Dunwoody
Smart people – Smart city

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

INVITATION TO BID

ITB 16-01

CHAMBLEE DUNWOODY ROAD WATER MAIN REPLACEMENT AND ROAD RESURFACING

Womack Road to Cambridge Drive

Denis Shortal Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Riticher 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

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Invitation to Bid
ITB 16-01

The City of Dunwoody is soliciting competitive sealed Bids from qualified contractors for the **Chamblee Dunwoody Road Water Main Replacement and Road Resurfacing- Womack Road to Cambridge Drive** project for the Department of Public Works.

Bids should be typed or submitted in ink and returned in a sealed container marked on the outside with the ITB number and company name. Bids will be received until 2:00 P.M. local time on **March 3, 2016** at the City of Dunwoody, 41 Perimeter Center East, Suite 250, and Dunwoody, Georgia 30346. Any Bid received after this date and time will not be accepted. Bids will be publicly opened and read at 2:05 P.M. Apparent Bid results will be available the following business day on our website www.dunwoodyga.gov.

A **Pre-Bid Conference will be held at 2:00 p.m., February 16, 2016** at the City of Dunwoody, Courtroom, 41 Perimeter Center East, First Floor Court Room, Dunwoody, GA 30346. The conference will include a review of the Bid Documents, and a question and answer period. Attendance at the Pre-Bid Conference is strongly encouraged, but it is not required. Bidders are expected to be familiar with the Bid Documents and to provide the City with any questions regarding the Bid Documents at the Pre-Bid conference or by the deadline for questions to be submitted.

Questions regarding Bids should be directed to John Gates, Purchasing Manager, at purchasing@dunwoodyga.gov no later than **February 17, 2016**. Bids are legal and binding upon the Bidder when submitted. All Bids should be submitted in duplicate. The written Bid Documents supersede any verbal or written prior communications between the parties.

If a Contract is awarded, it will be made to the lowest reliable Bidder whose proposal shall have met all of the prescribed requirements. The City reserves the right to reject any or all Bids to waive technicalities and to make an award deemed in its best interest. The low Bid will be determined based on the sum of the base Bid and any alternates selected by the City.

All companies submitting a Bid will be notified in writing of award. We look forward to your Bid and appreciate your interest in the City of Dunwoody.

John Gates
Purchasing Manager

Denis Shortal Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Riticher 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

SCOPE OF WORK

The project consists of water main replacement and paving on Chamblee Dunwoody Road between Womack Road and Cambridge Drive. The limits of construction are from Womack Drive tie-in at station 45+40± on plan sheet C-6 to station 99+00± on plan sheet C-10. This project will tie into water main improvements between Roberts Drive and Womack Road which are currently under contract for construction. The city is also currently constructing drainage improvements, roadway subbase and sidewalks between station 45+40 and 99+00 under a separate contract. The scope described herein includes completing the asphalt paving on the prepared subbase and resurfacing the existing asphalt.

Construction documents can be accessed and downloaded at the following website:

https://dunwoodyga.sharefile.com/d-s52aa595fb4e44a9b

In addition to this bid document and referenced standards and specifications, the construction documents include the following files:

R2T Reroute Phase II Complete Set.pdf
Supplemental Conditions 121115_1.pdf
Section 670 Water Distribution System for DeKalb 121115.pdf
Sue Scope of Services 080312015.pdf
Appendix B Water Main IGA.pdf

The roadway widening and sidewalk plans are provided for reference.

The Contractor shall furnish all materials, equipment, and labor to complete the required construction as described in its entirety to the specifications as directed and the terms of this Contract including all incidentals as directed by the City of Dunwoody Director of Public Works or his representative.

In accordance with Appendix B**,** "Intergovernmental Agreement for Replacement and Repaving Project between DeKalb County, Georgia and the City of Dunwoody, Georgia," dated June 16, 2014 and incorporated into the Contract Documents, the project will be a coordinated effort between DeKalb County and the City of Dunwoody to make improvements to the water distribution system and roadway, respectively. The Contract will be with the City of Dunwoody and the City will be the lead agency for overall project coordination. The DeKalb County Department of Watershed Management will be providing funding to the City and full construction management and oversight services for the water main replacement portion of the project.

Unless otherwise specified, all work related to the water main replacement shall be completed in compliance with the Construction Documents prepared by River To Tap, Inc. (R2T) and these Bid Documents including Addenda. The current edition of the Georgia Department of Transportation Standard Specifications and Supplemental Specifications will be used for asphalt paving.

It is the intent of this Contract for each unit price Bid to include all labor, materials, equipment, tools, transportation, and supplies required as necessary to complete the work in accordance with the plans, specifications, and the terms of this Contract. The Contractor is responsible for inspecting the site and for being thoroughly familiar with all Bid and Contract Documents.

Any items which must be removed to perform the Scope of Work that are not specifically called for removal in the drawings shall be removed by the Contractor. The cost shall be included in other unit price Bid items. No claims will be considered for extra compensation.

Minimum Contractor Qualifications

The Contractor must meet Georgia licensing requirements as a General or Utility Contractor and be a Georgia Department of Transportation qualified Contractor. The Contractor shall have been engaged in construction and successful completion of work of similar character and magnitude for at least five years and shall demonstrate the financial ability to perform the work. The Contractor's license must be active and in good standing at the time of Bid submission.

Local Small Business Enterprise/Disadvantaged Business Enterprise Requirements

There is a Local Small Business Enterprise/Disadvantaged Business Enterprise goal of 20% for the water main replacement work. Bidders must submit the attached *Schedule of Local Small Business Enterprise Participation, Minority Business Enterprise, Woman Business Enterprise Opportunity Tracking Form* and the *Letter of Intent to Perform as a Subcontractor, or Provide Materials or Services* forms with their Bids.

Traffic Control

All traffic control shall be provided by the Contractor in accordance with GDOT's "shelf" Special Provision 150. Assistance from police officers will not be provided by the City. Two way traffic and driveway access must be maintained throughout the construction. The traffic control pay item should include two variable message boards to be in place for the duration of the construction.

Except where noted otherwise herein, working hours are limited to Monday to Friday, 7:30 AM to 8:30 PM unless prior approval is granted by the Department of Public Works. Lane closures will not be permissible between 7:00 a.m. to 9:00 a.m. and 4 p.m. to 7 p.m. on weekdays. The

Contractor must stage the construction to minimize the frequency and duration of lane closures. The Contractor shall provide a complete schedule and traffic control plan for City approval prior to beginning construction. See the Right of Way Conditions Special Stipulations in Appendix C for requirements related to easement areas and for additional stipulations in regards to traffic control along specific parcels.

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

Water Service Outages

All water service outages shall be minimized and shall be approved in writing at least 72 hours in advance of the requested outage as per the Contract Documents. A designated DeKalb County Department of Watershed Management (DWM) representative must be present for the duration of scheduled outages.

Schedule

Notice to Proceed is expected to be given in March 2016 and the Contractor shall mobilize within 10 days of receiving notice to proceed. Work shall be completed within 190 calendar days beginning from either the first day of construction activity, or 10 days of the Notice to Proceed is issued, whichever occurs first. Once construction begins in an area, the Contractor shall work diligently and without delay to complete the work in order to minimize disruption to the property owners. There are specific schedule and testing requirements for elements of the Water Main Replacement portions of the Project. These requirements are contained in the Contract Documents pertaining to Water Main Replacement. The Contractor is responsible to become familiar with these requirements prior to submitting a bid proposal.

Traffic signal loops must be reinstalled within 7 days of final paving. Temporary pavement marking must be installed prior to opening areas to traffic. Thermoplastic pavement markings must be installed no sooner than 30 days after paving but no later than 60 days after paving. Should the Contractor fail to meet these requirements the City will remove these items from the Contract and deduct from the Contract any additional costs incurred by the City to complete the work.

