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

REQUEST FOR PROPOSALS

RFP 15-03

STANDBY SIDEWALK AND SMALL CONSTRUCTION PROJECTS UNIT PRICE CONTRACT

Michael G. Davis Mayor

Denis Shortal 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

REQUEST FOR PROPOSALS (RFP) 15-03
STANDBY SIDEWALK AND SMALL CONSTRUCTION PROJECTS UNIT PRICE CONTRACT

Sealed Proposals for Purchasing RFP 15-03 Standby Sidewalk and Small Construction Projects Unit Price Contractor will be received by the City of Dunwoody, hereinafter called "City." Service providers whose proposals meet the criteria established in the Request for Proposals, at the sole discretion of the City, may be considered for Contract award. The City may, by direct negotiation, finalize terms with the service provider who is selected for award based on proposals. The City reserves the right to reject any or all responses for any reason. Clarification of information may be requested by the City.

This contract shall be for a three year period with an optional one year extension beginning approximately April 1, 2015.

The City, at its sole discretion, may short-list firms that are deemed to best meet the City's requirements, taking into consideration all criteria listed in the RFP. Negotiations will be conducted and may take place in person or via telephone with the most qualified firm as identified by the City or, if short-listing occurs, with all of the short-listed proposers. Proposers that participate in the negotiations may be given an opportunity to submit their best and final offers. The City of Dunwoody requires pricing to remain firm for the duration of the contract. Failure to hold firm pricing for the duration of the contract will be sufficient cause for the City to declare a proposal non-responsive.

A proposal must be submitted in a sealed envelope which shall be clearly marked RFP 15-03 and your company name. One (1) printed and signed unbound original, three (3) bound hard copies, including a printed copy of the furnished excel spreadsheet of the Unit Price Schedule, (1) electronic copy in PDF of the proposal and a completed copy of the excel spreadsheet Unit Price Schedule. The **proposal shall be submitted no later than 2:00pm on February 10, 2015.** (Proposals will not be submitted by facsimile or e-mail). At which time noted, all proposals received will be publicly opened and read. Any proposal received after the time and date specified for the opening of the proposals will not be considered, but will be returned unopened.

A **Pre-Proposal Conference will be held at 10:00am on January 22, 2015** at the City of Dunwoody Courtroom, 41 Perimeter Center East, First Floor, Dunwoody, GA 30346. The conference will include a review of the proposal documents, and a question and answer period. Proposers are expected to be familiar with the proposal documents and to provide the City with any questions regarding the proposal documents at the Pre-Proposal conference or by the deadline for questions to be submitted.

Questions regarding proposals should be directed to purchasing@dunwoodyga.gov no later than 2:00pm on January 23, 2015. Proposals are legal and binding when submitted.

Proposal must be addressed as follows:

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

No Proposal may be withdrawn for a period of ninety (90) days after the time and date scheduled (or subsequently rescheduled) for proposal opening.

The City's staff will review all proposals submitted. After reviewing the proposals, staff may, at its discretion, request formal presentations from one or more of the proposers (at proposer's expense at the City's site) whose proposals appear to best meet the City's requirements.

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

The City reserves the right to waive any informalities or irregularities of proposals, to request clarification or information submitted in any proposal, to request additional information from any proposer, or to reject any or all proposals, and to re-advertise for proposals. The City also reserves the right to extend the date or time scheduled for the opening of proposals.

Award, if made, will be to the responsible and responsive proposer submitting the proposal which is deemed by the City, in the sole discretion, to be the most advantageous to the City, price and other factors being considered.

To ensure the proper and fair evaluation of proposals, the City highly discourages any communication initiated by a proposer or its agent to an employee of the City evaluating or considering the proposal during the period of time following the issuance of the RFP, the opening of proposals and prior to the time a decision has been made with respect to the Contract award. An appropriate Purchasing employee of the City may initiate communication with a proposer in order to obtain information or clarification needed to develop a proper and accurate evaluation of the proposal. Any communication initiated by proposer during evaluation should be submitted in writing and delivered to the City of Dunwoody, Purchasing Office, 41 Perimeter Center East, Suite 250, Dunwoody, Georgia 30346, or by e-mail to purchasing@dunwoodyga.gov or facsimile to (678) 382-6750. Unauthorized communication by the proposer may disqualify the proposer from consideration.

Please note that Section 12 of the Instructions to Proposers describes irregularities in proposals that may cause them to be rejected by the City. Included in these irregularities are those such as conditions, limitations, or unauthorized alternative proposals which may require the City to reject a proposal. Please seek the City's written advice BEFORE you submit a proposal containing any of the irregularities described in Section 12 of the Instructions to Proposers.

