



REQUEST FOR PROPOSALS (RFP)

RFP 18-888

**MS4 Structures and Conveyances Inventory and Inspections 2019**

**Issue Date: November 30, 2018**

**PROPOSALS DUE: December 19, 2018 @ 12:00 noon**  
**Late proposals will be rejected and returned unopened.**

**Information concerning this solicitation may be found at:**  
**www.brookhavenga.gov**

**Deadline for Questions: December 13, 2018 at 5:00pm**  
**(There is no conference scheduled for this procurement)**

Questions must be directed to

City of Brookhaven via e-mail: [purchasing@brookhavenga.gov](mailto:purchasing@brookhavenga.gov)

Questions will only be accepted via email to ensure the same information is given to everyone. A questions addendum will be issued shortly after the deadline and posted on the City's Purchasing Page.

Instructions to Proposers

All spaced below are to be completed and the Proposal Letter on page two must be signed where indicated. Failure to sign and return Proposal Letter may cause rejection of the proposal.

Proposal of:

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

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

Submit Proposals to:  
City of Brookhaven Purchasing Office  
4362 Peachtree Road  
Brookhaven, GA 30319  
City of Brookhaven

**PROPOSAL LETTER**

We propose to furnish and deliver any and all of the deliverables and services named in the attached Request for Proposals (RFP) for which prices have been set. The price or prices offered shall apply for the period of time stated in the RFP.

We further agree to strictly abide by all the terms and conditions contained in the City of Brookhaven Purchasing Policy as modified by any attached special terms and conditions, all of which are made a part hereof. Any exceptions are noted in writing and included with this bid.

It is understood and agreed that this proposal constitutes an offer, which when accepted in writing by the Purchasing Office, City of Brookhaven, and subject to the terms and conditions of such acceptance, will constitute a valid and binding contract between the undersigned and the City of Brookhaven.

It is understood and agreed that we have read the City's specifications shown or referenced in the RFP and that this proposal is made in accordance with the provisions of such specifications. By our written signature on this proposal, we guarantee and certify that all items included in this proposal meet or exceed any and all such City specifications. We further agree, if awarded a contract, to deliver goods and services which meet or exceed the specifications. The City of Brookhaven reserves the right to reject any or all proposals, waive technicalities, and informalities, and to make an award in the best interest of the City.

It is understood and agreed that this proposal shall be valid and held open for a period of one hundred twenty (120) days from proposal opening date.

**PROPOSAL SIGNATURE AND CERTIFICATION**  
(Bidder to sign and return with proposal)

I certify that this proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the same materials, supplies, equipment, or services and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of State and Federal Law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of the proposal and certify that I am authorized to sign this proposal for the proposer. I further certify that the provisions of the Official Code of Georgia Annotated, Sections 45-10-20 et. seq. have not been violated and will not be violated in any respect.

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_  
Print/Type Name \_\_\_\_\_  
Print/Type Company Name Here \_\_\_\_\_

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## 1.0 INTRODUCTION

### 1.1 Purpose of Procurement

The City of Brookhaven (the "City") is required by their Phase II National Pollutant Discharge Elimination System (NPDES) Permit to update, inventory and inspect 100% of the City's stormwater structures and conveyances within the 5-year reporting period (2019-2023). This request for proposal is for the services necessary to meet these requirements. This a multi-year contract with an annual renewable option for a term of up to five (5) years.

The City of Brookhaven was incorporated December 17, 2012 and is the newest city in DeKalb County. The City's population is approximately 50,000 with a geographic area of approximately 11.5 square miles. In 2014, The Atlanta Business Chronical recognized the City of Brookhaven as the fastest growing residential zip code in the Metro-Atlanta area.

The selected Consultant shall furnish all labor, insurance, supervision, equipment, materials and incidentals necessary for the scope of services described in Exhibit A for the following City of Brookhaven Public Works.

### 1.2 Basic Guidelines for This Request for Proposals

Competitive sealed proposals shall be submitted in response hereto. All proposals submitted pursuant to this request shall be made in accordance with the provisions of the City of Brookhaven Purchasing Policy, these instructions, and specifications. **Fee proposals shall be sealed in a separate envelope.**

**Proposals shall be presented in a sealed opaque envelope with the bid number and name (18-888) MS4 Structures and Conveyances Inventory and Inspections 2019 clearly marked on the outside of the envelope. The name of the company or firm submitting a bid should also be clearly marked on the outside of the envelope. ONE (1) ORIGINAL AND ONE (1) CD OR THUMB DRIVE OF THE PROPOSAL MUST BE SUBMITTED. (Total of three (3) submittals) one (1) hard copy original signed, one (1) CD or Thumb drive, and one (1) cost proposal in a separate envelope.**

The proposals shall be evaluated in accordance with the evaluation criteria set forth in this Request for Proposal (RFP). Award(s) shall be made to the responsible Offeror(s) whose proposal(s) is determined in writing to be the most advantageous for the City, taking into account all of the evaluation factors set forth in this RFP. No other factors or criteria shall be used in the evaluation. The City of Brookhaven reserves the right to reject any and all proposals submitted in response to this request.

It shall be unethical for any Offeror to offer, give or agree to give any employee or official of the City or for any employee or official of the City to solicit, demand, accept from another person, a

gratuity, rebate, loan, offer of employment or other services or property of value in connection with this RFP. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of Offeror as an inducement for the award. For violation of this provision, the City shall reserve the right to reject the proposal of the offending Offeror.