Delay in completion of the project results in additional management and testing costs to the City and erosion of public confidence and goodwill. The Failure or delay in completing work on time will result in daily deductions as outlined in Section 108.08 of GDOT's Standard Specifications, but in no case shall the daily deduction be less than $350/day. For each day 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 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.

Water Main Notes:

1. Regarding Detail 12 on Sheet C-15: Under pavement the city will allow Type II backfill material or GDOT Type IIIC1 or better soil for the initial and final backfill zones under pavement. As an alternative to the 1.5" asphalt topping, the concrete cap may be poured flush with the surrounding asphalt provided a smooth riding surface is provided.

Paving Notes:

1. The paving quantities are based on 2 inches of milling and inlay with 12.5 mm Superpave. Areas for patching will be marked at the time of paving.
2. The patching quantity assumes a 4-inch deep, 25 mm Superpave patch. The unit price shall include all milling, cleaning, tack and asphalt associated with the patching.
3. Striping will be at the direction of the city's representative. Marking tape is permissible for temporary pavement markings on milled surfaces and freshly paved asphalt. The pre-marking layout shall be approved by the City prior to temporary or permanent pavement marking.
4. The maximum allowable time between milling and placing new pavement will be 72 hours.
5. A material transfer vehicle is not required unless the plant and mix used require one as noted on GDOT's QPL 45.

General Notes:

1. The Contractor is responsible for calling for utility locations prior to the start of work. The Contractor shall locate below ground and above ground utilities that may be affected by the work using whatever means may be appropriate. It shall be the Contractor's responsibility to coordinate his work with any utility owner who may be in conflict with his work. No claims for additional utility locate compensation will be considered unless a specific pay item has been included on the Bid Form.

2. The Specifications, the Drawings, and other Contract Documents shall be complementary to each other, and any material, workmanship, and/or service which may be in one, but not

called for in the others, shall be binding as if indicated, called for, or implied by all. If conflicts or discrepancies between the Bid Documents, Engineering drawings and referenced specifications arise during the course of the construction work, the conflicts or discrepancies shall be immediately brought to the attention of the Engineer, who will evaluate the conflict or discrepancies based on the design intent, ultimate use, and/or intended goal(s) of the of the project. If the conflict cannot be satisfactorily resolved in this way the most stringent requirements will apply.

3. Each section or type of work is described separately in the Technical Specifications; however, should any item of material, equipment, work, or combinations of such be required in one section, and not be described in that section and a similar item described in another section, that description shall apply regardless of the section under which it is described.

4. Upon the completion of each work activity, any excess items which might be left over from the construction related work shall be removed and disposed of properly by the Contractor. The cost for such removal and disposal of such items will be included in the Contractor's Unit Price Bid. No claims will be considered for extra compensation.

5. Under the road improvements scope, "Department", "Engineer", and "Resident Engineer" shall mean the "City of Dunwoody, Georgia, Public Works Director or City of Dunwoody, Georgia or Public Works Designee".

6. Under this Contract, the terms "County Representative," "County Engineer," "County Construction Manager," "County Inspector," "County Attorney," etc. shall refer to the Owner for all elements of the Water Main Replacement phases of the Project. The Owner shall be the DeKalb County Department of Watershed Management Capital Improvements Program Director (Director) and any personnel designated by the Director, including those designated by the DeKalb County, Georgia Government and its designated Engineers, Construction Managers, Project Managers, Inspectors.

7. With respect to the Water Main Replacement portions of the Work, terms "City" and "County" and variations of same in the Contract Documents shall be interchangeable with regards to all Contract enforcement authority.

8. Contractor shall have all vehicles marked with their company name.

9. The Contractor will conduct, at Dunwoody City Hall, one (1) Contract pre-construction meeting shortly after award of the Contract.

10. The City of Dunwoody will not provide restroom facilities on site.

11. The Contract shall perform project housekeeping/clean-up on a daily basis. A 24-hour contact must be provided to the City of Dunwoody for all issues as needed in regards to the project for any safety, signage, or other emergency as needed.

12. The Contractor shall obtain permission from any private property owner on whose property construction equipment may be parked. Failure to obtain permission from property owners may result in citations.

13. Inspections and testing will be performed by a qualified firm hired by the City.

14. If unsuitable soils are found, a recommendation is to be obtained by the Inspector for their mitigation. Unsuitable soils removed without direction from the Engineer will not be considered for reimbursement.

15. 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 can communicate in English.

16. 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 one (1) year.

17. 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. 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. 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.

Bonding and Insurance Requirements

All Bidders are required to submit a Bid Bond or a certified check made payable to the City of Dunwoody in the amount of five percent (5%) of the total amount Bid. The Bid Bond or certified check must be enclosed in the envelope with the sealed Bid.

The awarded Bidder will be required to furnish a Performance Bond equal to 100% of the Contract amount and a Payment Bond equal to 110% of the total Contract amount. Insurance coverage shall be provided as required by the Contract Documents. Bonding Company must be licensed to do business in Georgia, licensed to do business by the Georgia Secretary of State, authorized to do business in Georgia by the Georgia Insurance Department, listed in the Department of the Treasury's Publication of Companies Holding Certificates of Authority as Acceptable Surety on Federal Bonds and as Acceptable Reinsuring Companies and have an A.M. Best rating of A-V or higher.

The awarded Bidder will be required to submit Maintenance Bond valid for 12 months in the amount of the total Bid.

The Contractor shall provide proof of insurance with contractual liability coverage for Contractor's covenants to and indemnification of the City, the County, and R2T under the Contract. See Section 14.7 of the Sample Contract in Appendix A for detailed insurance requirements.

BID FORM

Chamblee Dunwoody Road Water Main Replacement and Road Improvements- Womack Road to Cambridge Drive

PAY ITEM	ITEM DESCRIPTION	UNIT PRICE	UNIT	QUANTITY	TOTAL
	PAVING ITEMS				
150-1000	TRAFFIC CONTROL		LS	1	
402-1802	RECYCLED ASPH CONC PATCHING, INCL BITUM MATL & H LIME		TN	850	
402-1812	RECYCLED ASPH CONC LEVELING, INCL BITUM MATL & H LIME		TN	1100	
402-3121	RECYCLED ASPH CONC 25 MM SUPERPAVE, GP 1 OR GP 2, INCL BITUM MATL & H LIME		TN	2200	
402-3130	RECYCLED ASPH CONC 12.5 MM SUPERPAVE, GP 2 ONLY, INCL BITUM MATL & H LIME		TN	2200	
402-3190	RECYCLED ASPH CONC 19 MM SUPERPAVE, GP 1 OR GP 2, INCL BITUM MATL & H LIME		TN	2200	
413-1000	BITUM TACK COAT		GL	1800	
432-5010	MILL ASPH CONC PVMT, VARIABLE		SY	22000	
652-0120	THERMOPLASTIC PVMT MARKING, ARROW, TP 2		EA	6	
652-0094	PAVEMENT MARKING SYMBL, TP 4		EA	31	
653-0110	PAVEMENT MARKING ARROW, TP 1		EA	31	
653-1501	THERMOPLASTIC SOLID TRAF STRIPE, 5 IN, WHITE		LF	4300	
653-1502	THERMOPLASTIC SOLID TRAF STRIPE, 5 IN, YELLOW		LF	10100	
653-1704	THERMOPLASTIC SOLID TRAF STRIPE, 24 IN, WHITE		LF	250	
653-1804	THERMOPLASTIC SOLID TRAF STRIPE, 8 IN, WHITE		LF	1300	
653-3501	THERMOPLASTIC SKIP TRAF STRIPE, 5 IN, WHITE		GLF	3000	
653-3502	THERMOPLASTIC SKIP TRAF STRIPE, 5 IN, YELLOW		GLF	450	
653-6006	THERMOPLASTIC TRAF STRIPING, YELLOW		SY	200	
654-1001	RAISED PVMT MARKERS TP 1		EA	122	
654-1003	RAISED PVMT MARKERS TP 3		EA	292	
				Paving Total	