PART ONE – SCOPE OF WORK

1.1 The purpose of this Request for Proposal (RFP) is to select qualified contractors for on-call sidewalk and small infrastructure construction projects. Individual project cost will be based on the submitted Unit Prices per the contractor selected. The term of contract shall be for a three (3) year period with one (1) optional annual renewal.

1.2 The projects vary in magnitude and scope. Typical projects will involve new sidewalk construction with lengths of 800 to 4,000 feet. The first four projects that are anticipated are:

- Mount Vernon Way from Withmere Way to Mount Vernon Road
- Hensley Drive from Trumbull Drive to Vanderlyn Drive
- Tilly Mill Road from Georgia Perimeter College to North Peachtree Road
- Peachford Road from Nancy Creek tributary to North Peachtree Road

1.3 Occasionally the unit price contract may be used for other small projects such as:

- Sidewalk ramp retrofits to meet ADA requirements
- Curb and gutter replacement
- Median island construction
- Raised crosswalk or speed hump construction
- Retaining wall construction
- Concrete driveways
- Asphalt patching
- Minor grading
- Landscaping including grassing, mulch, shrubs

1.4 New sidewalk construction will be based on project specific engineering plans and Georgia Department of Transportation construction specifications.

1.5 The contractor is responsible for calling for utility locations prior to the start of the project. It shall be the contractor's responsibility to coordinate his work with any utility owner who may be in conflict with his work. Any utilities, public property, or private property damaged due to the contractor's negligence during construction shall be replaced at the contractor's expense.

1.6 The contractor will provide traffic control in accordance with the Manual on Uniform Traffic Control Devices (MUTCD). The contractor will be responsible for coordinating with adjacent property owners to maintain access.

1.7 All work will be performed and completed to the complete satisfaction and acceptance of the City. Contractor shall guarantee all work for a period of one (1) year from the date of acceptance or first beneficial use, whichever is first, against defective materials, design, workmanship and improper adjustment. Contractor will abide by any and all applicable professional standards, local codes, manufacturers' recommendations, and safe work practices and will secure any or all applicable permits or licenses to complete the described work.

1.8 The contractor will be responsible for restoring lawns and landscaped areas to pre-construction conditions. This includes reconnecting or repairing any damaged irrigation systems, installing new turf, and replacing any bed materials that have been removed. Turf replacement shall be with materials of like kind (i.e. Bermuda sod with Bermuda sod, fescue seed with fescue seed). Where visible, irrigation valves have been shown on the utility plans for convenience. The contractor is responsible for verifying the presence of irrigation systems and for coordinating relocation with the property owner.

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

1.10 As part of grading complete, the contractor shall raise any utility boxes, valve covers, etc. to finish grade of proposed sidewalk. Whenever possible utility boxes should be located outside of the sidewalk. Otherwise boxes shall be adjusted flush with the sidewalk surface.

1.11 Payment and Performance Bonds will be required on projects with costs over $200,000.

PART TWO – GENERAL CONDITIONS

2.1 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 disturb, endanger, unreasonably interfere with or delay the operations or activities of the City.

2.2 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.

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

2.4 The contractor will be responsible for protecting the sidewalk from weather, traffic and vandalism during concrete curing. Any defects or defacement resulting from failure to protect the concrete will be repaired at the contractor's expense.

2.5 Upon the completion of the project, 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 other unit price bid. No claims will be considered for extra compensation.

2.6 Working hours are limited to Monday through Friday, 7:30 A.M. to 8:00 P.M.. Lane closures are limited to the hours of 9:00 A.M to 4:00 P.M. unless prior permission is granted by the City. No work is permitted on city-observed holidays. 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.

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

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

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

2.10 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.

2.11 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.

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

PART THREE – PROPOSAL CONTENTS

Four (4) copies of the proposal (one original and three copies) including a printed copy of the furnished excel spreadsheet of the Unit Price Schedule, should be submitted in a sealed envelope. Proposals must be submitted in a sealed envelope which shall be clearly marked Purchasing RFP 15-03. Additionally provide one (1) electronic copy in PDF of the proposal and return a completed copy of the excel spreadsheet Unit Price Schedule. To aid in thorough and consistent review, the proposal shall be submitted on one-sided 8½" x 11" pages in no smaller than 10-point font and shall be organized and numbered to correspond to Section I through Section IV, with particular emphasis given to Section II:

2.1 SECTION I – Each proposal shall include a Title Page and a Table of Contents. The Title Page should identify the project; the name of the firm, name of the firm's primary contact, address, telephone number, fax number and email address. The Table of Contents shall contain the sections and corresponding page number for the items listed below. All pages of the proposal must be clearly identified and consecutively numbered and correspond to the Table of Contents.

2.2 SECTION II – Each proposer shall document its staff, experience and qualifications by describing the contractors experience with similar projects and the manner in which it plans to manage and staff the awarded contract, including the resumes of key and critical personnel, to successfully complete the project objectives.