### **1.3 Restrictions on Communications with Staff**

From the issue date of this RFP until a contractor is selected and the selection is announced, Offerors are not allowed to communicate for any reason with any City Staff except through the Contracting Officer named herein or as provided by existing work agreement(s). For violation of this provision, the City shall reserve the right to reject the proposal of the offending Offeror.

**All questions concerning this RFP must be submitted in writing to purchasing at [purchasing@brookhavenga.gov](mailto:purchasing@brookhavenga.gov) no later than December 13, 2018 at 5:00 p.m. No questions other than written will be accepted and all questions and responses will be posted to the Purchasing webpage shortly after the questions deadline. No response other than an official addendum shall be binding upon the City.**

## **2.0 DESCRIPTION OF REQUIREMENTS**

### **2.1 Introduction**

The City of Brookhaven has established certain requirements with respect to proposals to be submitted by Offerors.

Whenever the terms "shall", "must", "will", or "is required" are used in the RFP, the specification being referred to is a mandatory requirement of this RFP. Failure to meet any mandatory requirement will be cause for rejection of Offeror's proposal.

Whenever the terms "can", "may", or "should" are used in the RFP, the specification being referred to is a desirable and failure to provide any items so termed may not be cause for rejection, however, will probably cause a reduction in score awarded.

### **2.2 Scope of Work**

Scope of Services involve assessing the stormwater structures and conveyances inventory. This complies with Section 4.2.5 (Post-Construction Stormwater *Management*) 4.2.6 (Pollution Prevention/ Good Housekeeping for Municipal Operations) of NPDES Stormwater Permit# GAG610000 (authorization to discharge stormwater runoff associated with small MS4s). These services also comply with Section 5.4 (Watershed Management Action Items) of The Metropolitan North Georgia Water Planning District (MNGWPD) Water Resource Management Plan; which the City has adopted.

The primary goal of this program is to eliminate pollutants from discharging to state waters &

reduce flooding impacts to public & private property by visually inspecting the condition of all stormwater structures and conveyances located within the City's boundaries. In addition, this will assist City officials with the decisions to provide proper funding for the stormwater program's Operations & Maintenance budget, identify educational & outreach opportunities, and detect potential candidates for water quality & flood control improvement projects.

During the 2014-2018 reporting period, all public & privately-owned stormwater structures and conveyances were surveyed, inventoried and assessed for structural integrity and other issues with the stormwater infrastructure. For the 2019-2023 period, all stormwater structures and conveyances within the City will be re-assessed. Based on current GIS data, this includes 10,133 structures and 203 miles of conveyances (channel and pipe). These numbers are approximate, and the Public Works department is expecting the vendor to verify the accuracy of the database, verify the location of the existing structures and conveyances, and update any infrastructure added since inception of the city annually. A detailed structural inventory map is included in the Appendix.

## **1. SCOPE OF SERVICE TASKS**

The following list of tasks is provided to express the intent of the Scope of Service and is not provided to be all inclusive.

## **2. DRAINAGE SYSTEM INVENTORY**

1. Since the City has completed mapping of its inventory, the purpose of this assessment is to update and amend the database with information on the stormwater structures and conveyances current condition allowing the City to prioritize the capital improvement and maintenance program.

2. GPS updates will be required only on instances where data on the stormwater structures and conveyances was not successfully obtained in the original survey or if the drainage system was modified by a recent maintenance or capital improvement project. In these instances, stormwater structures and conveyances will be located including the structural data (ex. structure type, size, dimensions, invert, and crown), northing and easting based on NAD83, Georgia State Plane, West Zone, and any other information to sub 0.1-foot accuracy. Review, update, and correct the data to acceptable accuracy requirements.

3. Elevation data will be recorded at the top of each structure. Dropdown depths for each conveyance will be recorded from the top of each structure. The corrected elevation must be provided for the invert at the upstream and downstream of each conveyance.

4. Weekly reports shall be provided by the service contractor showing all progress and an updated schedule for completion. This report shall be submitted no later than Thursday for the previous weeks work.
5. For structural inspections, a visual assessment, along with photos, is required to determine if the system is in serviceable condition. At minimum, all stormwater structures and conveyances within assessment area must be inspected by the end of each year. A scoring matrix will be used to assess each stormwater structure and conveyance. It is based on criteria such as sediment/debris obstruction, stability (ex. erosion, sinkholes, undermining), vegetative growth, and/or structural integrity (ex. invert failure, cracks, and collapse).
6. Submit the data in electronic format compatible with the City of Brookhaven Geographic Information System (GIS). The stormwater data is in an ArcGIS for Server enterprise geodatabase. Our preference is to provide tools and/or services (ESRI features services) to allow managed editing of our existing data vs a disconnected database delivery. Other comparable approaches may be considered subject to approval by City staff.
7. Contact the City with any structural issues requiring immediate maintenance (i.e. health or safety hazard). Provide a summary of these high-priority assets along with the weekly report.
8. The City will provide all existing databases, maps, or any other available information requested by the service contractor to utilize in updating the inventory data. All the information provided by the City is provided on an "as is" and "as available" basis and you agree that you use such information entirely at your own risk.
9. Images of stormwater structures and conveyances will be taken of both the inside and the outside of the infrastructure. Flash photography should be used to record images of the inside of the structures. The make and model of the proposed camera must be included in the contractor's response. All images will be provided in JPEG format.
10. Videos with a HD pole camera will be required for all underground conveyances. These videos will be recorded from a stationary position within the adjoining stormwater structure. When access is not limited, videos must be obtained from both the upstream and downstream adjoining structure. The videos should be approximately 10 to 20 seconds of stabilized video that show the conveyance at multiple zooms. The pole camera must be equipped with lighting that will sufficiently illuminate culverts for a minimum of 200 feet. The make and model of the proposed pole camera equipment must be specified in the contractor's response. Videos must be provided in an MP4 format.
11. Images of above ground stormwater structures and conveyances must be obtained. The make and model of the proposed camera must be included in the contractor's response. All images will be provided in JPEG format.