BID FORM

Chamblee Dunwoody Road Water Main Replacement and Road Improvements- Womack Road to Cambridge Drive

PAY ITEM	ITEM DESCRIPTION	UNIT PRICE	UNIT	QUANTITY	TOTAL
	WATER MAIN REPLACEMENT ITEMS				
150-1000	TRAFFIC CONTROL		LS	1	
163-0001	EROSION CONTROL PER WATER MAIN DRAWINGS		LS	1	
441-0016	DRIVEWAY CONCRETE, 6 IN THICK		SY	40	
441-0104	CONCRETE SIDEWALK, 4 IN		SY	50	
441-6216	CONCRETE CURB & GUTTER, 8 IN X 24 IN, TP 2		LF	500	
500-3200	CONCRETE ENCASEMENT, 12” THICK		CY	68	
615-1000	JACK AND BORE PIPE		LF	270	
670-0001	FLOWABLE FILL (ABANDON WATERLINE AND GROUT FILL)		CY	65	
670-1001	POLYETHYLENE ENCASEMENT, WATER MAIN		LF	200	
670-1060	WATER MAIN, 6” DIP		LF	310	
670-1080	WATER MAIN, 8” DIP		LF	5,000	
670-1500	CAP OR REMOVE EXISING WATER MAIN (PROPERLY DISPOSE OF WM, INCL ASBESTOS CEMENT PIPE)		EA	5	
670-1600	CUT & PLUG EXISTING WATER MAIN		EA	4	
670-2002	VALVE MARKER		EA	51	
670-2003	AIR RELEASE VALVE ASSEMBLY & Vault		EA	2	
670-2060	GATE VALVE, 6” W/BOX & PAD		EA	15	
670-2080	GATE VALVE, 8” W/BOX & PAD		EA	25	
670-3066	TAPPING SLEEVE & VALVE ASSEMBLY, 6” X 6”		EA	7	
670-3086	TAPPING SLEEVE & VALVE ASSEMBLY, 8” X 6”		EA	2	
670-3087	TAPPING SLEEVE & VALVE ASSEMBLY; 8” X 8”		EA	2	
670-4000	FIRE HYDRANT ASSEMBLY (NO VALVE INCLUDED)		EA	11	
670-4500	CONCRETE THRUST COLLAR, 6 IN PIPE OR SMALLER		EA	10	
670-4510	CONCRETE THRUST COLLAR. 8 IN PIPE		EA	10	
670-5620	WATER SERVICE LINE, 3/4-INCH		LF	400	
670-5010	WATER SERVICE LINE, 1-INCH		LF	100	
670-5015	WATER SERVICE LINE, 1 1/2-INCH		LF	100	
670-5020	WATER SERVICE LINE, 2-INCH		LF	150	
670-7000	STEEL CASING, 18-INCH		LF	270	
670-9400	REPLACEMENT OF UNSUITABLE TRENCH MATERIAL		CY	15	
670-9710	RELOCATE EXIST. FIRE HYDRANT AND ASSEMBLY		EA	2	

BID FORM

Chamblee Dunwoody Road Water Main Replacement and Road Improvements- Womack Road to Cambridge Drive

PAY ITEM	ITEM DESCRIPTION	UNIT PRICE	UNIT	QUANTITY	TOTAL
670-9729	REPLACE EXIST. WATER METER & BOX		EA	10	
670-9730	RELOCATE EXISTING WATER METER, INCL BOX		EA	10	
670-9728	REPLACE EXISTING WATER METER, BOX,& CUSTOMER CUT OFF VALVE & BOX		EA	50	
670-9741	REMOVE OR RELOCATE EXISTING BACKFLOW PREVENTION ASSEMBLY, METER, AND VAULT. <4"		EA	3	
670-1650	BACKFLOW PREVENTION ASSEMBLY, < 8"		EA	1	
670-9920	REMOVE EXISTING FIRE HYDRANT		EA	3	
670-9743	RELOCATE EXISTING BACKFLOW PREVENTER, ¾" TO 2"		EA	2	
CSR	COORDINATED SITE RESTORATION	$200,000	LS	1	$200,000
P-01	SUBSURFACE UTILITY ENGINEERING TEST HOLES OWNER DIRECTED SUE BETWEEN STA 33+00 TO STA 46+00		EA	15	
	WATER MAIN REPLACEMENT TOTAL				

TOTAL BID _____

Company Name: _____

BID FORM

Chamblee Dunwoody Road Water Main Replacement and Road Improvements- Womack Road to Cambridge Drive

The Unit Price Bid Items provided for in the Bid Schedule are intended to be the only pay items under which the Contractor will be compensated for work described above. The Contractor shall examine the requirements of the work and the pay items in the Bid Schedule and include in the unit prices submitted all labor, equipment, materials, appurtenances, overhead, profit, vehicles, and all other things incidental for the completion of the work as specified.

Work is to commence on or about March 2016. The City of Dunwoody requires pricing to remain firm for the duration of the Contract. Failure to hold firm pricing for the term of the Contract will be sufficient cause for the City to declare Bid non-responsive.

Certification of Non-Collusion in Quote Preparation _____

Signature Date

Termination for Cause: The City may terminate this agreement for cause upon ten days prior written notice to the Contractor of the Contractor'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 Contractor. In the event of the City's termination of this agreement for convenience, the Contractor 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 Contractor, 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 Contractor. In the event of the City's termination of this Agreement for fund appropriation, the Contractor 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.

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

Addendum No. Date _____ _____ _____ _____

_____ _____ _____ _____

In compliance with the attached specifications, the undersigned offers and agrees, within ninety (90) days of the date of quote opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, delivered to the designated point(s) within the time specified in the quote schedule.

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 _____

Email Address _____

REFERENCES

List below customers for whom you have provided similar products or services.

1. COMPANY NAME: _____

   ADDRESS: _____

   _____

   CONTACT PERSON: _____

   PHONE NO.: _____

   E-MAIL: _____

2. COMPANY NAME: _____

   ADDRESS: _____

   _____

   CONTACT PERSON: _____

   PHONE NO.: _____

   E-MAIL: _____

3. COMPANY NAME: _____

   ADDRESS: _____

   _____

   CONTACT PERSON: _____

   PHONE NO.: _____

   E-MAIL: _____

Company Name: _____

BID FORM

Chamblee Dunwoody Road Water Main Replacement and Road Improvements- Womack Road to Cambridge Drive

SAMPLE

Solicitation No. _____

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Dunwoody has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this Contract, Contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Dunwoody at the time the subcontractor(s) is retained to perform such service.

_____
E-Verify * User Identification Number

Company Name
_____

_____
BY: Authorized Officer or Agent Date
(Contractor Signature)

_____
Title of Authorized Officer or Agent of Contractor

_____
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

_____ DAY OF _____, 200__

_____
Notary Public

My Commission Expires:
_____

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is "E-Verify" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

SAMPLE

Affidavit Verifying Status for City Public Benefit Application

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

1) _____ I am a United States citizen

OR

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

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

Signature of Applicant: Date

_____ _____

Printed Name:
_____

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
____ DAY OF _____, 20__

*_____
Alien Registration number for non-citizens

Notary Public
My Commission Expires:

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

_____

ATTENTION

FAILURE TO RETURN THE FOLLOWING DOCUMENTS MAY RESULT IN BID BEING DEEMED NON-RESPONSIVE AND AUTOMATIC REJECTION:

1. FAILURE TO USE CITY BID FORM.

2. FAILURE TO RETURN APPLICABLE COMPLIANCE SHEETS/SPECIFICATION SHEETS INCLUDING CONTRACTOR AFFIDAVIT AND AGREEMENT, AFFIDAVIT VERIFYING STATUS FOR CITY PUBLIC BENEFIT APPLICATION, FEDERAL AID CERTIFICATION, DBE GOALS FORM AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT.

