraw its Proposal prior to the expiration of the one hundred and eighty (180) day period shall be obligated to reimburse the City for all its costs incurred in connection with such withdrawal or attempted withdrawal including, without limitation, any increased costs for procuring the goods or services from another Proposer or all costs of advertising and re-procuring the goods or services, and all attorneys' fees, in addition to payment of City's other damages. A Proposer's submission of a Proposal shall be deemed the Proposer's acknowledgment of and agreement to the provisions of this Section.

11. DISQUALIFICATION OF PROPOSERS

11.1 Any of the following causes may be considered as sufficient for the disqualification of a Proposer and the rejection of its Proposal:

11.1.1 Submission of more than one Proposal for the same work, or participation in more than one Proposal for the same work as a partner or principal of the Proposer, by an individual, firm, partnership or corporation, under the same or different names, or by Proposers which are affiliates, either at the time of submittal, or at the time of award. For purposes of this section, the term "affiliates" means firms, partnerships, corporations or other entities under common control;

11.1.2 Evidence of collusion between or among Proposers;

11.1.3 Evidence, in the opinion of the City, of Proposer(s) attempting to manipulate the Proposal pricing for its own benefit (e.g. pricing resulting in a failure of the City's ability to enforce the Contract or impose the remedies intended following breach by Contractor);

11.1.4 Being in arrears on any of its existing contracts with the City or in litigation with the City or having defaulted on a previous contract with the City;

11.1.5 Poor, defective or otherwise unsatisfactory performance of work for the City or any other party on prior projects which, in the City's judgment and sole discretion, raises doubts as to Proposer's ability to properly perform the work; or

11.1.6 Any other cause which, in the City's judgment and sole discretion, is sufficient to justify disqualification of Proposer or the rejection of its Proposal.

11.2 The City has adopted a policy which addresses, among other things, the obligations of the City's employees with respect to interest in business entities, unauthorized compensation and acceptance of gifts. Please be aware that any act by a Proposer that could cause a City employee to violate the policy is sufficient cause for the denial of the right of the Proposer to propose on any contract or sell any materials, supplies, equipment, or services to the City for a period of time that is determined by the City Manager.

12. REJECTION OF IRREGULAR PROPOSALS

A Proposal may be considered irregular and may be rejected if it is improperly executed, shows omissions, alterations of form, additions not called for, unauthorized conditions, or limitations, or unauthorized alternate Proposals, fails to include the proper Proposal Guaranty, Contract references, other certificates, affidavits, statements, or information required to be included with Proposals, including, but not limited to, the Proposer's prices, or contains other irregularities of any kind.

13. NOTICE OF INTENT TO AWARD CONTRACT

Unless all Proposals are rejected, a Notice of Intent to Award is anticipated to be provided within ninety (90) days from the opening of Proposals to the responsible and responsive Proposer submitting the Proposal deemed to be most advantageous to the City, price and other factors being considered. For all procurements, the City reserves the right to reject any or all Proposals and to cancel the procurement or to solicit new Proposals.

14. RESPONSIBILITY OF PROPOSERS

14.1 City reserves the right, to aid it in determining a Proposer's responsibility, to require a Proposer to submit such evidence of Proposer's qualifications as the City may deem necessary, and may consider any evidence available to the City of the financial, technical, and other qualifications and abilities of a Proposer, including past performance (experience) with the City and others. The City shall be the final authority in the award of any and all Proposals.

14.2 All Proposers shall furnish the City with the company name, address, contact person, and telephone number of at least three (3) entities (preferably a firm other than the City) for which they have supplied similar services as requested in this Proposal during the past three (3) years. The information should be submitted on the provided Contract References page with the knowledge that the City will use the data for reference purposes. The City does check all references and requires the Proposer to notify the reference, verify contract information, and obtain permission from the reference before completing the form.

14.3 For a Proposer to meet the minimum responsibility criteria for this Contract, the Proposer must provide verifiable evidence, through references or otherwise, that the Proposer is an individual, a firm, a corporation, or other entity that is currently employed or otherwise engaged in providing similar services and, taking into account the activities of a related predecessor, affiliate, or principal of Proposer, has been actively engaged in such activity for at least three (3) years immediately preceding the date of the Proposer’s response to this request.

15. GUARANTY OF FAITHFUL PERFORMANCE

A Performance Bond shall not be required for this Contract.

16. POWER OF ATTORNEY AND COUNTERSIGNATURE
Not applicable.

17. EXECUTION OF CONTRACT
17.1 The Proposer to whom the Notice of Intent to Award is given shall, within ten (10) business days of the date of the Notice of Intent to Award, execute and/or deliver the following to the City: the Contract, a copy of the Proposer's valid business or occupational license, and all other documents and information required by the Contract Documents. All of the above documents and information must be furnished and the Contract Documents executed by Proposer, and delivered to the City, before the Contract will be executed by the City.

17.2 A Proposer's failure to timely fulfill its obligations under this section shall be just cause for withdrawal of such Notice of Intent to Award. In such case, a Notice of Intent to Award may then be issued to the next ranked Proposer or all Proposals may be rejected and the Contract re-advertised. In such event, the City shall be entitled to receive its damages and costs, including, but not limited to, its attorneys' fees caused by or in connection with a Proposer's failure to fulfill its obligations under this paragraph. A Proposer's liability for failing to timely fulfill the obligations stated in this paragraph shall be the same as for withdrawing its Proposal (see Section 10).

17.3 The Contract shall not be binding upon the City until it has been executed by the City and a copy of such fully executed Contract is delivered to the Contractor. The City reserves the right to cancel the award without liability to any Proposer at any time before the Contract has been fully executed by the City and delivered to the Contractor. Accordingly, the Contractor is hereby warned that it should not commence performance or incur costs or expenses in connection with the Contract obligations until it has been delivered a final, fully executed copy of the Contract.

18. GEORGIA SALES TAX
The City is a governmental agency and a political subdivision under Georgia law. Purchases by the City under this Contract are exempt from sales tax: A City tax exempt number is not required for a municipality. No purchase made by any entity is qualified to be exempt other than those made directly by the City. The City's sales tax exemption does not apply to goods or services purchased or consumed by a Contractor for which the Contractor is deemed to be the ultimate consumer in connection with the fulfillment of its Contract obligations, and the City shall have no liability for such taxes.

19. SUBCONTRACTS
19.1 The Contractor's right to subcontract shall be governed by the provisions of Section 17 of the General Conditions.

19.2 Nothing contained in these Contract Documents shall be construed as creating any contractual relationship between any subcontractor and the City.

19.3 The Contractor shall be fully responsible to the City for the acts and omissions of a subcontractor and of persons employed by said subcontractor to the same extent that the Contractor is liable to the City for acts and omissions of persons directly employed by it.

20. FAMILIARITY WITH LAWS

All Proposers and the Contractor are presumed to be familiar with and shall observe all Federal, State and local laws, ordinances, codes, rules and regulations, including, without limitation, the City's rules and regulations, that may in any way affect work herein specified. Ignorance on the part of the Contractor shall in no way relieve Contractor from any such responsibility or liability. Contractor’s compliance with requirements of O.C.G.A. 13-10-91 and Rule 300-10-1-.02, if applicable, will be attested.

21. SECURITY

The successful Proposer will be required to comply with all applicable standards of the City relating to security which may be in effect or changed from time to time.

22. MINORITY AND WOMEN BUSINESS ENTERPRISE ("MWBE") PARTICIPATION

An MWBE participation goal has not been established for this Contract. Such participation is encouraged, but will not be considered during the evaluation process for award of this Contract.