12. The extent of stormwater structures and conveyances to be in the inventory is all structures both public and private, including ditches and streams. The intent is to have a totally connected system.

13. Service contractor shall determine "Ownership" of all stormwater structures and conveyances by utilizing the existing database, recorded plats, and record drawings where available. Additional research at Dekalb County maybe required.

14. The City will provide a pdf or image file format of all recorded plats according to Land Lot and District.

15. An ESRI GIS geo-database, prepared by the City of Brookhaven has been developed to aid in the collection and storage of each feature. The service contractor and the City shall work together to refine and finalize the geo-database during the project requirements.

16. Virtual Structures: It is anticipated that some structures will be located but not be able to be accessed due to physical obstructions/limitations or may be buried or otherwise inaccessible for internal inspection. Structures meeting these requirements shall be classified as Virtual Structures. Virtual Structures shall be located with GPS coordinates, related to connecting features and attributed to the maximum extent possible.

17. The service contractor shall determine, when available, the date of installation/construction for stormwater structures and conveyances.

18. Contractor shall perform a visual assessment to determine if defects to the structure or conveyance are present. Inspection forms provided in the Appendix will be completed for each conveyance and structure.

19. Uninhibited access to the structure and conveyances will be required for fieldwork. The Service Provider will be responsible for ensuring access to each structure and conveyance.

### **3. INFRASTRUCTURE INSPECTION AND MAINTENANCE SCHEDULE DEVELOPMENT**

1. Utilize the results from field investigations and spatial analyses conducted in section 2.3 to develop a general inspection and maintenance schedule for the various drainage components and appurtenances owned by the City.

2. Incorporate inspection and maintenance information into the spatial database produced in section 2.3
3. Develop a prioritized list of maintenance and capital improvement projects needed to improve the function of the City's drainage network to improve both water quantity and quality protection. Work with the City to develop the preferred prioritization approach.

#### **4. DELIVERABLES**

1. Spatial database to include all mapped structures and conveyances inventory. Database is to be formatted as an ArcGIS 10.x geodatabase. All data shall be projected in NAD83, Georgia State Plane, West Zone.
2. The resulting ArcGIS 10.x geodatabase is to include an inventory of locations of stormwater easements to better differentiate structure and conveyance ownership.
3. Digital photos of all structures and conveyance appurtenances. File names shall reflect the unique feature ID assigned to each component in the interim spatial database. Structures and conveyance appurtenances previously not included the database will be assigned unique feature IDs.
4. Prioritized list of maintenance and capital improvement projects for drainage components and appurtenances owned by the City. Updated spatial database to include recommended maintenance intervals for drainage components and appurtenances owned by the City.
5. Operational and maintenance inspection report data forms will be submitted on a weekly basis for the work completed during the previous week.

#### **4. DATA AVAILABLE TO THE CONSULTANT**

1. GIS inventory of the City's stormwater structures and conveyances (available as ESRI .shp)

2. Color aerial photo tiles of all land areas within the City's boundaries, available as tiff or MrSid files.
3. Aerial topographic maps with contours (ESRI .shp or AutoCAD .dwg files) of all areas within the City's boundaries.
4. Plats and other planning and development documents available upon request on a case-by-case basis.

## 5. PROPOSAL FORMAT

1. The Proposal shall follow the Scope of Service and exclusions.
2. All fees shall be **unit rates** and include all labor, material, equipment, and direct expenses. No allowances for reimbursable expenses such as mileage, printing, copying, deliveries etc. Unit rate shall include any cost for clearing of vegetation on City Right of Way or drainage easement to obtain access to stormwater structures and conveyances, if needed.
3. Each proposal should include a cost estimate within a separate sealed package. Cost estimates should be provided on a unit basis for stormwater structures and conveyances.
4. Each proposer shall document its staff, experience, and qualifications by identifying the project manager and key technical team members and their roles on the project.
5. Each proposer may, but is not required to, include references, qualifications, resumes and any other materials deemed necessary but not provided otherwise (such as promotional literature, white papers, etc.)
6. Proposal should follow the following format:
  - a) List of stormwater inventory projects performed by the firm in the last five years.
  - b) Letter of interest and firm overview (one page maximum).
  - c) Key personnel who will work on the project and team leader. Include an indication of the degree of availability anticipated in scheduling staff to meet project needs. (two pages maximum).
  - d) Resumes of the project team (seven pages maximum).
  - e) Organizational chart. (one page maximum).
  - f) The make and model of the contractor's proposed equipment for all data collection must be included in responses. The following equipment must be specified:
    - HD Pole Camera
    - Camera for still images
    - Any proposed water quality analysis equipment
    - GPS Unit capable of sub 0.1 foot accuracy
    - Drop down measurement equipment

g) Each proposal should include a cost estimate within a separate sealed package (one page maximum). Cost estimates should be provided on a unit basis for the following:

- Stormwater structures (located and assessed).
- Stormwater conveyances (located and assessed).