2.2.1 Qualifications, including experience in the proposed project methodology and public sector and/or municipal experience;

2.2.2 Summary of experience, including the number of years of relevant experience and representative project experience with project name, client and date performed;

2.2.3 Description of any specialty equipment or capabilities;

2.2.4 Other supporting documentation which demonstrates the ability to successfully perform the work;

2.3 SECTION III – Unit Price Schedule

2.4 SECTION IV – Each proposer is required to include three (3) verifiable references. Each proposer may, but is not required to include qualifications, resumes, and any other materials for similar contracts.

2.5 SECTION V – Required forms (acknowledgement of agenda, etc.)

PART FOUR - EVALUATION OF PROPOSALS

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

3.1 The City, in its discretion, may award the Contract(s) to the responsible and responsive proposer(s) submitting the proposal which is deemed to be the most advantageous to the City, price and other factors being considered. The following are the evaluation criteria the City will consider in determining which proposal is most advantageous to the City:

3.1.1 Copy of business license and proof of being in business at least seven (7) years. Provide copy of State Contractor's License with name and phone of the registered agent.

3.1.2 Name and telephone number of the Contractor's designated contact.

3.1.3 Project Personnel: Provide information on personnel to be assigned to this project. Personnel should have experience from similar projects and in fields necessary to complete this proposed work.

3.1.4 Similar Experience: List and describe your firm's projects worked on in the past five years that best match the scope and intent of the various projects. Identify unique constraints or challenges associated with those projects and how you addressed those in order to deliver a successful project. The City may request samples of comparable work during the proposal review process.

3.1.5 Verifiable references of similar projects.

3.1.6 The Unit Price Schedule

3.2 The following are the evaluation criteria the City will consider in determining which proposal is most advantageous to the City:

Qualifications – 60%

Cost – 40%

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

CONTRACT REFERENCES

List below customers for whom you have provided similar services in the past or with whom you are presently contracting. Ensure references below have been contacted and agree to provide the City with a reference including answers to questions posed by the City. References should relate to services of a type similar to the obligations presented in this proposal.

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: _____

GENERAL CONDITIONS

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. SCOPE OF WORK

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

2. REGULATIONS

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

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

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

3. WORK HOURS

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

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

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

4. CONTRACTOR'S PERSONNEL

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

4.2 The Contractor shall require all prospective employees to show proof of citizenship, or proof from the United States Immigration and Naturalization Service of valid entry permits and/or work permits for legal aliens and proof that such legal aliens are eligible to be employed in the United States. This includes any requirement for participation in the DHS e-Verify or SAVE program.

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

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

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

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

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

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

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

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

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

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

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

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

5. ITEMS PROVIDED BY THE CITY

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

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

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

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

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

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

6. TOOLS AND EQUIPMENT

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

7. PERFORMANCE REQUIREMENTS

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

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

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

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

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

7.6 The Contractor will make a reasonable effort to reply to e-mails and phone calls from City personnel within 1 business day. When a response is anticipated to take more than 1 business day to prepare, the Contractor will acknowledge the request immediately and provide an estimated time to deliver the complete response. In addition, the contractor shall make every reasonable effort to respond to formal written communication from the City within 3 business days of receipt.

8. CONFIDENTIAL INFORMATION

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

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

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

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

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

9. USE OF PREMISES

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

10. SAFETY AND PROTECTION

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

11. COMPENSATION - INVOICE AND PAYMENT FOR SERVICES

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

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

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

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

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

11.6 The Contractor shall be obligated to pay promptly all proper charges and costs incurred by the Contractor for labor and materials used for the work performed hereunder. The City shall have the right, but not the obligation, to pay directly to third parties (including subcontractors) all past due

amounts owed by the Contractor to third parties for labor and materials used for the work hereunder, based on invoices submitted by such third party, and all such amounts paid by the City shall be applied toward, and shall reduce, amounts owed to Contractor hereunder.

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

12. COMPLIANCE WITH LAWS AND REGULATIONS

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

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

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

13. CONTRACTOR'S LIABILITY

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

14. INDEMNIFICATION AND INSURANCE

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

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

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

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

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

14.5 In any and all claims against the City, or any of their officers, members, agents, servants or employees, by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of the Contractor under this Section 14 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Contractor or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.

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

14.7 Insurance

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

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

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

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

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

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

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

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

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

15. SURETY BONDS/LETTERS OF CREDIT/LIABILITY INSURANCE

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

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

16. CONTRACT ADJUSTMENTS

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

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

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

17. SUBCONTRACTORS

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

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

17.3 In the event that the Contractor employs a subcontractor, then the City may require that copies of invoices for all work (including invoices submitted to the Contractor for work performed by a subcontractor) shall be submitted to the City by the Contractor and the City shall pay all compensation to the Contractor. It shall be the sole responsibility of the Contractor to deal with a subcontractor with respect to the collecting and submission of invoices and the payment of compensation. In no event shall the City have any obligation or liability hereunder to any subcontractor, including, in particular, any obligations of payment.