23. LOCAL DEVELOPING BUSINESS ("LDB") PARTICIPATION

An LDB participation goal has not been established for this Contract. Such participation is encouraged, but will not be considered during the evaluation process for award of this Contract.

24. INSURANCE

The Proposer to whom the Notice of Intent to Award is given shall provide a signed Certificate of Insurance. The Certificate of Insurance shall evidence the insurance coverage required by the City pursuant to Section 14.7 of the General Conditions and shall be filed with the City within ten (10) business days of the date of the Notice of Intent to Award. The Certificate of Insurance must contain a provision that the coverage provided under the policies will not be cancelled or modified or the limits thereunder decreased unless at least thirty (30) days prior written notice has been given to the City.

25. PROPOSAL ERRORS

In the case of a Proposer’s error in the extension or addition of Proposal prices, the unit prices will govern. Proposals having erasures or corrections should be initialed in ink.

26. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT

The Proposer certifies that all materials, equipment, chemicals, etc. contained in its Proposal or otherwise to be provided or used by the Proposer in its performance of the Contract work, and including any replacements or substitutions therefore, shall meet all EPA and OSHA requirements.

27. PERFORMANCE STANDARD

The standards by which the Contractor's performance will be evaluated are set forth in the General Conditions and Specifications. The successful Proposer's failure to meet these standards, after receipt of written notice to correct such deficiencies, may in addition to the City's other

remedies, in the City's sole discretion, result in a termination of the Contract for cause pursuant to the termination provisions of the General Conditions.

28. NO PROPOSALS

In the event a potential Proposer elects not to submit a Proposal, such potential Proposer is nonetheless requested to respond by advising the City of the reason for not submitting a Proposal.

29. PUBLIC RECORDS/PUBLIC MEETINGS

Please be aware that all meetings of the City's Council are duly noticed public meetings and all documents submitted to the City as a part of or in connection with a Proposal may constitute public records under Georgia law regardless of any person's claim that proprietary or trade secret information is contained therein. By submission to the City, Proposers waive any declaration that their entire response to be proprietary information. Proposals and all related correspondence are subject to the Georgia Open Records Act and may be provided to anyone properly requesting same, after contract award. The City cannot protect proprietary data submitted in vendor proposals unless provided for under the open records law. In the event, the proposer deems certain information to be exempt from the disclosure requirements, the proposal must specify what content is considered exempt and site the applicable provision of the law to support that assessment. In the event such information is requested under the open records law, the proposer's assessment will be examined by the City Attorney who will make a determination. The decision to withhold or release the information will be at the City's sole discretion.

* * * * * * * END OF INSTRUCTIONS TO PROPOSERS * * * * * * *

APPENDIX A

NO RESPONSE

TO

REQUEST FOR PROPOSALS

If your company is unable to submit a Proposal at this time, please provide the information requested in the space provided below and return to:

Purchasing Department
City of Dunwoody
41 Perimeter Center East, Suite 250
Dunwoody, GA 30346

Our company's reason for not submitting a Proposal is:

_____

_____

_____

_____

_____

_____
Company Name

By: _____

Its: _____
Name & Title, Typed or Printed

APPENDIX B

SAMPLE

CONSULTANT CONTRACT
RFP 13-01

This **CONTRACT** made and entered into this _____day of _____, 20 by and between the City of Dunwoody, Georgia (Party of the First Part, hereinafter called the CITY), and _____, (Party of the Second Part, hereinafter called the Consultant)

NOW THEREFORE, for and in consideration of the mutual promises and obligations contained herein and under the conditions hereinafter set forth, the parties do hereby agree as follows:

1. TERM:

This contract shall commence upon execution of contract.

2. ATTACHMENTS:

Copies of the Consultant's proposal, including all drawings, specifications, price lists, Instructions to Bidders, General Conditions, Special Provisions, and Detailed Specifications submitted to the City during the Proposal process (hereinafter collectively referred to as the "Bid Proposal") are attached hereto (Exhibit A) and are specifically incorporated herein by reference. In the event of a conflict between the City's contract documents and the Bid Proposal, the City's contract documents shall control.

3. PERFORMANCE:

Consultant agrees to furnish all skill and labor of every description necessary to carry out and complete in good, firm and substantial, workmanlike manner, the work specified, in strict conformity with the Bid Proposal.

4. PRICE:

As full compensation for the performance of this Contract, the City shall pay the Consultant for the actual quantity of work performed, which shall in no event exceed $_____The fees for the work to be performed under this Contract shall be charged to the City in accordance with the rate schedule referenced in the Bid Proposal (Exhibit A). The City agrees to pay the Consultant following receipt by the City of a detailed invoice, reflecting the actual work performed by the Consultant.

5. INDEMNIFICATION AND HOLD HARMLESS:

CONSULTANT agrees to protect, defend, indemnify, and hold harmless the CITY, its mayor, council members, officers, agents and employees from and against any and all liability, damages, claims, suits, liens, and judgments, for whatever nature, including claims for contribution and/or indemnification, for injuries to or death of any person or persons, or damage to the property or other rights of any person or persons to the extent arising out of and attributed to the negligent errors, acts, or omissions of the CONSULTANT. CONSULTANT's obligation to protect,

defend, indemnify, and hold harmless, as set forth hereinabove shall include any matter arising out of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations.

CONSULTANT further agrees to protect, defend, indemnify, and hold harmless the CITY, its mayor, council members, officers, agents, and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee of the CONSULTANT.

6. TERMINATION FOR CAUSE:
The CITY may terminate this Contract for cause upon ten (10) days prior written notice to the Consultant of the Consultant's default in the performance of any term of this Contract. Such termination shall be without prejudice to any of the CITY's rights or remedies provided by law.

7. TERMINATION FOR CONVENIENCE:
The CITY may terminate this Contract for its convenience at any time upon 30 days written notice to the Consultant. In the event of the CITY's termination of this Contract for convenience, the Consultant will be paid for those services actually performed. Partially completed performance of the Contract will be compensated based upon a signed statement of completion to be submitted by the Consultant, which shall itemize each element of performance.

8. CONTRACT NOT TO DISCRIMINATE:
During the performance of this Contract, the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, or disability, which does not preclude the applicant or employee from performing the essential functions of the position. The Consultant will also, in all solicitations or advertisements for employees placed by qualified applicants, consider the same without regard to race, creed, color, sex, national origin, age, or disability, which does not preclude the applicant from performing the essential functions of the job. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provision will be binding upon each subconsultant, providing that the foregoing provisions shall not apply to contracts or subconsultants for standard commercial supplies of raw materials.

9. ASSIGNMENT:
The Consultant shall not sublet, assign, transfer, pledge, convey, sell or otherwise dispose of the whole or any part of this Contract or his right, title, or interest therein to any person, firm, or corporation without the previous consent of the City in writing.

10. WAIVER:
A waiver by either party of any breach of any provision, term, covenant, or condition of this Contract shall not be deemed a waiver of any subsequent breach of the same or any other provision, term, covenant, or condition.

11. SEVERABILITY:
The parties agree that each of the provisions included in this Contract is separate, distinct and severable from the other and remaining provisions of this Contract, and that the invalidity of any

Contract provision shall not affect the validity of any other provision or provisions of this Contract.

12. GOVERNING LAW:
The parties agree that this Contract shall be governed and construed in accordance with the laws of the State of Georgia. This Contract has been signed in Dekalb County, Georgia.