<b>Contract Year</b>	<b>Fee (\$)</b>	<b>Cost per Stormwater Structure (\$)</b>	<b>Cost per Stormwater conveyance (\$)</b>
<b>2019</b>			
<b>2020</b>			
<b>2021</b>			
<b>2022</b>			
<b>2023</b>			

Cost should be based on total stormwater structures and conveyances per study area. Proposed fee will include all costs associated with plat research, field work, capital program development, geodatabase development, travel, salaries, overhead, profit, and expenses.

### **3.0 PROPOSAL SUBMISSION AND EVALUATION**

#### **3.1 Requested Proposal Format**

In order to secure information in a form which will ensure that proposals can be properly evaluated, you are asked to submit your proposal in the format listed below.

1. Title page should include the proposal subject, the firm's name, address, phone number, email address, and contact person, date of the proposal.
2. Table of Contents with page numbers.
3. A transmittal letter briefly stating the understanding of the work to be done, the commitment to perform the work within the schedule, a statement why the firm believes it is the best qualified to perform the work and that the proposal is an irrevocable offer for a stated period of time (minimum 120 days).
4. Firm profile including:
  - \* Provide business address
  - \* Provide a statement addressing the number of years in business
  - \* Provide a copy of the State's Certificate of Incorporation
  - \* Provide a list of firm principles

5. Team composition - a complete listing of all key personnel who will be assigned to this project, their background, experience, qualifications, roles and responsibilities, and availability.
  - a. Project references – provide a list of five (5) projects completed within the past five (5) years, including;
    - b. Project Location
    - c. Project Description
    - d. Date Completed
    - e. Client Information: Name & Address
    - f. Client Reference: Name, Telephone Number and Email address
6. Project Schedule - provide a master project schedule that includes milestone dates and deliverables.
7. Cost – provide a section detailing the total price to complete the work specified.  
**All cost must be in a separate enclosed envelope with “Cost” and name of company on the front of the envelope. See Appendix “A”**
8. Provide a list of your firm’s hourly billing rates. This should be in your “Cost” envelope.

The City of Brookhaven retains the right to request any additional information pertaining to the Consultant’s ability, qualifications, and procedures used to accomplish all work under the contract as it deems necessary to ensure safe and satisfactory work. The City of Brookhaven reserves the right to reject any and all Proposals and to waive any informality in the solicitation process.

Every effort should be made to make proposals as concise as possible using a minimum font size of 12 point. The body of the submittal is limited to a maximum of fifteen (15) pages.

Proposals shall be in sealed envelopes and clearly marked with “MS4 Structures and Conveyances Inventory and Inspections 2019”. The proposals will be reviewed and evaluated for the relevant experience of the Project Team members, the understanding of the Project as delineated by the approach proposed, and satisfaction of past clients.

### **Evaluation of Submittals**

Proposals must meet certain mandatory criteria in order to qualify for further evaluation. Any “no” answer to the first and last questions will disqualify the proposal. A “yes” answer to the second and third question will require a written explanation, and may disqualify the proposal.

- 1 Is the Consultant properly licensed?
- 2 Has disciplinary action been taken or is pending against the Consultant?
- 3 Has the Consultant been barred from providing work on federal, State or City construction projects?
- 4 Is the Consultant using E-Verify in compliance with State and City laws?

Proposals will be reviewed using the following technical criteria. Proposals should address each question.

- i. Does the Consultant have a quality control program to help ensure adherence to high professional standards, if yes, please provide.
- ii. Does the proposal fully respond to the needs of City of Brookhaven?
- iii. What is the timeframe the Consultant will be able to complete the services requested?
- iv. Is the Consultant's professional personnel to be assigned to the engagement and the Consultant's management support personnel available for technical consultation adequate?
- v. Has the Consultant performed similar services for other local governments, or has there been experience working with the City of Brookhaven and DeKalb County? If so, please list the references for local government experience and indicate if we may contact them.
- vi. Does the proposal adequately describe in a clear, concise, and understandable manner the procedures to be used for completion of the project?

### **3.2 Signature Requirements**

Proposals must be signed by a duly authorized official of the responder. Consortia, joint ventures, or teams submitting proposals, although permitted and encourages, will not be considered responsive unless it is established that all contractual responsibility rests solely with one contractor or one legal entity which shall not be a subsidiary or affiliate with limited resources. Each proposal should indicate the entity responsible for execution on behalf of the proposal team.

### **3.3 Submission of Proposals**

Proposals must be submitted in two parts: a Proposal and Fee Proposal. The proposal packages should be sealed in separate envelopes and identified as follows:

### 3.4 Selection Criteria and Process

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 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. Proposals will be graded based on 30% firm experience, 30% team members, team leader 10%, cost 20%, and equipment 10%.

The following criteria will be weighed in evaluating the qualification of each Consultant:

#### **Bid Evaluation Scoring**

Maximum points 100

Firm Experience	30
Cost	20
Equipment	10
Team Leader	10
Team Members	30

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\*Fee proposal shall be **SEALED** in a separate envelope, which will not be opened until after other criteria have been considered. The fee should include: 1) A total cost estimate and not to exceed amount for the work described under the Scope of Work; 2) A rate schedule for computing any extra work not specified in the contracted Scope of Work, including hourly rates for all positions plus unit costs for incidental expenses. **See Appendix A**

### 4.0 TERMS AND CONDITIONS

#### 4.1 RFP Addenda

The City of Brookhaven reserves the right to addend the RFP prior to the date of proposal submission. Addenda will be posted to the City of Brookhaven's website, It is recommended that applicant vendors register for the City of Brookhaven bid and addenda notifications located on the Purchasing Department website page.