3. FAILURE TO ACKNOWLEDGE APPLICABLE ADDENDA.

4. FAILURE TO PROVIDE INFORMATION ON ALTERNATES OR EQUIVALENTS.

5. THE CITY SHALL BE THE SOLE DETERMINANT OF TECHNICALITY VS. NON-RESPONSIVE BID.

6. FAILURE TO PROVIDE BID BOND, WHEN REQUIRED, WILL RESULT IN BID BEING DEEMED NON-RESPONSIVE AND AUTOMATIC REJECTION. BID BONDS ARE NOT REQUIRED ON ALL BIDS. BOND REQUIREMENTS ARE CLEARLY STATED ON THE INVITATION TO BID. IF YOU NEED CLARIFICATION, CONTACT PURCHASING.

BID FORM

Chamblee Dunwoody Road Water Main Replacement and Road Improvements- Womack Road to Cambridge Drive

CITY OF DUNWOODY
DEPARTMENT OF FINANCE AND ADMINISTRATION – PURCHASING DIVISION
GENERAL INSTRUCTIONS FOR BIDDERS

These Instructions will apply unless a particular item is specifically addressed in the solicitation document or not relevant to the particular type of good or service.

1. PREPARATION OF BIDS:

A. Each Bidder shall examine the drawings, specifications, schedule and all instructions. Failure to do so will be at the Bidder's risk, as the Bidder will be held accountable for their Bid response.

B. Each Bidder shall furnish all information required by the Bid Form or document. Each Bidder shall sign the Bid and print or type his or her name on the schedule. The person signing the Bid must initial erasures or other changes. An authorized agent of the company must sign Bids.

C. Individuals, firms and businesses seeking an award of a City of Dunwoody contract may not initiate or continue any verbal or written communications regarding a solicitation with any City officer, elected official, employee or other City representative without the permission of Purchasing between the date of the issuance of the solicitation and the date of the final Contract award. Violations will be reviewed by the Purchasing Manager. If determined that such communication has compromised the competitive process, the offer submitted by the individual, firm or business may be disqualified from consideration for award.

2. DELIVERY:

A. Each Bidder should state time of proposed delivery of goods or services.

B. Words such as "immediate," "as soon as possible," etc. shall not be used. The known earliest date or the minimum number of calendar days required after receipt of order (delivery A.R.O.) shall be stated (if calendar days are used, include Saturday, Sunday and holidays in the number).

3. EXPLANATION TO BIDDERS:

Any explanation desired by a Bidder regarding the meaning or interpretation of the invitation for Bids, drawings, specifications, etc. must be requested by the question cutoff deadline stated in the solicitation in order for a reply to reach all Bidders before the close of Bid. Any information given to a prospective Bidder concerning an invitation for Bid will be furnished to all prospective Bidders as an addendum to the invitation if such information is necessary or if the lack of such information would be prejudicial to uninformed Bidders. The written Bid Documents supersede any verbal or written communications between parties. Receipt of addendum should be acknowledged in the Bid. Although Purchasing will make every effort to send any addendum to known Bidders, it is the Bidder's ultimate responsibility to ensure that they have all applicable Addenda prior to Bid submittal. This may be accomplished via contact with Purchasing prior to Bid submittal.

4. SUBMISSION OF BIDS:

A. Bids shall be enclosed in sealed envelopes, addressed to the City of Dunwoody Purchasing Office with the name of the Bidder, the date and hour of opening and the invitation to Bid number on the face of the envelope. Telegraphic/faxed Bids will not be considered. Any Addenda should be enclosed in the sealed envelopes as well.

B. ADD/DEDUCT: Add or deduct amounts indicated on the outside of the envelope are allowed and will be applied to the lump sum amount. Amount shall be clearly stated and should be initialed by an authorized company representative.

C. Samples of items, when required, must be submitted within the time specified and, unless otherwise specified by the City, at no expense to the City. Unless otherwise specified, samples will be returned at the Bidder's request and expense if items are not destroyed by testing.

D. Items offered must meet required specifications and must be of a quality, which will adequately serve the use and purpose for which intended.

E. Full identification of each item Bid upon, including brand name, model, catalog number, etc. must be furnished to identify exactly what the Bidder is offering. Manufacturer's literature may be furnished.

F. The Bidder must certify that items to be furnished are new and that the quality has not deteriorated so as to impair its usefulness.

G. Unsigned Bids will not be considered except in cases where Bid is enclosed with other documents, which have been signed. The City will determine this.

H. The City of Dunwoody is exempt from federal excise tax and Georgia sales tax with regard to goods and services purchased directly by the City. Suppliers and Contractors are responsible for federal excise tax and sales tax, including taxes for materials incorporated in City construction projects. Suppliers and contractors should contact the State of Georgia Sales Tax Division for additional information.

I. Information submitted by a Bidder in the Bidding process shall be subject to disclosure after the public opening in accordance with the Georgia Open Records Act. Each page of proprietary information must be identified. Entire Bid may not be deemed proprietary.

5. WITHDRAWAL OF BID DUE TO ERRORS:

A. The Bidder shall give notice in writing of his claim of right to withdraw his Bid without penalty due to an error within two (2) business days after the conclusion of the Bid opening procedure. Bids may be withdrawn from consideration if the price was substantially lower than the other Bids due solely to a mistake therein, provided the Bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and material used in the preparation of the Bid sought to be withdrawn. The Bidder's original work papers shall be the sole acceptable evidence of error and mistake if he elects to withdraw his Bid. If a Bid is withdrawn under the authority of this provision, the lowest remaining responsive Bid shall be deemed to be low Bid.

B. No Bidder who is permitted to withdraw a Bid shall, for compensation, supply any material or labor or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn Bid was submitted.

C. Supplier has up to forty-eight (48) hours to notify Purchasing of an obvious clerical error made in calculation of Bid in order to withdraw a Bid after Bid opening. Withdrawal of Bid for this reason <u>must</u> be done in writing within the forty-eight (48) hour period. Suppliers who fail to request withdrawal of Bid by the required forty-eight (48) hours shall automatically forfeit bid bond. Bid may not be withdrawn otherwise.

D. Bid withdrawal is not automatically granted and will be allowed solely at the City of Dunwoody's discretion.

6. TESTING AND INSPECTION:

Since tests may require several days for completion, the City reserves the right to use a portion of any supplies before the results of the tests are determined. Cost of inspections and tests of any item, which fails to meet the specifications, shall be borne by the Bidder.

7. F.O.B. POINT:

Unless otherwise stated in the invitation to Bid and any resulting Contract, or unless qualified by the Bidder, items shall be shipped F.O.B. Destination. The seller shall retain title for the risk of transportation, including the filing for loss or damages. The invoice covering the items is not payable until items are delivered and the contract of carriage has been completed. Unless the F.O.B. clause states otherwise, the seller assumes transportation and related charges either by payment or allowance.

8. PATENT INDEMNITY:

The Contractor guarantees to hold the City, its agents, officers or employees harmless from liability of any nature or kind for use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the Contract, for which the Contractor is not the patentee, assignee or licensee.

9. BID BONDS AND PAYMENT AND PERFORMANCE BONDS (IF REQUIRED):

A five percent (5%) bid bond, a one hundred percent (100%) performance bond, and a one hundred ten percent (110%) payment bond shall be furnished to the City of Dunwoody for any Bid as required in Bid package or

document. Failure to submit appropriate bonding will result in automatic rejection of Bid. Bonding company must be authorized to do business in Georgia by the Georgia Insurance Commission, listed in the Department of the Treasury's publication of companies holding certificates of authority as acceptable surety on Federal bonds and as acceptable reinsuring companies, and have an A.M. Best rating as stated in the insurance requirement of the solicitation.