13. MERGER CLAUSE:
The parties agree that the terms of this Contract include the entire Contract between the parties, and as such, shall exclusively bind the parties. No other representations, either oral or written, may be used to contradict the terms of this Contract.

14. TRAVEL COST REIMBURSEMENT
Consultant is subject to the City of Dunwoody travel policy for all requests made for travel cost reimbursement.

15. OWNERSHIP OF INTELLECTUAL PROPERTY
The City shall own all intellectual property produced under and for this contract.

(Signature Next Page)

DUNWOODY, GEORGIA

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized agents, have caused this **CONTRACT** to be signed, sealed and delivered.

DUNWOODY, GEORGIA

By:
Michael G. Davis, Mayor
City of Dunwoody, GA

ATTEST:

Signature

Print Name
City Clerk

APPROVED AS TO FORM:

Signature
Dunwoody Staff Attorney

CONSULTANT: ____

BY:
Signature

___
Print Name

Title

ATTEST:

Signature

Print Name
Corporate Secretary
(Seal)

GENERAL CONDITIONS

These General Conditions will apply unless a particular item is specifically addressed in the solicitation documents

1. SCOPE OF WORK

The Contract will be to provide to the City in accordance with the Contract Documents. All work shall be performed in accordance with the Specifications attached hereto.

2. REGULATIONS

2.1 The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of the work specified herein.

2.2 The Contractor shall obtain all permits, licenses and certificates, or any such approvals of plans or specifications as may be required by Federal, State and local laws, ordinances, rules and regulations, for the proper execution of the work specified herein.

2.3 During the performance of this Contract, the Contractor shall keep current and, if requested by the City, provide copies of any and all licenses, registrations or permits required by applicable governing agencies. The Contractor shall keep a copy of any and all licenses, registrations and permits on the job site while performing the Contract work.

3. WORK HOURS

3.1 The Contractor shall normally perform on-site work during Standard Work Hours which are between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding City's observed holidays. The City may require the Contractor to perform work on the city's premises during Non-standard Work Hours which are outside the Standard Work Hours. Non-standard Work Hours may be arranged with prior written approval of the City. The Contractor shall advise the City no less than 48 hours in advance of its projected work schedule. The Contractor shall perform no work during City observed holidays without the prior written permission of the City.

3.2 In the event an emergency condition is declared by the City's Manager or his respective designee, the Contractor will perform work during such hours as requested by the City.

3.3 Work can be performed away from the City's premises, but in all cases, such work must be maintained and documented on the City's servers (shared drives accessed via a VPN, etc.)

4. CONTRACTOR'S PERSONNEL

4.1 The Contractor will abide by all State and Federal regulations on wages and hours of an employee dealing with the employment relationship between the Contractor and its subsidiaries or related parties and its employees, including but not limited to the Federal National Labor Relations Act, the Federal Fair Labor Standards Act, the Federal Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act.

4.2 The Contractor shall require all prospective employees to show proof of citizenship, or proof from the United States Immigration and Naturalization Service of valid entry permits and/or work permits for legal aliens and proof that such legal aliens are eligible to be employed in the

United States. This includes any requirement for participation in the DHS e-Verify or SAVE program.

4.3 Should the Contractor engage employees who are illiterate in English, it will be the Contractor's responsibility and obligation to train such employees to be able to identify and understand all signs and notices in and/or around the areas that relate to them or the services being performed by them pursuant to this Contract. In addition, the Contractor will have someone in attendance at all times who can communicate instructions to said employee.

4.4 The Contractor shall maintain a drug-free workplace within the meaning of the Georgia Drug-free Workplace Act. No employee shall be hired by a Contractor for work on the City's premises prior to such employee having tested negative for drugs. In addition, existing employees of the Contractor must be subject to drug testing by the Contractor upon reasonable suspicion of drug use. Results of all such drug tests are to be retained by the Contractor. Copies shall be provided to the City, if requested.

4.5 The Contractor shall transfer promptly from the City any employee or employees that the City advises are not satisfactory, and replace such personnel with employees satisfactory to the City; but in no event shall the City be responsible for monitoring or assessing the suitability of any employee or agent of the Contractor.

4.6 The Contractor's employees shall be instructed that no gratuities shall be solicited or accepted for any reason whatsoever from the tenants, customers or other persons at the City. The Contractor shall be responsible for ensuring that all articles found by its employees on the City's premises are turned over to the City or the City's designated agent in charge of such articles.

4.7 A valid driver license (Commercial Driver License, if applicable) will be required of all personnel operating motor vehicles or motorized equipment on roadways in or around the City.

4.8 While working on city property all Contractors' employees shall wear (when appropriate) neat-appearing business casual attire or uniforms with the company name and/or logo and footwear of a style that complies with all legal and safety requirements, including and without limitation, the requirements of OSHA.

4.9 Designation of Project Manager - The Contractor shall designate a Project Manager acceptable to the City for all purposes related to this Specification.

4.9.1 The Project Manager shall be fully responsible for the Contractor meeting all of its obligations under this Contract. The Project Manager shall provide the City with an appropriate status report on the progress of the project every week, as well as conduct weekly team status review calls or meeting with the City during the Contract term, the day to be mutually determined as part of the Project Plan. This report may be delivered by facsimile, e-mail, U.S. postal service, or private carrier, provided it is delivered in a timely manner.

4.9.2 The Project Manager shall be available, as reasonably required, to be on-site during necessary times. Such times shall be discussed between the Project Manager and the City, but the final required times will be at the City's discretion.

4.9.3 In the event that the designated Project Manager terminates employment with the Contractor, or is requested by the City to be removed from the role of Project Manager (as provided in Section 4.5), the position shall be assumed by an individual with equivalent qualifications, experience, and knowledge. Such replacement shall require the City's prior approval.

4.9.4 The Contractor shall not replace the approved Project Manager without written approval of the City, which approval will not be unreasonably withheld.

4.10 The process by which the implementation partner requests the removal of a team member from the project. If a Contractor replaces a proposed team member, the Contractor shall replace that team member with a new team member of similar experience. The City reserves the right to accept or reject any proposed or replacement team member, with or without cause, at any time during the duration of the project.

5. ITEMS PROVIDED BY THE CITY

5.1 Work Location. It shall be the sole responsibility of the Contractor to provide for project team work locations.

5.2 Uninterruptible Power Supply (UPS). It shall be the sole responsibility of the Contractor to provide for project team all necessary UPS.

5.3 Printers. It shall be the sole responsibility of the Contractor to provide for project team all necessary printers.

5.4 Office Space. It shall be the sole responsibility of the Contractor to provide for project team all necessary office space.

5.5 Utility Services. It shall be the sole responsibility of the Contractor to provide for project team all necessary utility services.

5.6 Employee Parking. It shall be the sole responsibility of the Contractor to provide for project team all necessary parking.

6. TOOLS AND EQUIPMENT

It shall be the sole responsibility of the Contractor to provide for project team all tools, parts and equipment necessary to perform work under this Contract.

7. PERFORMANCE REQUIREMENTS

7.1 The Contractor shall perform all of its obligations and functions under the Contract in accordance with the Contract specifications, industry standards and any manufacturers' specifications. The Contractor shall adjust and coordinate its activities to the needs and requirements of the City and perform its activities so as not to annoy, disturb, endanger, unreasonably interfere with or delay the operations or activities of the City.

7.2 The Contractor's personnel shall perform work in a neat and professional manner, and in compliance with all Federal, State, and City of Dunwoody regulations and OSHA rules and regulations shall be followed at all times.