#### 4.2 Proposal Withdrawal

Prior to the proposal due date, a submitted proposal may be withdrawn by the Offeror by

submitting a written request to the Purchasing Manager named herein. All such requests must be signed by a person authorized to sign for the Offeror. No proposal may be withdrawn for a period of ninety (90) days after the time scheduled for the proposal opening.

#### **4.3 Contract**

Prior to award, the apparent winning Offeror will be required to enter into discussions with the City to resolve any contractual differences before an award is made. These discussions are to be finalized and all exceptions resolved within five (5) calendar days of notification, if not, this could lead to rejection of the Offeror's proposal and discussions initiated with the second highest scoring Offeror.

#### **4.4 Payment for Services**

The city will make payments to the successful Offeror on a monthly basis. Monthly invoices are required.

#### **4.5 Conflict of Interest**

If an Offeror has any existing client relationship(s) that involve the City of Brookhaven that would prevent objectivity, the Offeror must disclose such relationship(s).

#### **4.6 Confidentiality Requirements**

The staff members who are assigned by the successful Offeror to this project may be required to sign a departmental non-disclosure statement. Proposals are subject to the Georgia Open Records Act and may be provided to anyone properly requesting same, after contract award. The City cannot protect proprietary data submitted in proposals.

#### **4.7 Georgia Open Records Act**

All meetings of the City's Council are duly noticed public meetings and all documents submitted to the City as a part of or in connection with a Proposal may constitute public records under Georgia law regardless of any person's claim that proprietary or trade secret information is contained therein. By submission to the City, Proposers waive any declaration the entire response any solicitation to be proprietary information. The Proposer shall designate in the smallest increments possible, that part of the qualifications which is deemed to be proprietary. Proposals and all related correspondence are governed by the Georgia Open Records Act and shall be provided to anyone properly requesting same, after contract award. The City cannot protect proprietary data submitted in vendor proposals unless provided for under the open

records law and clearly marked as proprietary by the proposer. In the event the Proposer deems certain information to be exempt from the disclosure requirements, the Proposal must specify what content is considered exempt and cite the applicable provision of the law to support that assessment. In the event such information is requested under the open records law, the Proposer's assessment will be examined by the City Attorney who will make a determination. The decision to withhold or release the information will be at the City Attorney's sole discretion.

#### **4.8 Policy on Drug-Free Workplace**

The final award of a contract is contingent upon the contractor certifying to the City that a drug-free workplace will be provided for the Contractor's employees during the performance of the contract as required by the "Drug-Free Workplace Act' (O.C.G.A. 50-24-1).

**APPENDIX  
PROPOSAL PRICE CERTIFICATION**

In compliance with the attached specification, the undersigned offers and agrees that if this proposal is accepted by the City Council within one hundred and twenty (120) days of the date of proposal opening, that he will furnish any or all of the deliverables upon which prices are quoted, at the price set opposite each, to the designated point(s) within the time specified.

COMPANY \_\_\_\_\_

ADDRESS \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

PRINT / TYPE NAME \_\_\_\_\_

**Total Cost \$** \_\_\_\_\_

**Other Cost \$** \_\_\_\_\_

*Must be submitted in a separate envelope with the name of the Project and RFP number required.*