10. AWARD:

A. Award will be made to the lowest reliable Bidder whose proposal shall have met all the prescribed requirements. The quality of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the City, and the delivery terms will be taken into consideration in making the award. The City may make such investigations as it deems necessary to determine the ability of the Bidder to perform, and the Bidder shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any Bid if the evidence submitted by, or investigation of such Bidder fails to satisfy the City that such Bidder is properly qualified to carry out the obligations of the Contract.

B. The City reserves the right to reject or accept any or all Bids and to waive technicalities, informalities and minor irregularities in Bids received.

C. The City reserves the right to make an award as deemed in its best interest, which may include awarding a Bid to a single Bidder or multiple Bidders; or to award the whole Bid, only part of the Bid, or none of the Bid to single or multiple Bidders, based on its sole discretion of its best interest.

11. DELIVERY FAILURES:

Failure of a Contractor to deliver within the time specified or within reasonable time as interpreted by the Purchasing Manager, or failure to make replacement of rejected articles/services when so requested, immediately or as directed by the Purchasing Manager, shall constitute authority for the Purchasing Manager to purchase in the open market articles/services of comparable grade to replace the articles/services rejected or not delivered. On all such purchases, the Contractor shall reimburse the City within a reasonable time specified by the Purchasing Manager for any expense incurred in excess of Contract Prices, or the City shall have the right to deduct such amount from monies owed the defaulting Contractor. Alternatively, the City may penalize the Contractor one percent (1%) per day for a period of up to ten (10) days for each day that delivery or replacement is late. Should public necessity demand it, the City reserves the right to use or consume articles delivered which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Manager.

12. CITY FURNISHED PROPERTY:

No material, labor or facilities will be furnished by the City unless so provided in the invitation to Bid.

13. REJECTION AND WITHDRAWAL OF BIDS:

Failure to observe any of the instructions or conditions in this invitation to Bid may constitute grounds for rejection of Bid.

14. CONTRACT:

A. Each Bid is received with the understanding that the acceptance in writing by the City of the offer to furnish any or all of the commodities or services described therein shall constitute a Contract between the Bidder and the City which shall bind the Bidder on his part to furnish and deliver the articles quoted at the prices stated in accordance with the conditions of said accepted Bid. The City, on its part, may order from such Contractor, except for cause beyond reasonable control, and to pay for, at the agreed prices, all articles specified and delivered.

B. It is understood that the Bidder has reviewed the Contract Documents with the understanding that the City of Dunwoody requires that all agreements between the parties must be entered into via this document. If any exceptions are taken to any part, each must be stated in detail and submitted as part of the Bid. If no exceptions are stated, it is assumed that the Bidder fully agrees to the provisions contained in the "Sample Contract" in its entirety.

C. When the Contractor has performed in accordance with the provisions of this agreement, the City of Dunwoody shall pay to the Contractor, within thirty (30) days of receipt of any department approved payment request and based upon work completed or service provided pursuant to the Contract, the sum so requested, less a 10% retainage, if any.

15. NON-COLLUSION:

Bidder declares that the Bid is not made in connection with any other Bidder submitting a Bid for the same commodity or commodities, and that the Bid is bona fide and is in all respects fair and without collusion or fraud. An affidavit of non-collusion shall be executed by each Bidder. Collusion and fraud in Bid preparation shall be reported to the State of Georgia Attorney General and the United States Justice Department.

16. DEFAULT:

The Contract may be canceled or annulled by the Purchasing Manager in whole or in part by written notice of default to the Contractor upon non-performance or violation of Contract terms. An award may be made to the next low responsive and responsible Bidder, or articles specified may be purchased on the open market similar to those so terminated. In either event, the defaulting Contractor (or his surety) shall be liable to the City for costs to the City in excess of the defaulted Contract Prices; provided, however, that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this clause. Failure of the Contractor to deliver materials or services within the time stipulated on his Bid, unless extended in writing by the Purchasing Manager, shall constitute Contract default.

17. TERMINATION FOR CAUSE:

The City may terminate this agreement for cause upon ten days prior written notice to the Contractor of the Contractor'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.

18. TERMINATION FOR CONVENIENCE:

The City may terminate this agreement for its convenience at any time upon 30 days written notice to the Contractor. In the event of the City's termination of this agreement for convenience, the Contractor 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 Contractor, which shall itemize each element of performance.

19. DISPUTES:

Except as otherwise provided in the Contract Documents, any dispute concerning a question of fact arising under the Contract which is not disposed of shall be decided after a hearing by the Purchasing Manager, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Purchasing Manager shall be final and binding; however, the Contractor shall have the right to appeal said decision to a court of competent jurisdiction.

20. SUBSTITUTIONS:

Bidders offering and quoting on substitutions or who are deviating from the attached specifications shall list such deviations on a separate sheet to be submitted with their Bid. The absence of such a substitution list shall indicate that the Bidder has taken no exception to the specifications contained herein.

21. INELIGIBLE BIDDERS:

The City may choose not to accept the Bid of a Bidder who is in default on the payment of taxes, licenses or other monies due to the City. Failure to respond to three (3) consecutive times for any given commodity/service may result in removal from the supplier list under that commodity/service.

22. BUSINESS LICENSE:

Each successful Bidder shall provide evidence of a valid City of Dunwoody business license if the Bidder maintains an office within the City of Dunwoody. Unincorporated, out of City, and out of State Bidders are required to provide evidence of a certificate to do business in any town, County or municipality in the State of Georgia, or as otherwise required by City ordinance or resolution.

23. ALTERATIONS OF SOLICITATION AND ASSOCIATED DOCUMENTS:

Alterations of City documents are strictly prohibited and will result in automatic disqualification of the firm's solicitation response. If there are "exceptions" or comments to any of the solicitation requirements or other language, then the firm may make notes to those areas, but may not materially alter any document language.

24. TAX LIABILITY:

Local and state governmental entities must notify Contractors of their use tax liability on public works projects. Under Georgia law, private Contractors are responsible for paying a use tax equal to the sales tax rate on material and equipment purchased under a governmental exemption that is incorporated into a government construction project: excluding material and equipment provided for the installation, repair, or expansion of a public water, gas or sewer system when the property is installed for general distribution purposes. To the extent the tangible personal property maintains its character (for example the installation of a kitchen stove), it remains tax-exempt. However, if the installation incorporates the tangible personal property into realty, e.g., the installation of sheetrock, it becomes taxable to the private Contractor.

See O.C.G.A. 48-8-3(2) and O.C.G.A. 48-8-63

25. GENERAL CONTRACTORS LICENSE:

All General Contractors must have a current valid license from the State Licensing Board for Residential and General Contractors, unless specifically exempted from holding such license pursuant to Georgia law (O.C.G.A. Section 43-41-17).

26. INDEMNIFICATION:

To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless the City, the County, the Engineers, and their agents and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses, including, but not limited to, attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, action, judgment, cost, penalty, liability, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission 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, regardless whether such claim is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any of the rights or obligations of indemnity which would otherwise exist as to any party or person described in this agreement. In any and all claims against the City, the County, the Engineers, or any of their agents 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 contained herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation Acts, disability benefit acts, or other employee benefit acts.

27. 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.

DIRECTIONS TO DUNWOODY CITY HALL

From I-285 take Exit 29 (Ashford-Dunwoody Rd.) and turn North. At fourth traffic light, turn right onto Perimeter Center East. The entrance to the parking lot for 41 Perimeter East will be on the right. The City of Dunwoody offices are on the second floor of 41 Perimeter Center East.

APPENDIX A
SAMPLE CONTRACT AND GENERAL CONDITIONS
DO NOT SIGN CONTRACT. DO NOT SUBMIT WITH BID.