7.3 Dates for commencement and completion of work shall be coordinated with the City's Authorized Representative.

7.4 Any work required beyond that which is specified herein shall be reported in advance to the City. At no time shall work beyond the scope be performed without prior written authorization from the City.

7.5 The Contractor shall utilize maximum safety precautions. Tools and equipment will be in a good state of repair, safe to use, and be used in the manner in which they were intended. The Contractor is required to inform all workers and concerned persons of the Material Safety Data on all products being utilized on this project. No materials or equipment will be left unattended or stored on the project site at any time.

8. CONFIDENTIAL INFORMATION

8.1 In the course of performing the Contract work, the Contractor may gain access to security-sensitive and other sensitive information of the City.

8.2 The Contractor agrees to hold all City data and information in confidence and to make such information known only to its employees and subcontractors who have a legitimate need to know such information and only after advising such persons of the Contractor's non-disclosure obligations.

8.3 The Contractor shall seek the City's prior written consent before using for any purpose other than the fulfillment of the Contractor's obligations hereunder, or before releasing, disclosing, or otherwise making such information available to any other person.

8.4 The Contractor shall employ such practices and take such actions to protect the City's information from unauthorized use or disclosure as the Contractor employs and takes to protect its own information, but in no event shall the Contractor use less than reasonable efforts to protect the City's information.

8.5 The provisions of this Section shall survive the expiration or earlier termination of the Contract.

9. USE OF PREMISES

During the progress of the work specified herein, the Contractor shall keep the premises free from accumulation of waste materials, and other debris resulting from the work. At the completion of each work day, the Contractor shall remove daily all waste materials and debris from, and about the premises as well as tools, equipment, machinery and surplus material, and leave the site clean and ready for occupancy by the City.

10. SAFETY AND PROTECTION

The Contractor shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the work site and other persons including, but not limited to, the general public who may be affected thereby.

11. COMPENSATION - INVOICE AND PAYMENT FOR SERVICES

11.1 The City shall pay the Contractor, subject to any authorized deductions, the applicable prices set forth for each service authorized by the City, and actually delivered or performed, as the case may be, by the Contractor to the satisfaction and acceptance, as appropriate, of the City. The timing of such payments shall be as set forth below in this Section.

11.2 The City shall pay the Contractor the price as set forth within 30 days after completion of the services, or 30 days after the City's receipt of the invoice, whichever is later. The Contractor shall invoice the City for the implementation services that were completed and accepted under the Contract, accompanied by such supporting documentation and other backup material as the City may reasonably require.

11.3 The Contractor shall invoice with such supporting documentation and other backup material as the City may reasonably require.

11.4 The Contractor shall deliver to the City for approval and acceptance, and before eligible for final payment of any amounts due, all documents and material prepared by the Contractor for the City under this Contract.

11.5 The City shall pay the undisputed amount of the Contractor's invoice, as it may be reduced to reflect unsubstantiated or unsatisfactory services. Items in dispute shall be paid upon the resolution of the dispute. No verification or payment of any amounts invoiced shall preclude the City from recovering any money paid in excess of that due under the terms of this Contract.

11.6 The Contractor shall be obligated to pay promptly all proper charges and costs incurred by the Contractor for labor and materials used for the work performed hereunder. The City shall have the right, but not the obligation, to pay directly to third parties (including subcontractors) all past due amounts owed by the Contractor to third parties for labor and materials used for the work hereunder, based on invoices submitted by such third party, and all such amounts paid by the City shall be applied toward, and shall reduce, amounts owed to Contractor hereunder.

11.7 The Contractor shall submit all invoices to: City of Dunwoody, GA, Accounts Payable, 41 Perimeter Center East, Suite 250, Dunwoody, GA 30346.

12. COMPLIANCE WITH LAWS AND REGULATIONS

12.1 The Contractor shall perform its obligations and functions hereunder in compliance with the applicable laws of the United States, the State of Georgia, DeKalb County, the City of Dunwoody, any applicable rules, regulations or directives of any agency thereof, and the applicable regulations of the City. OSHA rules and regulations shall be followed at all times. The City shall have the right (but not the obligation) to contest or challenge by any means whatsoever any law, regulation, rule or directive which in any way affects or otherwise impacts upon the Contractor's performance of its obligations and functions hereunder; the Contractor shall cooperate to the fullest extent and take whatever action (including becoming a party in any

litigation) the City should reasonably request in connection with any such challenge or contest by the City.

12.2 The Contractor shall obtain and keep current all licenses, permits and authorizations, whether municipal, county, state or federal, required for the performance of its obligations and functions hereunder and shall pay promptly when due all fees therefore.

12.3 The Contractor shall abide by all applicable state and federal regulations pertaining to wages and hours of an employee; including but not limited to the Contractor's compliance with requirements of the Official Code of Georgia Annotated and relevant State Rules and Regulations.

13. CONTRACTOR'S LIABILITY

The Contractor shall be responsible for the prompt payment of any fines imposed on the City or the Contractor by any other federal, state or local governmental agency as a result of the Contractor's, or its subcontractor's (or the officers', directors', employees' or agents' of either), failure to comply with the requirements of any law or any governmental agency rule, regulation, order or permit. The liability of the Contractor under this Section 13 is in addition to and in no way a limitation upon any other liabilities and responsibilities which may be imposed by applicable law or by the indemnification provisions of Section 14 hereof, and such liability shall survive the expiration or earlier termination of this Contract.

14. INDEMNIFICATION AND INSURANCE

14.1 The Contractor shall indemnify, defend and hold completely harmless the City, and the members (including, without limitation, members of the City's Council, and members of the citizens' advisory committees of each), officers, employees and agents of each, from and against any and all liabilities (including statutory liability and liability under Workers' Compensation Laws), losses, suits, claims, demands, judgments, fines, damages, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, paralegal and expert fees and reasonable attorneys' fees) which may be incurred by, charged to or recovered from any of the foregoing by (i) reason or on account of damage to or destruction or loss of any property of the City, or any property of, injury to or death of any person resulting from or arising out of or in connection with the performance of this Contract, or the acts or omissions of the Contractor's directors, officers, agents, employees, subcontractors, licensees or invitees, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, fine, damage, cost or expense was proximately caused solely by the City's negligence or by the joint negligence of the City and any person other than the Contractor or the Contractor's directors, officers, agents, employees, subcontractors, licensees, or invitees, or (ii) arising out of or in connection with the failure of the Contractor to keep, observe or perform any of the covenants or agreements in this Contract which are required to be kept, observed or performed by the Contractor, or (iii) arising out of or in connection with any claim, suit, assessment or judgment prohibited by Section 14.4 below by or in favor of any person described in Section 14.5 below, or (iv) arising out of or in connection with any action by Contractor or its directors, officers, agents, employees, subcontractors, licensees or invitees. The City agrees to give the Contractor reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow the Contractor or its insurer to compromise and defend the same to the extent of its interests, and to reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations under this section, the Contractor shall

engage counsel reasonably acceptable to the City. In any suit, action, proceeding, claim or demand brought in respect of which the City may pursue indemnity, the City shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the City unless (1) the Contractor and the City shall have mutually agreed to the contrary, (2) the Contractor has failed within a reasonable time to retain counsel reasonably satisfactory to the City, or (3) the City and the Contractor are both named parties in any such proceeding and, in the sole judgment of the City, representation of both the City and the Contractor by the same counsel would be inappropriate due to actual or potential differing interests between them. The indemnification provisions of this Section 14 shall survive the expiration or earlier termination of this Contract with respect to any acts or omissions occurring during the term of the Contract.