**STORMWATER  
STRUCTURE  
AND CONVEYANCE  
INSPECTION AREAS**

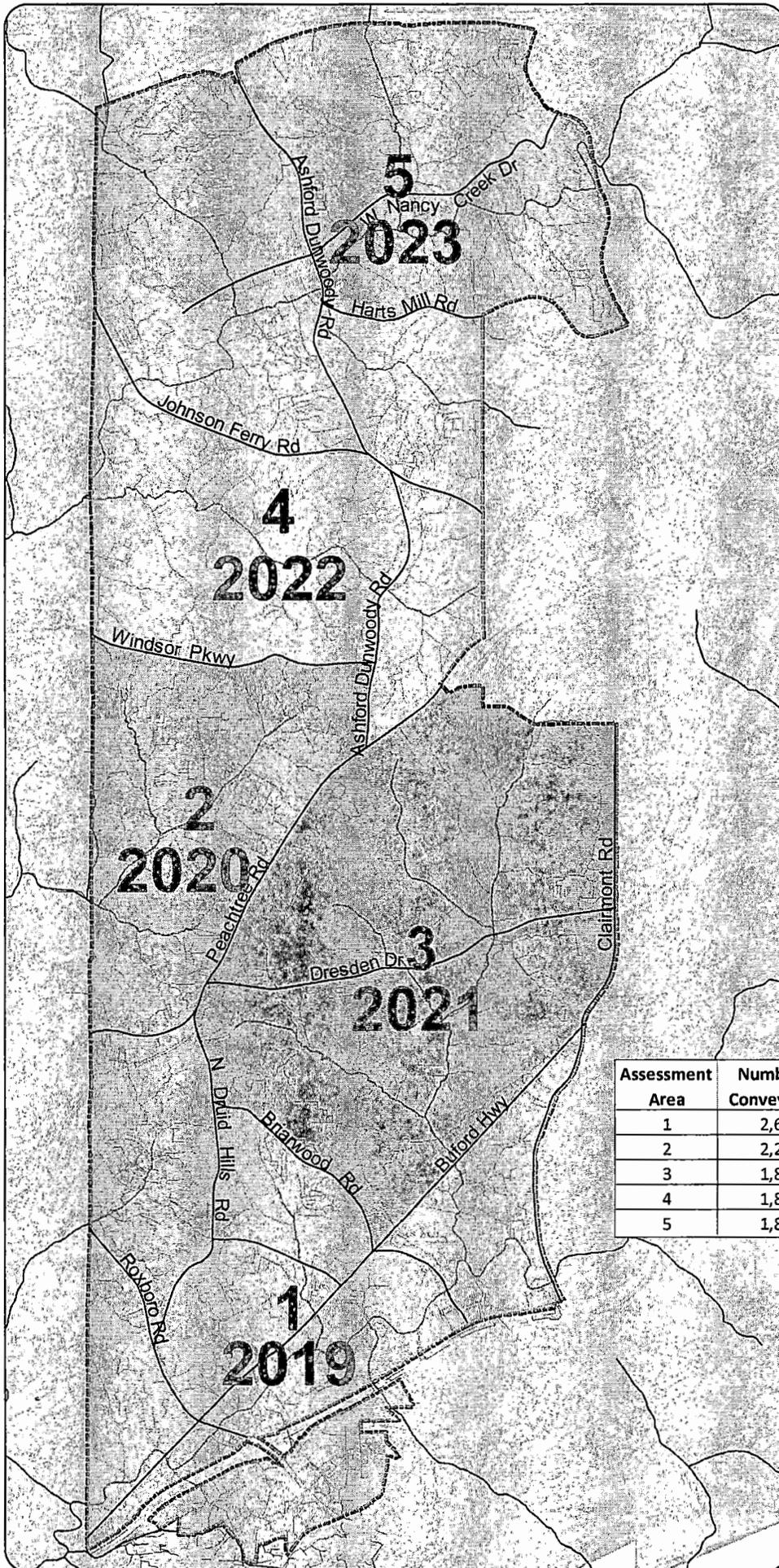


**Legend**

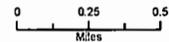
**Assessment Areas**

**Assessment Area**

- 1
- 2
- 3
- 4
- 5
- Creek
- Storm Conveyance
- City Boundary

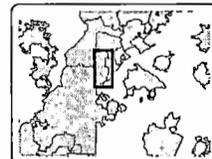


Assessment Area	Number of Conveyances	Number of Structures
1	2,656	2,831
2	2,250	2,299
3	1,826	1,840
4	1,846	1,932
5	1,861	1,865



Prepared by the  
City of Brookhaven IT/GIS Department  
May 30, 2018

This map has been compiled from the most accurate source data from the City of Brookhaven and/or other agencies. However, this map is for informational purposes only and is not to be interpreted as a legal document. The City assumes no liability for the information shown on this map. For further information, contact the City of Brookhaven. Copyright © 2018, by the City of Brookhaven, GA. 2018-2023. All rights reserved. This map is reproduced or transmitted for personal and individual purposes only, subject to consideration. This map and its contents are not to be reproduced or transmitted for commercial purposes, in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system, except as expressly permitted in writing by the City of Brookhaven. Requests should be made to the City's IT/GIS Department at (404) 837-0500.





**City of Brookhaven, Georgia**  
**Pollution Prevention/Good Housekeeping for Municipal**  
**Operations**  
**MS4 Operation and Maintenance Program**  
**(Applies to Publicly-Owned and Privately-Owned Facilities)**

**1.0 Introduction**

The City's Municipal Separate Storm Sewer System (MS4) is made up of structures, facilities and natural drainage-ways used for collecting, conveying, storing and/or treating stormwater. In order to ensure that the stormwater system continues to operate as designed to safely convey stormwater volume, velocity, and quality, it is the City's responsibility to maintain the MS4. An adequate Operation and Maintenance (O&M) program is essential to maintain the functionality of the system and should be a high priority for the City's comprehensive Stormwater Management Plan. In addition, it is a requirement of the City's Phase II NPDES Stormwater Permit that the City proactively maintain the MS4 in accordance with the procedures set forth in the accepted Notice of Intent (NOI). This document outlines the City's procedures for system inspection, maintenance, and documentation, and will become part of the City's NOI upon acceptance by EPD.

The City must develop and implement a drainage system O&M program that is customized to the policies, priorities, and issues that are predominant in the City. Failure to perform effective O&M activities can potentially reduce both the conveyance capacity and pollutant removal efficiency of stormwater drainage system infrastructure. Ideally, the O&M program should address maintenance issues proactively instead of addressing issues (i.e. flooding, infrastructure failure, etc.) on a reactive basis. One of the purposes of formalizing the City's O&M plan is to outline how City staff will transition from an existing reactive O&M program to a proactive O&M program which incorporates schedules/planned activities and tasks into its day to day efforts.

The City is currently developing a program to provide regular inspections of publicly-owned and privately-owned facilities to assure that all stormwater systems receive periodic routine inspection and maintenance. This program is being developed to insure that these systems function as they were designed, to prevent flooding, erosion, and degradation of existing water resources. This program was created to outline the inspection process, organize the administrative workload and develop a systematic method for maintenance and repair functions.



## **2.0 Program Description**

The existing publicly-owned Municipal Separate Storm Sewer System (MS4) components will be inspected by the City of Brookhaven. The City maintains the stormwater system within the right-of-way and stormwater components and controls on property owned by the City or within an easement with an express acceptance by the City. It is estimated that the City has 10,133 structures and 203 miles of conveyances in our system. It is the City's intention to inspect each of these components at least once every five years.

Within the right-of-way and for publicly owned stormwater components, the City will inspect and provide periodic, remedial and condition driven inspections and maintenance. However, for privately-owned stormwater components other than BMP facilities, the city will only inspect the condition and provide information/ recommendations on proper maintenance to the private owners on a remedial basis.