CONTRACT

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

WITNESSETH: That the said Contractor has agreed, and by these presents does agree with the said City, for the consideration herein mentioned and under the provision of the Performance Bond and Payment Bond required by the Specifications to furnish all equipment, tools, materials, skill and labor of every description necessary to carry out and complete in a good, firm and substantial and workmanlike manner, the work specified, in strict conformity with the drawings and specifications, together with the foregoing proposal made by the Contractor, the Advertisement, Addenda, the Instructions to Bidders, General Conditions, General Requirements, Supplemental Conditions, Special Provisions, the Intergovermental Agreement between the City of Dunwoody, Georgia and DeKalb County, Georgia, and this Contract, shall all form essential parts to this Contract, and together are known as the Contract Documents. The work covered by this Contract includes all work shown on plans and specifications and listed in the conditions and specifications to wit:

(Description)

The Contractor awarded work under this Contract shall commence work within ten (10) days after the issuance of the Notice to Proceed and shall fully complete all work hereunder within _____ consecutive calendar days from and after said date.

If said work is not completed within the time stated, the Contractor shall be liable and hereby agrees to pay the City as liquidated damages and not as a penalty, the amount as outlined in Section 108.08 of GDOT's Standard Specifications as liquidation of the extra expense incurred by the City and liquidated damages to the City.

The City shall pay and the Contractor shall receive the prices stipulated in the proposal hereto attached as full compensation for everything furnished and done by the Contractor under this Contract, which shall in no event exceed ($) based on the proposal which sum shall be paid in the manner and terms specified in the Contract Documents, but before issuance of certificate of payment, if the Contractor shall not have submitted evidence satisfactory to the City that all payrolls, materials bills, and other indebtedness connected with the work have been paid, the City may withhold, in addition to the retained percentages, such amount or amounts as may be necessary to pay just claims for labor and services rendered and materials in and about the work, and such amount or amounts withheld or retained may be applied by the City to the payment of such just claims.

When the Contractor has performed in accordance with the provisions of this Contract, City shall pay to the Contractor, within thirty (30) days of receipt of any Department or County approved payment request and based upon work completed or service provided pursuant to the Contract, the sum so requested, less the retainage stated in this Contract, if any. In the event that the City fails to pay the Contractor within sixty (60) days of receipt of a Department or County approved pay request based upon work completed or service provided pursuant to the Contract, the City shall pay the Contractor interest at the rate of l/2% per month or pro rata

fraction thereof, beginning the sixty-first (61st) day following receipt of the Department of County approved pay request. The Contractor's acceptance of progress payments or final payment shall release all claims for interest on said payments.

It is further mutually agreed between the Parties hereto that if, at any time after the execution of the Contract and the Performance Bond for its faithful performance and the Payment Bond, the first party shall deem the surety or sureties upon such bond to be inadequate to cover the performance of the work, the second party shall, at its expense, within five (5) days after the receipt of notice from the first party to do so, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the first party. In such event, no further payment to the second party shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the work shall be furnished in a manner and form satisfactory to the first party.

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.

(Signatures Next Page)

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

CITY OF DUNWOODY, GEORGIA

By: _____
Denis Shortal, Mayor
City of Dunwoody, Georgia

ATTEST:

_____
Signature

_____
Print Name
City Clerk/ City of Dunwoody

APPROVED AS TO FORM:

_____
Signature
City of Dunwoody Staff Attorney

SERVICE PROVIDER:_____

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 Unless otherwise noted in the General Conditions or Special Provisions, 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.

11.8 A 10% retainage will be withheld from the progress payments.

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, the County, River to Tap, Inc., and the members (including, without limitation, members of the City's Council and Board of County Commissioners, and members of the citizens' advisory committees of each), officers, employees and agents of each, with regards to Paragraph 14, each and all collectively referred to as the City, 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, the County, the Engineers and the members (including, without limitation, all members of the governing City's Council, the County's Board of Commissioners 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 is to be provided with limits not less than the following:

$1,000,000 per occurrence for bodily injury and property damage liability
$1,000,000 personal and advertising injury liability
$2,000,000 general aggregate
$2,000,000 products-completed operations aggregate
$100,000 damage to rented premises (each occurrence)
$5,000 medical expense (any one person)

Insurance shall include 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, County and 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 $1,000,000 for "each accident," $1,000,000 for "disease policy limit," and $1,000,000 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 Umbrella or Excess Coverage is to be provided with General Liability, Auto Liability, and Employers Liability scheduled as underlying policies with limits not less than the following:

$5,000,000 per occurrence
$5,000,000 aggregate

14.7.4 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.

14.7.5 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.

14.7.6 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 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 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.

It is recognized that the attached Intergovernmental Agreement (IGA) between the City of Dunwoody, Georgia and DeKalb County, Georgia extends certain Owner authority to the County and/or its representatives. Nothing in this Contract shall limit the authority provided to the County by the IGA.

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, the Intergovernmental Agreement, 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 or County, and the Contractor shall indemnify and save the City, as described in Paragraph 14, 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 * * * * * * *

SCHEDULE OF LOCAL SMALL BUSINESS ENTERPRISE PARTICIPATION MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE OPPORTUNITY TRACKING FORM

The Chief Executive Officer and the Board of Commissioners of DeKalb County believe that it is important to encourage the participation of small and local businesses in the continuing business of County government; and that the participation of these types of businesses in procurement will strengthen the overall economic fabric of DeKalb County, contribute to the County's economy and tax base, and provide employment to local residents. Therefore, the Chief Executive Officer and the Board of Commissioners have made the success of local small businesses a permanent goal of DeKalb County by implementing the Local Small Business Enterprise Ordinance.

PROVISIONS OF LOCAL SMALL BUSINESS ENTERPRISE (LSBE) ORDINANCE

Amount of LSBE Participation Required
20% of Total Award

	Request For Proposals (RFP)	Invitations To Bid (ITB)
LSBE Within DeKalb (LSBE-DeKalb)	Ten (10) Percentage Points	Ten (10) Percent Preference
LSBE Outside DeKalb (LSBE-MSA)	Five (5) Percentage Points	Five (5) Percent Preference

Certified Local Small Business Enterprises (LSBEs) located within DeKalb County and prime contractors utilizing LSBEs that are locally-based inside DeKalb County shall receive ten (10) percentage points in the initial evaluation of their response to any Request for Proposal and a ten (10) percent preference on all responses to any Invitation to Bid. Certified LSBEs located outside of DeKalb County but within the ten (10) County Metropolitan Statistical Area (MSA) consisting of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry and Rockdale Counties shall receive five (5) percentage points in the initial evaluation of their response to any Request for Proposal and a five (5) percent preference on all responses to any Invitation to Bid.

For all qualified sealed solicitations, the Director of Purchasing and Contracting, DeKalb County Government, shall determine if the bidder/proposer has included written documentation showing that at least twenty percent (20%) of the total contract award will be performed by a certified LSBE. This written documentation shall be in the form of a notarized Schedule of LSBE Participation (Attached hereto as Exhibit "A".) For all contracts, a signed letter of intent from all certified LSBEs describing the work, material, equipment and/or services to be performed or provided by the LSBE(s) and the agreed upon dollar value shall be due with the bid or proposal documents and included with Exhibit "A". The certified vendor list compiled by the Contract Compliance Division, Purchasing and Contracting Department, DeKalb County Government establishes the group of Certified LSBE's from which the bidder/proposer must solicit subcontractors for LSBE participation.

Contractors failing to meet the LSBE benchmark must document and demonstrate Good Faith Efforts in accordance with the attached "Checklist for Good Faith Efforts" portion of "Exhibit A." Failure to achieve the LSBE benchmark or demonstrate good faith efforts may result in a bid or proposal being rejected. The notarized Schedule of LSBE Participation shall be due and submitted with each bid or proposal. Failure to complete and submit the notarized Schedule of LSBE Participation will result in a bid or proposal being rejected.

Upon award, Prime Contractors are required to submit a report detailing LSBE/Sub-Contractor usage with each request for payment and not less than on a monthly basis. Prime Contractors are also required to certify that all sub-contractors have been paid within seven (7) days of the Prime's receipt of payment from the County. Failure to provide requested reports/documentation may constitute a material breach of contract, entitling the County to terminate the Contract for default or pursue other remedies. LSBE sub-contractors must submit a detailed report of their sub-contracting activity for each County contract they participate in. Sample Report Forms are attached as Exhibit C.