14.2 In addition to indemnification provisions stated above, if the City's use of any service, software, firmware, programming, or other item provided by or on behalf of the Contractor is enjoined due to infringement of another person or entity's intellectual property rights, the Contractor shall promptly, at its sole cost and expense, modify the infringing item so that it no longer infringes, procure for the City the legal right to continue using the infringing item, or procure for the City a non-infringing item, or procure for the City a non-infringing replacement item having equal or greater functional capabilities as the infringing item.

14.3 The Contractor shall assume all responsibility for loss caused by neglect or violation of any state, federal, municipal or agency law, rule, regulation or order. The Contractor shall give to the proper authorities all required notices relating to its performance, obtain all official permits and licenses, and pay all proper fees and taxes. It shall promptly undertake proper monetary restitution with respect to any injury that may occur to any building, structure or utility in consequence of its work. The Contractor will notify the City in writing of any claim made or suit instituted against the Contractor because of its activities in performance of the Contract.

14.4 No recourse under or upon any obligation, covenant or agreement contained in this Contract, or any other agreement or document pertaining to the work or services of the Contractor hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or any judgment obtained against the City, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Contract, shall be had against any member (including, without limitation, members of the City's Council, or members of the citizens advisory committees of each), any officer, employee or agent, as such, past, present, or future of the City, either directly or through the City or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for any sum that may be due and unpaid by the City. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, officer, employee, or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for the payment for or to the City, or any receiver therefore or otherwise, of any sum that may remain due and unpaid by the City, is expressly waived and released as a condition of and in consideration of the execution of this Contract and the promises made to the Contractor pursuant to this Contract.

14.5 In any and all claims against the City, or any of their officers, members, agents, servants or employees, by any employee of the Contractor, any subcontractor, anyone directly or

indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of the Contractor under this Section 14 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Contractor or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.

14.6 No provisions of Section 14 herein shall be construed to negate, abridge, or otherwise reduce any other right of indemnity that the City may have as to any party or person described therein.

14.7 Insurance

14.7.1 General Liability and Automobile Liability. The Contractor shall purchase and maintain in force during the term of the Contract, at its own cost and expense, to protect the Contractor, the City, and the members (including, without limitation, all members of the governing City's Council and the citizens' advisory committees of each), officers, agents, and employees of each, from and against any and all liabilities arising out of or in connection with the Contractor's performance of the Contract work:

(1) Commercial general liability insurance with coverage of not less than ONE MILLION DOLLARS ($1,000,000.00) combined single limit per occurrence, and with contractual liability coverage for Contractor's covenants to and indemnification of the City under the Contract, and

(2) Automobile liability insurance with policy limits of not less than ONE MILLION DOLLARS ($1,000,000.00) combined single limit per accident or occurrence covering each motor vehicle operated on City property.

14.7.1.1 Self-Insured Retention. Contractor's commercial general liability insurance policies shall not be subject to a self-insured retention exceeding $10,000, if the value of the Contract is less than $1,000,000, and not be subject to a self-insured retention exceeding $100,000, if the Contract is $1,000,000 or more, unless approved by the City Manager. Contractor's automobile liability insurance policies shall not be subject to a self-insured retention exceeding $10,000, unless approved by the City Manager.

14.7.1.2 Additional Insured Endorsement. Contractor agrees and shall cause the City their members (including, without limitation, members of the City's Council and members of the citizens' advisory committees of each), officers, employees, and agents to be named as additional insured's under such policy or policies of commercial general and automobile liability insurance.

14.7.2 Workers' Compensation and Employer's Liability. If Contractor has any employee working on City property, Contractor shall procure and maintain in force during the term of the Contract (i) workers' compensation insurance, and (ii) employer's liability insurance. The policy limits of the Contractor's employer's liability insurance shall not be less than $100,000 for "each accident," $500,000 for "disease policy limit," and $100,000 for "disease each employee." If the Contractor is self insured, the Contractor shall provide proof of self-insurance and authorization to self-insure as required by applicable state laws and regulations.

14.7.3 Professional Liability Insurance. The Contractor shall purchase and maintain in force during the term of the Contract, Professional Liability insurance which will pay for damages

arising out of errors or omissions in the rendering, or failure to render professional services under the Contract in the amount of at least ONE MILLION DOLLARS ($1,000,000.00) per claim. Such insurance must contain nose and tail coverage to include work performed by the Contractor from the project's inception date and until such time as the Statue of Limitations has run for the work done on the project.

14.7.4 Deductibles. The Contractor's policies of insurance required by this Section 14.7 may require the Contractor's payment of a deductible, provided the Contractor's insurer is required to pay claims from the first dollar at 100% of the claim value without any requirement that the Contractor pay the deductible prior to its insurer's payment of the claim.

14.7.5 Other Insurance Requirements. All insurance policies required by this Section 14.7 shall provide that they are primary insurance with respect to any other valid insurance the City may possess, and that any other insurance the City does possess shall be considered excess insurance only. All such insurance shall be carried with a company or companies which meet the requirements of Section 15.2 of these General Conditions, and said policies shall be in a form satisfactory to the City. A properly completed and executed Certificate of Insurance on a form provided or approved by the City (such as a current ACORD certificate of insurance) evidencing the insurance coverage required by this Section shall be furnished to the City upon the Contractor's execution of the Contract. The Contractor shall provide the City with at least thirty (30) days' prior written notice of any adverse material change in the Contractor's required insurance coverage except that ten (10) days notice of cancellation for non-payment is required. For purposes of this Section, an "adverse material change" shall mean any reduction in the limits of the insurer's liability, any reduction, non-renewal or cancellation of any insurance coverage, or any increase in the Contractor's self-insured retention. Prior to the expiration of any such policy, the Contractor shall file with the City a certificate of insurance showing that such insurance coverage has been renewed. If the insurance coverage is canceled or reduced, the Contractor shall, within five (5) days after such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies approved by the City. If the Contractor fails to obtain or have such insurance reinstated, the City may, if it so elects, and without waiving any other remedy it may have against the Contractor, immediately terminate this Contract upon written notice to the Contractor. The City Manager shall have the right to alter the monetary limits or coverage herein specified from time to time during the term of this Contract, and the Contractor shall comply with all reasonable requests of the City Manager with respect thereto.

15. SURETY BONDS/LETTERS OF CREDIT/LIABILITY INSURANCE

15.1 A surety Bond/Letter of Credit is not required for this Contract.

15.2 Liability Insurance Companies furnishing insurance coverage required by these General Conditions shall (a) be approved to issue insurance policies in the State of Georgia, and (b) must have no less than a "B+" Financial Rating and a Financial Size Category of "Class VI" or higher according to the most current edition of A.M. Best's Insurance Reports. If the liability insurer is rated by A.M. Best's Insurance Reports at an "A-" Financial Rating and a Financial Size Category of "Class VIII" or higher than the City Manager may waive the requirement for the insurer to be approved by the State of Georgia.

16. CONTRACT ADJUSTMENTS

16.1 Notwithstanding any provision herein to the contrary, the City reserves the right to modify at any time the nature, method, scope, frequency, or timing of the Contractor's obligations under this Contract (Contract Adjustments) in whatever manner it determines to be reasonably necessary for the proper completion of the Contractor's work hereunder. Both parties agree that, should any Contract Adjustments be made, the Contractor's compensation and the amount of the Performance Bond or Letter of Credit required, will be adjusted accordingly, in such amount or amounts as will be mutually agreed to by means of good faith negotiation by the City and the Contractor and, to the extent possible, by reference to any unit costs already established in the Proposal. Without exception, all deletions or additions to the scope of work will be set forth in a written Amendment to this Contract.