## **3.0 Procedure**

It is essential to establish an Extent of Service (EOS) and Level of Service (LOS) for the various components of the MS4 and to develop a proactive plan for O&M of the system. The extent of service policy basically spells out the "responsibility status" of the various drainage infrastructure components based upon system component location and ownership factors. The City maintains the stormwater system within the right-of-way and stormwater components and controls on property owned by the City or within an easement with an express acceptance by the City.

The LOS for each major component of the system must be defined. The LOS is defined as the types and frequencies of O&M activities that a community will provide to different components of the MS4. Within the right-of-way and for publicly owned stormwater components, the City will inspect and provide periodic, remedial and condition driven inspections and maintenance, unless service is provided by a private-third party. However, for privately-owned stormwater components other than BMP facilities, the city will only inspect the condition and provide information/recommendations on proper maintenance to the private owners on a remedial basis.

A comprehensive O&M program will incorporate three types of maintenance and inspection:

1. Remedial inspections and maintenance
2. Periodic inspections
3. Condition driven maintenance

Remedial inspection and maintenance is performed on an as-needed basis established on evidence of system failure during regular inspections or citizen complaints.

Periodic inspection involves performing inspection on a routine or set schedule.

Condition driven maintenance involves performing maintenance activities when certain criteria are met.



For the City to implement a proactive O&M program with limited resources, it is recommended and necessary for the City to prioritize areas and system components within the MS4 to inspect. By identifying and prioritizing inspections based on a history of flooding, the City's responsibilities, and the systems condition, the City can cost effectively focus its resources on those systems with priority needs.

Priority drainage systems can be identified as those structures where significant harm or damage could occur if the system were to fail. The highest priority would be assigned to those systems that cannot be allowed to fail due to the potential for serious threat of citizen safety, significant damage to habitable structures, or damage to public infrastructure. This priority could also be assigned to systems where the loss of other public infrastructure (i.e. roads, culverts, etc.) would result in a public safety issue or major inconvenience to citizens or business owners. Loss of access to a residential structure or business can severely limit access of emergency services such as fire and medical vehicles in these cases. Other high priority drainage systems would include systems that cause flooding of livable structures but do not cause damage to the livable spaces. For example, flooding would include unfinished basements, crawl spaces, debris against the structure and damage to mechanical systems (air conditioning units, furnaces, etc.).

Secondary drainage systems could include all other drainage systems not classified as a primary system within the City's EOS. A high priority secondary system would include systems that could cause road closures but not necessarily result in loss of access to an area. Other secondary systems should include those that result in flooding of non-livable structures (i.e. sheds, storage buildings, etc.) and those that cause nuisance flooding. These criteria could be tied into the city's performance LOS criteria as it relates to flooding. After the initial inspections begin, the City will have a better concept of where the priority areas are in the City.

For private systems, an inspection will be conducted and kept on file along with documentation of corrective action for any problems noted during the inspection. After inspection, each job is placed into a project folder. The folder contains a copy of the final plat showing easements and boundaries and a written inspection report. The City is planning to develop a computer maintenance management system (CMMS) that will replace paper files. Once the inspection of a private system is complete and a report has been finalized, a letter is sent to the affected property owners notifying them of our findings with a time frame for completion of repairs if necessary. If repairs are not properly completed within the specified time frame, the City may make the necessary repairs at the owner's expense.

### **3.1 Inventory**

The current inventory of MS4 components is based on the City's GIS database and field survey completed in 2014-2018. The database will be updated as part of the new permit to include the structural elements listed in the required minimum list of structures and will be updated annually in the future as new information is obtained or as structures are installed or deleted from the MS4. The MS4 components includes such features as inlets, catch basins, storm sewers, culverts, ditches, and structural stormwater control facilities. The components may be located on publicly-owned



property or on privately-owned property within an easement expressly accepted by the City for maintenance.

The breakdown of the structures is:

Structure Type	Number
Catch Basin	2629
Control Structure	323
Drop Inlet	2736
Flume	391
Headwall	1569
Junction Box	771
Manhole	864
Plain Pipe End	738
Stand Pipe	11
Spillway	6
Trench Drain	95

Conveyances	(miles)
Closed Conduit	118
Creek	0.13
Detention Pond Line	1.5
Ditch	28
Lake Line	7
Stream	41
Surface Channel	6
Swale	1

In accordance with BMP #1- MS4 Control Structure Inventory, the inventory will be updated and completed by December 31 of 2019.

### 3.2 Remedial Inspection and Maintenance Procedures

Remedial maintenance is performed based on evidence of system impairment or failure identified through citizen complaints or City staff inspection. Inspection and maintenance is performed on an as needed basis and is logged in as work performed through a work order system. This type of maintenance can include sediment/litter removal, vegetation clearing, channel stabilization, and outlet structure repairs.

Upon receipt of a complaint, the City staff will generate a work order for the individual project. A City staff member will perform an inspection of that complaint within five (5) business days. The City staff person will assess the system for condition, material, water quality issues, structural issues, etc. Maintenance will be recommended and performed based on the condition driven maintenance standards established below. If recommended remedial maintenance calls for more specialized expertise and equipment then the work order may be transferred to another department or an outside entity specializing in that activity.

### 3.3 Periodic Inspections

Periodic inspection is performed on a scheduled basis (i.e. a work order is not necessary). The City will perform periodic inspections on our MS4 system once every five years with the goal to inspect a minimum of 20% of the system each year of the permit term. The number of structure inspections made each year will be adjusted to include new structures being added to the inventory.