For eligible bids over $5,000,000.00, The Director of Purchasing and Contracting or designee will determine if the Mentor-Protégé provision of the Ordinance will apply.

It is the objective of the Chief Executive Officer and Board of Commissioners of DeKalb County to provide maximum practicable opportunity for all businesses to participate in the performance of government contracts, including Local Small Business Enterprises (LSBE), Minority Business Enterprises (MBE) and Women Business Enterprises (WBE). To achieve this purpose, the County would like to track and record information about participating vendors. The attached "Exhibit A," also records who performs work and renders services to the County. Contractors are requested to indicate whether they are a LSBE, MBE or WBE and list the level of participation by subcontractors designated as such on each solicitation.

"EXHIBIT A"

SCHEDULE OF LOCAL SMALL BUSINESS ENTERPRISE PARTICIPATION MINORITY/WOMEN BUSINESS ENTERPRISE OPPORTUNITY TRACKING FORM

As specified, Bidders and Proposers are to present the details of LSBE, MBE AND WBE participation below:

PRIME BIDDER/PROPOSER_____SOLICITATION NUMBER: _____

TITLE OF UNIT OF WORK –_____

1. My firm, as the prime bidder/proposer on this unit of work, is a certified (check all that apply):
   ____LSBE-DeKalb ____LSBE-MSA ____MBE ____ WBE.

2. If you are a Certified LSBE, MBE or WBE, please indicate below the portion of work (including the percentage of the amount bid/proposal) that your firm will carry out directly: _____.

3. If the prime bidder/proposer is a joint venture, please describe below the nature of the joint venture and level of work and financial participation to be provided by the LSBE, MBE or WBE joint venture firm.
   _____
   _____
   _____

4. List the LSBE, MBE, and/or WBE subcontractors and/or firms (including suppliers) to be utilized in this contract, if awarded. No changes can be made in the subcontractors listed below without the prior written approval of the County. Copy the following page and list additional subcontractors, if necessary. Please attach a signed letter of intent from all certified LSBEs describing the work, materials, equipment or services to be performed and/or provided and the agreed upon dollar value. A Letter of Intent form is attached hereto as Exhibit "B".

Name of Company	
Address	
Telephone	
Fax	
Contact Person	
Indicate all that apply and attach proof of certification: LSBE-DeKalb/LSBE-MSA/MBE/WBE	
Description of services to be performed	

Percentage of work or estimated contract award amount to be performed	

Name of Company	
Address	
Telephone	
Fax	
Contact Person	
Indicate all that apply and attach proof of certification: LSBE-DeKalb/LSBE-MSA/MBE/WBE	
Description of services to be performed	
Percentage of work or estimated contract award amount to be performed	

Name of Company	
Address	
Telephone	
Fax	
Contact Person	
Indicate all that apply and attach proof of certification: LSBE-DeKalb/LSBE-MSA/MBE/WBE	
Description of services to be performed	
Percentage of work or estimated contract award amount to be performed	

Name of Company	
Address	
Telephone	
Fax	
Contact Person	
Indicate all that apply and attach proof of certification: LSBE-DeKalb/LSBE-MSA/MBE/WBE	
Description of services to be performed	
Percentage of work or estimated contract award amount to be performed	

DEKALB COUNTY LOCAL SMALL BUSINESS ENTERPRISE
SCHEDULE OF PARTICIPATION
MINORITY/WOMEN BUSINESS ENTERPRISE OPPORTUNITY TRACKING FORM

Bidder/Proposer Statement of Compliance

Bidder(s)/Proposer(s) hereby state that they have read and understand the requirements and conditions as set forth in the objectives and that reasonable effort were made to support the County in providing the maximum practicable opportunity for the utilization of LSBEs consistent with the efficient and economical performance of this contract. The Bidder and any subcontractors shall file compliance reports at reasonable times and intervals with the County in the form and to the extent prescribed by the Director of DeKalb County Purchasing and Contracting Department. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of Contractors and their subcontractors.

1. **Non-Discrimination Policy**
   a. During the performance of this agreement, Contractor agrees to conform to the following Non-Discrimination Policy adopted by the County.
   b. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. The Contractor will take action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex, national origin, or disability. Such action shall include, but not be limited to, the following:
      (1) Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth provisions of this non-discrimination clause.
      (2) Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability.
   c. Without limiting the foregoing, Contractor shall not discriminate on the basis of disability in the admission or access to, or treatment or employment in, the programs and activities, which form the subject of the contract. The Contractor will take action to ensure that applicants for participation in such programs and activities are considered without regard to disability. Such action shall include, but not be limited to, the following:
      (1) Contractor agrees to post in conspicuous places available to participants in its programs and activities notices to be provided setting forth the provisions of this non-discrimination clause.

(2) Contractor shall, in all solicitations or advertisements for programs or activities, which are the subject of the contract, state that all qualified applicants will receive consideration for participation without regard to disability.

2. **Commitment**

The undersigned certifies that he/she has read, understands, and agrees to be bound by the bid specifications, including the accompanying Exhibits and other terms and conditions of the Invitation to Bid and/or Request for Proposal regarding LSBE utilization. The undersigned further certifies that he/she is legally authorized by the bidder or responder to make the statements and representations in Exhibit A and that said statements and representations are true and correct to the best of his/her knowledge and belief. The undersigned will enter into formal agreement(s) with the LSBE(s) listed in this Exhibit A, which are deemed by the owner to be legitimate and responsible LSBEs. Said agreement(s) shall be for the work and contract with the County. The undersigned understands and agrees that if any of the statements and representations are made by the Bidder knowing them to be false, or if there is a failure of the successful Bidder (i.e., Contractor) to implement any of the stated agreements, intentions, objectives, goals and commitments set forth herein without prior approval of the County, then in any such events the contractor's act or failure to act, as the case may be, shall constitute a material breach of contract, entitling the County to terminate the Contract for default. The right to so terminate shall be in addition to, and not in lieu of, any other rights and remedies the County may have for other defaults under the Contract. Additionally, the Contractor will be subject to the loss of any future contract awards by the County for a period of one year.

Firm Name (Please Print):
_____

Firm's Officer:
_____
_____
(Authorized Signature and Title Required)
Date

Sworn to and Subscribed to before me this____day of_____,
20__.
_____
___

Notary Public
My Commission
Expires:_____

"EXHIBIT B"
LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR
PROVIDING MATERIALS OR SERVICES

Instructions:

1. Complete the form in its entirety and submit with bid documents.

2. Please be advised that LSBEs cannot be removed from a project without pre-approval from Contract Compliance.

3. Executed contracts between the Prime and LSBEs must be submitted with the bid documents. Such contracts shall include a statement that the contract will become effective only upon approval of the contract between the County and the Prime.

(Name of Prime Contractor Firm)

To:_____

From:_____ **☐ LSBE –DeKalb ☐ LSBE –MSA ☐ MBE ☐ WBE**

(Name of Subcontractor Firm) **(Check all that apply)**

ITB Number:_____

Project Name:_____

The undersigned subcontractor is prepared to perform the following described work or provide materials or services in connection with the above project (specify in detail particular work items, materials, or services to be performed or provided).

Description of Materials or Services	Project Commence Date	% of Contract Award	Estimated Dollar Amount

Prime Contractor

Signature:_____

Title:_____

Date:_____

Sub-contractor

Signature:_____

Title:_____

Date: _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, THAT

Name of Contractor: _____

Address of Contractor: _____

(Corporation, Partnership and or Individual) hereinafter called Principal, and _____

_____

(Name of Surety)

_____

(Address of Surety)

A corporation of the State of _____, and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto:

City of Dunwoody Georgia

(Name of Obligee)

41 Perimeter Center East, Suite 250

Dunwoody, Georgia 30346

(Address of Obligee)

herein after referred to as Obligee, in the penal sum of_____ Dollars ($ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to submit, or has submitted, to the City of Dunwoody, Georgia, a proposal for furnishing materials, labor and equipment for:

2016 Water Main Replacement and Road Resurfacing

WHEREAS, the Principal desires to file this Bond in accordance with law in lieu of a certified Bidder's check otherwise required to accompany this Proposal.