16.2 Notwithstanding the foregoing, the City shall have the right to terminate this Contract pursuant to the provisions of Section 18.2 herein should the Contractor and the City fail to reach agreement on the adjusted compensation, or the amount of the Performance Bond or Letter of Credit, within thirty (30) days after the date of the Contract Adjustment.

16.3 Notwithstanding the foregoing, there shall be no upward adjustment of the compensation on account of any Contract Adjustment made necessary or appropriate as a result of the mismanagement, improper act, or other failure of the Contractor, its employees, agents, or its subcontractors to properly perform its obligations and functions under this Contract.

17. SUBCONTRACTORS

17.1 The Contractor shall perform all of its obligations and functions under this Contract by means of its own employees, or by a duly qualified subcontractor which is approved in advance by the City. Such subcontractor which is an affiliate, parent, or subsidiary company; or had principal owners, relatives, management, or employees common to the Contractor; or any other party that has the ability to significantly influence the management or daily business operations of the subcontractor must be disclosed in writing to the City Manager. Goods and services provided by subcontractors which are reimbursed by the City must be bona fide arm's-lengths transactions. In the event a subcontractor is employed, the Contractor shall continuously monitor the subcontractor's performance, shall remain fully responsible to ensure that the subcontractor performs as required and itself perform or remedy any obligations or functions which the subcontractor fails to perform properly. Nothing contained herein shall be construed to prevent the Contractor from using the services of a common carrier for delivering goods to the City.

17.2 This Contract shall be referred to and incorporated within any contractual arrangement between the Contractor and a subcontractor and, in such contractual arrangement; the subcontractor shall give its express written consent to the provisions of this Section 17. To the extent feasible, the provisions of this Contract shall apply to any such subcontractor in the same manner as they apply to the Contractor. However, such application shall neither make any subcontractor a party to this Contract, nor make such subcontractor a third party beneficiary hereof.

17.3 In the event that the Contractor employs a subcontractor, then the City may require that copies of invoices for all work (including invoices submitted to the Contractor for work performed by a subcontractor) shall be submitted to the City by the Contractor and the City shall

pay all compensation to the Contractor. It shall be the sole responsibility of the Contractor to deal with a subcontractor with respect to the collecting and submission of invoices and the payment of compensation. In no event shall the City have any obligation or liability hereunder to any subcontractor, including, in particular, any obligations of payment.

18. DEFAULT AND TERMINATION

18.1 In the event that:

18.1.1 the Contractor shall repeatedly fail (defined for this purpose as at least three (3) failures within any consecutive twelve (12) month period) to keep, perform or observe any of the promises, covenants or agreements set forth in this Contract (provided that notice of the first two (2) failures shall have been given to the Contractor, but whether or not the Contractor shall have remedied any such failure); or

18.1.2 the Contractor shall fail to keep, perform or observe any promise, covenant, or agreement set forth in this Contract, and such failure shall continue for a period of more than five (5) days after delivery to the Contractor of a written notice of such breach or default; or

18.1.3 the Contractor's occupational or business license shall terminate or the Contractor shall fail to provide the City with any bond, letter of credit, or evidence of insurance as required by the Contract Documents, for any reason; or

18.1.4 the Contractor fails for any reason to provide the City with an acceptable renewal or replacement bond or letter of credit within the time period specified by a provision of this Contract; or

18.1.5 the Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws, or under any other law or statute of the United States or any State thereof, or shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

18.1.6 the Contractor shall have a petition under any part of the Federal Bankruptcy laws, or an action under any present or future insolvency laws or statute filed against it, which petition is not dismissed within thirty (30) days after the filing thereof; or

18.1.7 There is any assignment by the Contractor of this Contract or any of the Contractor’s rights and obligations hereunder for which the City has not consented in writing; or

18.1.8 The Contractor shall default on any other agreement entered into by and between Contractor and the City, then, in its discretion, the City shall have the right to terminate this Contract for default, which termination shall be effective upon delivery of written notice of such termination to the Contractor. In the event that the City terminates this Contract for default, or the Contractor abandons or wrongfully terminates the Contract, the Contractor shall be paid for compensation earned to the date of termination or abandonment (but the City shall have the right to reduce by off-set any amounts owed to the Contractor hereunder or under any other Contract or obligation by the amount of the City’s damages and any amounts owed by the Contractor to

the City), but the Contractor shall not be compensated for any profits earned or claimed after the receipt of the City's notice of termination by default or after abandonment or wrongful termination. The City's election to terminate or not to terminate this Contract in part or whole for the Contractor's default shall in no way be construed to limit the City's right to pursue and exercise any other right or remedy available to it pursuant to the terms of the Contract or otherwise provided by law or equity.

18.2 Notwithstanding anything else herein contained, the City may terminate this Contract in whole or in part at any time for its convenience by giving the Contractor thirty (30) days written notice. In that event, the Contractor shall proceed to complete any part of the work, as directed by the City, and shall settle all its claims and obligations under the Contract, as directed by the City. The Contractor shall be compensated by the City in accordance with the provisions hereof, including in particular Section 2 of these General Conditions, provided, however, that in no event shall Contractor be entitled to compensation for work not performed or for anticipatory profits. Contractor shall justify its claims, as requested by the City, with accurate records and data.

18.3 Bankruptcy and Liquidation - In the event the Contractor (1) makes an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (2) commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction whether now or hereafter in effect; (3) has had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of sixty (60) days or more; (4) takes any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or substantial part of its assets; or (5) permits any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more causing the Contractor or any third party, including, without limitation, a trustee in bankruptcy, to be empowered under state or federal law to reject this Contract or any agreement supplementary hereto, the City shall have the following rights:

(i) In the event of a rejection of this Contract or any agreement supplementary hereto, the City shall be permitted to retain and use any back-up or archival copies of the software licensed hereunder under this Agreement for the purpose of enabling it to mitigate damages caused to the City because of the rejection of this Contract. The City shall exert reasonable efforts to mitigate such damages by use of such back-up or archival copies.

(ii) In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the City to, as applicable, the Contractor or the bankruptcy trustee or receiver. The Contractor or such bankruptcy trustee or receiver shall not interfere with the rights of the City as licensee as provided in this Contract or in any agreement supplementary hereto to obtain the Source Material(s) from the bankruptcy trustee and shall, if requested, cause a copy of such Source Material(s) to be available to the City.

(iii)In the vent of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights of setoff with respect to this Contract under the Bankruptcy Code or applicable non-bankruptcy law; or In the event of a rejection of this Contract or any agreement supplementary hereto, the City may retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights under section 503(b) of the Bankruptcy Code.

19. CITY'S AUTHORIZED REPRESENTATIVE

During the term of this Contract, the City Manager or designee may from time to time designate an individual to serve as the City's Authorized Representative and an Assistant Representative designated to serve in that capacity in the absence of the CITY’S AUTHORIZED REPRESENTATIVE, who shall have such authority to act on the City's behalf as the City Manager may from time to time actually delegate to such person, but in no event shall the CITY’S AUTHORIZED REPRESENTATIVE have authority to modify or terminate this Contract, or make final decisions with respect to amendments, time extensions, assignments, cost or payment adjustments or payment disputes.