18. DEFAULT AND TERMINATION

18.1 In the event that:

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

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

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

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

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

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

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

18.1.8 The Contractor shall default on any other agreement entered into by and between Contractor and the City, then, in its discretion, the City shall have the right to terminate this Contract for default, which termination shall be effective upon delivery of written notice of such termination to the Contractor. In the event that the City terminates this Contract for default, or the Contractor abandons or wrongfully terminates the Contract, the Contractor shall be paid for compensation earned to the date of termination or abandonment (but the City shall have the right to reduce by off-set any amounts owed to the Contractor hereunder or under any other Contract or obligation by the amount of the City's damages and any amounts owed by the Contractor to the City), but the Contractor shall not be compensated for any profits earned or claimed after the receipt of the City's notice of termination by default or after abandonment or wrongful termination. The City's election to terminate or not to terminate this Contract in part or whole for the Contractor's default shall in no way be construed to limit the City's right to pursue and exercise any other right or remedy available to it pursuant to the terms of the Contract or otherwise provided by law or equity.

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

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

(i) In the event of a rejection of this Contract or any agreement supplementary hereto, the City shall be permitted to retain and use any back-up or archival copies of the software licensed

hereunder under this Agreement for the purpose of enabling it to mitigate damages caused to the City because of the rejection of this Contract. The City shall exert reasonable efforts to mitigate such damages by use of such back-up or archival copies.

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

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

19. CITY'S AUTHORIZED REPRESENTATIVE

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

20. ASSIGNMENT

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

21. NOTICES

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

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

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

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

22. NONDISCRIMINATION

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

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

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

22.1.3 Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive proposing or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

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

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

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

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

22.1.6 Incorporation of Provisions. The Contractor shall include the provisions of subsections 22.1.1 through 22.1.5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City to enter into such litigation to protect the interest of the City and, in

addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

23. COPYING DOCUMENTS

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

24. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

24.14 The City shall, in its discretion, be entitled to deduct from the compensation to which the Contractor is otherwise entitled hereunder, an amount equal to any liabilities of the Contractor to the City which are then outstanding. In the event that additional work beyond the scope of this Contract is requested by

the City Manager and it results in any extra charges to the City, the Contractor shall so advise the City in writing of the amount of the extra charges. The City is not required to pay any extra charges for additional work unless such work and the charges therefore have been approved in advance and have been confirmed in writing within twenty-four (24) hours by the City Manager, in his or her exclusive discretion.

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

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

Contractor has over billed such amounts for any Contract period by two (2%) percent or more, then the entire expense of such inspection, examination or audit shall be paid by the Contractor.

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

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

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

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

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

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

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

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

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

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

OFFEROR'S RFP CHECKLIST

10 Critical Things to Keep in Mind When Responding to an RFP for the City of Dunwoody

1. _____ **Read the *entire* document.** Note critical items such as: supplies/services required; submittal dates; number of copies required for submittal; contract requirements, if any (e.g. bonding and insurance requirements).
2. _____ **Note the Purchasing Manager's name, address, phone numbers and e-mail address.** This is the only person you are allowed to communicate with regarding the RFP and is an excellent source of information.
3. _____ **Attend the pre-proposal conference** if one is offered. These conferences provide an opportunity to ask clarifying questions, obtain a better understanding of the Project, or to notify the City of any ambiguities, inconsistencies, or errors in the RFP. This conference may be mandatory.
4. _____ **Take advantage of the "question and answer" period.** Submit your questions to the Purchasing Manager by the due date listed in the *Schedule of Events* and view the answers given in the formal "addenda" issued for the RFP. All addenda issued for an RFP will be distributed by email to the RFP participants.
5. _____ **Follow the format required in the RFP** when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
6. _____ **Provide complete answers/descriptions.** Read and answer **all** questions and requirements. Don't assume the City or Evaluation Committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the City. The responses are evaluated based solely on the information and materials provided in response to the RFP.
7. _____ **Use the forms provided**, e.g. cover page, reference questionnaire, etc.
8. _____ **Review the RFP document again** to make sure that you have addressed all requirements. Your original response and the requested copies must be identical and complete. The copies are provided to the Evaluation Committee members and will be used to rank your submittal.
9. _____ **Submit your proposal on time.** Note all the dates and times listed in the *Schedule of Events* and within the document, and be sure to submit all required items on time. Late proposals will not be accepted.

This checklist is provided for assistance only and should not be submitted with Offeror's proposal.