NOW, THEREFORE, the conditions of this obligation are such that if the bid is accepted, the Principal shall within 10 days after receipt of notification of the acceptance execute a Contract in accordance with the Bid and upon the terms, conditions, and prices set forth in the form and manner required by the City of Dunwoody, Georgia, and execute a sufficient and satisfactory Performance Bond and Payment Bond payable to the City of Dunwoody, Georgia, each in an amount of 100 percent of the total Contract Price, in form and with security satisfactory to said the City of Dunwoody, Georgia, and otherwise, to be and remain in full force and virtue in law; and The Surety shall, upon failure of the Principal to comply with any or all of the foregoing requirements within the time specified above, immediately pay to the City of Dunwoody, Georgia, upon demand, the amount hereof in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

PROVIDED FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant, to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. SS 13-10-1, et. Seg. and SS 36-86-101, et. Seg., and is intended to be and shall be constructed as a bond in compliance with the requirements thereof.

Signed, sealed, and dated this _____ day of _____, 2016.

ATTEST:

_____ _____

(Principal Secretary) (Principal)

(Seal)

BY: _____

_____ _____

(Witness to Principal) (Address)

_____

(Address)

_____

(Surety)

ATTEST:

_____

(Attorney-in-Fact) and Resident Agent

_____

(Attorney-in-Fact)

(Seal)

_____

(Address)

_____

(Witness as to Surety)

_____

(Address)

_____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: THAT

_____

(Name of Contractor)

_____

(Address of Contractor)

_____

(Corporation, Partnership or Individual)

_____

Hereinafter called Principal, and

_____

(Name of Surety)

_____

(Address of Surety)

A Corporation of the State of _____ and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto

The City of Dunwoody, Georgia

(Name of Obligee)

41 Perimeter Center East, Suite 250

Dunwoody, Georgia 30346

(Address of Obligee)

hereinafter referred to as Obligee; are held firmly bound unto said Obligee and all persons doing work or furnishing skill, tools, machinery, supplies, or material under or for the purpose of the Contract hereinafter referred to, in the penal sum of: _____Dollars ($ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, as whereas the Principal entered into a certain contract, hereto attached, with the Obligee, dated _____for: _____

NOW THEREFORE, the conditions of this obligation are such that if the above bound Principal shall well, truly, fully and faithfully perform said contract according to its terms, covenants, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the oblige, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreement of any and all duly authorized modifications of said contract that may hereafter be made, then his obligation shall be void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that said Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations, or additions to the terms of the Contract or to the Work to be performed there under shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations, or additions to the terms of the Contract or to the work to be performed there under.

PROVIDED FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including but not limited to, O.C.G.A. SS 13-10-1 et. Eq. and SS 36-86-101, et. Seg., and is intended to be and shall be construed as a bond in compliance with the requirements thereof.

Signed, sealed, and dated this _____ day of _____, 2016.

ATTEST:

_____ _____

(Principal Secretary) (Principal)

(SEAL)

BY: _____

_____

(Witness to Principal)

_____

(Address)

_____

(Surety)

ATTEST:

_____

Attorney-in-Fact) and Resident Agent

_____

(Attorney-in-Fact)

(Seal)

_____

(Address)

_____

(Witness as to Surety)

_____

(Address)

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: THAT

_____

(Name of Contractor)

_____

(Address of Contractor)

_____

(Corporation, Partnership or Individual)

_____

Hereinafter called Principal, and

_____

(Name of Surety)

_____

(Address of Surety)

Corporation of the State of _____ and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto

The City of Dunwoody Georgia

(Name of Obligee)

41 Perimeter Center East, Suite 250

Dunwoody, Georgia 30346

(Address of Obligee)

hereinafter referred to as Obligee; for the use and protection of all subcontractors and all persons supplying labor, services, skill, tools, machinery, materials and/or equipment in the prosecution of the work provided for in the contract herein after referred to in the full and just sum of _____Dollars ($_____) in lawful money of the United States, for the payment of which sum well and truly to be made, the Principal and Surety bind themselves, their, and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, as whereas the Principal entered into a certain contract. hereto attached, with the Obligee, dated _____ for _____.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall well, truly, and faithfully perform said Contract in accordance to its terms, covenants, and conditions, and shall promptly pay all persons furnishing labor, materials, services, skill, tools, machinery and/or equipment for use in the performance of said Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect.

All persons who have furnished labor, materials, services, skill, tools, machinery and/or equipment for use in the performance of said Contract shall have a direct right of action on this Bond, provided payment has not been made in full within ninety (90) days after the last day on which labor was performed, materials, services, skill, tools, machinery, and equipment furnished or the subcontract completed.

PROVIDED FURTHER, that said Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations, or additions to the terms of the Contract or to the Work to be performed there under shall in any way affect its obligation on this bond, and it does hereby waive

notice of any such change, extension of time, alterations, or additions to the terms of the Contract or to the work to be performed there under.

PROVIDED HOWEVER, that no suit or action shall be commenced hereunder by any person furnishing labor, materials, services, skill, tools, machinery, and/or equipment having a direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the Principal:

Unless such person shall have given notice to the Principal within 120 days after such person did, or performed the last of the work or labor, or furnished the last of the materials, services, skill, tools, machinery and/or equipment for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials, services, skill, tools, machinery and/or equipment were furnished, or for whom the work or labor was done or performed. Such a notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Principal, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer, and a copy of such notice shall be delivered to the Obligee, to the person and at the address provided for in the Contract, within five days of the mailing of the notice to the Principal.

PROVIDED FURTHER, that any suit under this bond must be instituted before the expiration of one year after the acceptance of the public works covered by the Contract by the proper authorities.

PROVIDED FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. SS 13-10-1, et. Eq. and SS 36-86-101, et. Seg., and is intended to be and shall be construed as a bond in compliance with the requirements thereof.

Signed, sealed, and dated this _____ day of _____, 2016

ATTEST:

_____ _____

(Principal Secretary) (Principal)

(Seal)

BY: _____

_____ _____

(Witness to Principal) (Address)

_____

(Address) _____

(Surety)

ATTEST BY: _____

(Attorney-in-Fact) and Resident Agent

_____

(Attorney-in-Fact)

(Seal)

_____

(Address)

_____

(Witness as to Surety)

_____

(Address)

MAINTENANCE BOND

CITY OF DUNWOODY, GEORGIA

PROJECT NO: _____ DEKALB COUNTY, GEORGIA

BOND NO: _____

KNOW ALL MEN BY THESE PRESENTS that we,_____ as Principal, and _____ as Surety, are held and firmly bound unto the CITY OF DUNWOODY, GEORGIA, as Obligee in the sum of one-third of the contract bid for the payment of which said Principal and Surety bind themselves, their heirs, administrators, executors, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into an agreement with the City of Dunwoody for the **2016 Water Main Replacement and Road Resurfacing**. Said work has now been completed and the Obligee desires a maintenance bond guarantee said streets and improvements for a period of one year beginning _____ and ending _____.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall fully indemnify and save harmless the City of Dunwoody from any and all loss, costs, expenses or damages, for any repairs or replacements required because of defective workmanship or materials in said construction, then this obligation shall be null and void; otherwise to be and remain in full force and effect as to any such claim arising within one year from the completion of said construction as set forth in said agreement.

Signed, sealed and dated this_____ day of _____, 2016

Witness:

_____

(Principal)

_____

(Name of Surety Company)

_____

(Attorney-in-fact)