20. ASSIGNMENT

Neither this Contract nor any of the Contractor's rights or obligations hereunder may be assigned by the Contractor without the City's prior written consent, which consent may be granted or withheld at the City's sole discretion. Any transfer of this Contract by merger, consolidation or liquidation (unless the stock of the Contractor is traded on a national stock exchange or in a generally recognized over the counter securities market) any change in ownership of or power to vote a majority of the outstanding voting stock or ownership interests of the Contractor shall constitute an assignment of this Contract for purposes of this Section. In the event the Contractor assigns or subcontracts or attempts to assign or subcontract any right or obligation arising under this Contract without the City's prior written consent, the City shall be entitled to terminate this Contract pursuant to the provisions of Section 17 hereof.

21. NOTICES

21.1 Unless otherwise stated herein, all notices or other writings which the City is required or permitted to give to the Contractor may be hand delivered, mailed via U.S. Certified Mail or sent next-day delivery by a nationally-recognized overnight delivery service to the Contractor's address set forth in the Proposal. Any such notice shall be deemed to have been delivered upon actual delivery, or one (1) day following submission to a nationally-recognized overnight delivery service for next day delivery to the Contractor, or three (3) days following submission to the Contractor by U.S. Certified Mail.

21.2 Unless otherwise stated herein, all notices or other writings which the Contractor is required or permitted to give to the City may be hand delivered to the City Manager, mailed via U.S. Certified Mail, or sent next-day delivery by a nationally-recognized overnight delivery service. Any such notice shall be deemed to have been delivered upon actual delivery, or one (1) day following submission to a nationally-recognized overnight delivery service for next day delivery to City, or three (3) days following submission to the City by U.S. Certified Mail. Any such notice shall be sent to:

City of Dunwoody, GA
ATTN: City Manager
41 Perimeter Center East, Suite 250
Dunwoody, GA 30346

21.3 Either party may change its notice address by written notice to the other given as provided in this section.

22. NONDISCRIMINATION

22.1 During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest agrees as follows:

22.1.1 Compliance with Regulations. The Contractor shall comply with the Laws and Regulations as they may be amended from time to time (hereafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Contract.

22.1.2 Nondiscrimination. The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of any subcontractor, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by the Regulations.

22.1.3 Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive proposing or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of 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 grounds of race, color or national origin.

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

22.1.5 Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such Contract Sanctions as it may determine to be appropriate, including but not limited to:

22.1.5.1 Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or

22.1.5.2 Cancellation, termination or suspension of the Contract, in whole or in part.

22.1.6 Incorporation of Provisions. The Contractor shall include the provisions of subsections 22.1.1 through 22.1.5 in every subcontract, including procurement of materials and

leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City to enter into such litigation to protect the interest of the City and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

22.2 The Contractor assures the City that it will comply with the pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, marital status, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision shall bind the Contractor from the period beginning with the initial solicitation through the completion of the Contract.

23. COPYING DOCUMENTS

The Contractor hereby grants the City and its agent's permission to copy and distribute any and all materials and documents contained in, comprising, or which are otherwise submitted to the City with or in connection with the Contractor's Proposal or which are contained in the Contract Documents (the "Submittals"). The permission granted by the Contractor shall be on behalf of the Contractor and any and all other parties who claim any rights to any of the materials or documents comprising the Submittals. Such permission specifically authorizes the City and its agents to make and distribute such copies of the Submittals or portions thereof as may be deemed necessary or appropriate by the City for its own internal purposes or for responding to requests for copies from any member of the public regardless of whether the request is specifically characterized as a public records request pursuant to Georgia Code. This provision shall survive the expiration or termination of the Contract.

24. GENERAL PROVISIONS

24.1 The Contract Documents consist of the Contract, the Proposal Forms, the Instructions to Proposers, Request for Proposals, all Addendum(s) issued prior to execution of this Contract, these General Conditions and the Specifications. Together, these documents comprise the Contract and all the documents are fully a part of the Contract as if attached to the Contract or repeated therein. Precedence of the Contract Documents shall be as follows: (i) addendum(s) to the Contract Documents, (ii) the Contract, (iii) the General Conditions (iv) the Proposal Forms, (v) the Instructions to Proposers, (vi) the Specifications, and (vii) the Request.

24.2 This Contract represents the entire agreement between the parties in relation to the subject matter hereof and supersedes all prior agreements and understandings between such parties relating to such subject matter, and there are no contemporaneous written or oral agreements, terms or representations made by any party other than those contained herein. No verbal or written representations shall be relied upon outside the Contract terms and amendments. Without exception, all deletions or additions to the scope of work will be set forth in a written amendment to this Contract. No amendment, modification, or waiver of this Contract, or any part thereof, shall be valid or effective unless in writing signed by the party or parties sought to be bound or charged therewith; and no waiver of any breach or condition of this Contract shall be deemed to be a waiver of any other subsequent breach or condition, whether of a like or different nature.

24.3 The Contractor shall, during the term of this Contract, repair any damage caused to real or personal property of the City and/or its tenants, wherever situated, caused by the intentional, reckless, or negligent acts or omissions of the Contractor's officers, agents, or employees, and any subcontractors and their officers, agents, or employees, or, at the option of the City, the Contractor shall reimburse the City for the cost of repairs thereto and replacement thereof accomplished by or on behalf of the City.

24.4 The Contractor warrants to the City that no work performed or materials purchased pursuant to the Contract, whether by, from, or through the Contractor or a subcontractor, shall cause any claim, lien or encumbrance to be made against any property of the City, and the Contractor shall indemnify and save the City harmless from and against any and all losses, damages and costs, including attorneys' fees, with respect thereto. If any such claim, lien or encumbrance shall be filed, the Contractor shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. This provision shall survive the expiration or termination of the Contract.

24.5 The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either the City or the Contractor. This Contract shall be deemed to be made, construed and performed according to the laws of the State of Georgia. Any suit or proceeding initiated for the purpose of interpreting or enforcing any provision of this Contract or any matter in connection therewith shall be brought exclusively in a court of competent jurisdiction in DeKalb County, Georgia, and the Contractor waives any venue objection, including, but not limited to, any objection that a suit has been brought in an inconvenient forum. The Contractor agrees to submit to the jurisdiction of the Georgia courts and irrevocably agrees to acknowledge service of process when requested by the City

24.6 The section headings herein are for the convenience of the City and the Contractor, and are not to be used to construe the intent of this Contract or any part hereof, or to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.

24.7 The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.

24.8 The delay or failure of the City at any time to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of that breach or any subsequent breach or default in the terms, conditions, or covenants of this Contract. The Contractor shall not be relieved of any obligation hereunder on account of its failure to perform by reason of any strike, lockout, or other labor disturbance.

24.9 If the City shall, without any fault, be made a party to any litigation commenced between the Contractor and a third party arising out of the Contractor's operations and activities at the premises, then the Contractor shall pay all costs and reasonable attorney's fees incurred by or imposed upon the City in connection with such litigation for all trial and appellate proceedings. The City shall give prompt notice to the Contractor of any claim or suit instituted against it by such third party. The provisions of this Section supplement and are not intended to be in lieu of the indemnification provisions of Section 5 hereof. The provisions of this Section

shall survive the acceptance of the services and payment therefore, and the expiration or earlier termination of this Contract.

24.10 The City shall have the right to recover from the Contractor all of the City's costs and expenses incurred in enforcing the provisions of this Contract including, but not limited to, (1) the cost of administrative investigation and enforcement (including, without limitation, audit fees and costs, attorneys' fees) and (2) the cost of any trial, appellate or bankruptcy proceeding (including, without limitation, investigation costs, audit fees and costs, attorneys' fees, court costs, paralegal fees and expert witness fees). This provision shall survive the expiration or termination of the Contract.

24.11 The Contractor shall not during the term of the Contract knowingly hire or employ (on either a full-time or part-time basis) any employee of the City.

24.12 The Contractor shall be required, during the term of the Contract, at no additional cost to the City, to take such reasonable security precautions with respect to its operations at City Hall as the City in its discretion may from time to time prescribe. The Contractor shall comply with all regulations, rules and policies of any governmental authority, including the City, relating to security issues.

24.13 The City may, but shall not be obligated to, cure, at any time, upon five (5) days written notice to the Contractor (provided, however, that in any emergency situation the City shall be required to give only such notice as is reasonable in light of all the circumstances), any default by the Contractor under this Contract; whenever the City so cures a default by the Contractor, all costs and expenses incurred by the City in curing the default, including, but not limited to, reasonable attorneys' fees, shall be paid by the Contractor to the City on demand.

24.14 The City shall, in its discretion, be entitled to deduct from the compensation to which the Contractor is otherwise entitled hereunder, an amount equal to any liabilities of the Contractor to the City which are then outstanding. In the event that additional work beyond the scope of this Contract is requested by the City Manager and it results in any extra charges to the City, the Contractor shall so advise the City in writing of the amount of the extra charges. The City is not required to pay any extra charges for additional work unless such work and the charges therefore have been approved in advance and have been confirmed in writing within twenty-four (24) hours by the City Manager, in his or her exclusive discretion.

24.15 The Contractor is an independent contractor and nothing contained herein shall be construed as making the Contractor an employee, agent, partner or legal representative of the City for any purpose whatsoever. The Contractor acknowledges that it does not have any authority to incur any obligations or responsibilities on behalf of the City, and agrees not to hold itself out as having any such authority. Nothing contained in this Contract shall be construed to create a joint employer relationship between the City and the Contractor with respect to any employee of the Contractor or of its subcontractors.

24.16 The Contractor and its subcontractors, if any, shall maintain complete and accurate books and records in accordance with generally accepted accounting principles, consistently applied, and shall be in a form reasonably acceptable to the City Manager or designee. The Contractor and its subcontractors shall account for all expenses of any nature related to

transactions in connection with this Contract in a manner which segregates in detail those transactions from other transactions of the Contractor and subcontractors and which support the amounts reported and/or invoiced to the City. At a minimum, the Contractor's and subcontractor's accounting for such expenses and transactions shall include such records in the form of electronic media compatible with or convertible to a format compatible with computers utilized by the City at its offices; a computer run hard copy; or legible microfilm or microfiche, together with access to the applicable reader. All such books and records and computerized accounting systems, shall upon reasonable notice from the City be made available in DeKalb County, Georgia, for inspection, examination, audit and copying by the City through and by its duly authorized representatives at any time for up to four (4) years after the year to which books and records pertain. Such inspection, examination, or audit may include, but is not limited to a review of the general input, processing, and output controls of information systems, using read only access, for all computerized applications used to record financial transactions and information. The Contractor and subcontractor shall freely lend its own assistance in a timely manner in making such inspection, examination, audit, or copying and, if such records are maintained in electronic and other machine readable format, shall provide the City and/or its representative such assistance as may be required to allow complete access to such records. The City Manager may require the Contractor and subcontractors to provide other records the City Manager, in his or her sole discretion, deems necessary to enable the City to perform an accurate inspection, examination or audit of expenses incurred in and transactions related to performance of this Contract. Such records shall be provided within thirty (30) days of request thereof. In the event that expenses incurred or reimbursed are found by such inspection, examination, or audit to have been overpaid, the Contractor and its subcontractors agree that such amounts shall be payable to the City. If, prior to the expiration of the above-stated four (4) year record retention period, any audit or investigation is commenced by the City, or any claim is made or litigation commenced relating to this Contract by the City, the Contractor, or a third party, the Contractor shall continue to maintain all such records, and the City shall continue to have the right to inspect such records in the manner stated above, until the inspection, examination, audit, claim, or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal). This provision shall survive the expiration or earlier termination of this Contract. In the event of any conflict between any provision of this Contract and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Contract shall control even where this Contract references such provisions or standards. In particular, without limitation, the Contractor and subcontractors shall maintain all records required under this Contract to the full extent required hereunder, even if some or all such records would not be required under such generally accepted accounting principles or auditing standards. If as a result of an inspection, examination or audit, it is established that amounts are due from the Contractor to the City, the Contractor shall forthwith, upon written demand from the City, pay the City such amount, together with interest on the amount due at the rate of eighteen (18%) percent per annum, or if less, the maximum rate of interest allowed by law, from the date such additional amounts were overpaid by the City. Further if such inspection, examination or audit establishes that the Contractor has over billed such amounts for any Contract period by two (2%) percent or more, then the entire expense of such inspection, examination or audit shall be paid by the Contractor.

24.17 The Contractor and subcontractors shall prepare and provide the City with all detailed reports as required under the Contract on a timely basis. The City reserves the right to modify the reporting procedures or the form and content of any report as it deems necessary.

24.18 There are no third party beneficiaries to this Contract and nothing contained herein shall be construed to create such.

24.19 Time is of the essence for the performance of each of the Contractor's obligations under this Contract.

24.20 In computing any period of time established under this Contract, except as otherwise specified herein the word “days,” when referring to a period of time that is ten (10) days or less means business days, and when referring to a period of time that is more than ten (10) days means calendar days. The day of the event, from which the designated period of time begins to run shall not be included. A business day is any day other than Saturday, Sunday, or Federal, State of Georgia or City holidays.

24.21 The Contractor agrees to perform all acts and execute all supplementary instruments or documents which may be reasonably necessary to carry out or complete the transaction(s) contemplated by this Contract.

24.22 The City reserves the right to further develop, improve, repair and alter the facilities and all roadways, and parking areas, as it may reasonably see fit, free from any and all liability to the Contractor for loss of business or damages of any nature whatsoever to the Contractor occasioned during the making of such improvements, repairs, alterations and additions, including, but not limited to, any damages resulting from negligence of the City or its employees, agents or contractors.

24.23 The Contractor and the City hereby mutually waive any claim against each other and their respective members, officials, officers, agents and employees for damages (including damages for loss of anticipated profits) caused by any suit or proceedings brought by either of them or by any third party directly or indirectly attacking the validity of this Contract or any part thereof, or any addendum or amendment hereto, or the manner in which this Contract was solicited, awarded or negotiated, or arising out of any judgment or award in any suit or proceeding declaring this Contract, or any addendum or amendment hereto, null, void or voidable or delaying the same, or any part thereof, from being carried out.

24.24 At the option of the Contractor, the products and/or services provided under the Contract resulting from this solicitation may be provided to other governmental agencies, including the State of Georgia, its agencies, political subdivisions, counties and cities under the same terms and conditions, including price, as such products and/or services are provided under this Contract. Each governmental agency allowed by the Contractor to purchase products and/or services in connection with this Contract shall do so independent of the City or any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods and services ordered, received and accepted by it. The City shall have no liability to the Contractor or any governmental agency resulting from the purchase by that agency of products and/or services from the Contractor in connection with this Contract.

24.25 Contractor must adhere to the City’s Travel Policy.

* * * * * * * END OF GENERAL CONDITIONS * * * * * * *