### 3.4 Condition Driven Maintenance

Condition driven maintenance is performed based on the results of City staff inspections conducted as part of a periodic or remedial inspection program. If certain standards are not met during inspection, City staff will perform applicable maintenance procedures including removal of litter, debris, or sediment; re-grading; minor repair; replacement; etc.

Standards for System Components:

- **Catch Basins:** Catch basins with sumps should be cleaned if accumulated sediment, debris or other deposits are equal to or greater than one-third the depth from the invert of the basin sump to the invert of the lowest pipe into or out of the basin. If catch basins are found to significantly exceed this standard, they should be inspected and cleaned more often. If deposits of concern are rarely found during regular inspections, inspection may be moved to a more infrequent schedule.
- **Storm Drain Lines:** Storm sewers should be inspected as the catch basins are inspected. Storm pipes shall be cleaned if accumulated sediment, debris or other deposits are blocking more than 35% of the pipe diameter.
- **Culverts:** Woody debris and other blockages should be immediately removed from culverts and other critical conveyance components.
- **Open Drainage:** Open drainage refers to ditches, canals, swales, etc. Drainage ditches should be inspected and cleaned if accumulated sediment, debris or other deposits exceed 35% of the functional depth. Excess vegetation shall be removed manually if it is restricting flow.
- **Municipally-Owned Detention Ponds and other Regional Controls:** Inspections of inflow and outflow structures are required. Sediment should be removed before 50% of the capacity has been lost (typically every 10 to 20 years). Stormwater structural control facilities shall be maintained according to criteria or procedures present in Volume 2 of the *Georgia Stormwater Management Manual*. Maintenance requirements are detailed at the end of each structural control design criteria section.
- **Outfalls:** Dry weather flows in the stormwater system observed during inspection and that indicate a potential pollution problem should be investigated for potential illegal dumping and /or illicit connections. If flow of water from outfall is causing erosion, energy dissipaters should be installed as part of a programmed system improvement plan.

### 3.5 Emergency Maintenance

The City may conduct emergency maintenance operations within drainage easements in order to protect the common good. Emergency maintenance includes maintenance necessary to remedy a



condition which is potentially damaging to life, property, or public roads. Such emergency maintenance, conducted for the common good, shall not be construed as constituting accepting a continuing maintenance obligation by the City, nor prevent the City from seeking reimbursement for expenses from the property owner(s) of the land that generated the condition.

### **3.6 Categorizing Project Requests**

There are currently more projects than the City can address at one time. The order of response to these projects will be determined by the category of the request. Requests for projects will be categorized as:

- Category I: Posing an immediate danger or threat to public safety,
- Category II: Rapidly degrading to a dangerous condition, or
- Category III: Maintenance or cosmetic repair.

Projects in Category I will receive priority.

City Public Works staff will review project requests and will perform the initial project categorization. Public Works staff will periodically monitor the conditions at the project location, prior to repair/maintenance, and will modify the categorization when needed.

### **3.7 Funding Issues (Set Funding Allocated in Budget)**

The Mayor and City Council may allocate funding for stormwater projects during each budget cycle. Projects will be recommended for implementation based on the determination of City responsibility, by Category, and by approved funding level.

### **3.8 Record Keeping**

The City staff will keep records of all inspection and maintenance activities performed as part of the MS4 inspection program. Service Requests will be generated based on citizen complaints or other unforeseen maintenance activities not usually performed as part of scheduled maintenance. Service Requests will detail the source of the complaint, nature of the stormwater issues, inspection results, and all maintenance and/or enforcement activities. The service request will detail the project from start to finish including dates, activities and staff. City Crews will also keep daily activity logs detailing all of their inspection and maintenance activities as they relate to system inspection and maintenance. These logs will include structures inspected, activities performed, dates, etc.

# Stormwater Structure Inspection Form

**Structure Inspection Data:**

Date: \_\_\_\_\_ Inspector: \_\_\_\_\_  
 Time: \_\_\_\_\_

<b>Structure I.D.</b>	<b>Final Discharge from Structure?</b> Yes _____ No _____ If Yes, Discharge to Outfall No: _				
<b>Catch Basin Label:</b>	<b>Stencil</b>	<b>Ground Inset</b>	<b>Sign</b>	<b>None</b>	<b>Other</b> _
<b>Structure Material:</b>	Concrete <input type="checkbox"/> Corrugated metal <input type="checkbox"/> Stone <input type="checkbox"/> Brick <input type="checkbox"/> Other: <input type="checkbox"/>	<b>Structure Condition:</b>			Excellent (5) <input type="checkbox"/> Good (4) <input type="checkbox"/> Fair (3) <input type="checkbox"/> Poor (2) <input type="checkbox"/> Repair Required (1) <input type="checkbox"/>
<b>Pipe Material:</b>	Concrete <input type="checkbox"/> HDPE <input type="checkbox"/> PVC <input type="checkbox"/> Clay Tile <input type="checkbox"/> Other: _____	<b>Pipe Measurements:</b>			Inlet Dia. (in): d= Outlet Dia. (in): D=

Defects (check all that apply):

Cracks (CL, CM, CM) <input type="checkbox"/>	Joint (J) <input type="checkbox"/>	Obstacles & Obstructions <input type="checkbox"/>	Roots: Light <input type="checkbox"/>
Fractures (F) <input type="checkbox"/>	Surface Damage (S) <input type="checkbox"/>	Grout & Seal <input type="checkbox"/>	Roots: Medium <input type="checkbox"/>
Broken Pipe (B) <input type="checkbox"/>	Lining Features (LF) <input type="checkbox"/>	Vermin <input type="checkbox"/>	Roots: Heavy <input type="checkbox"/>
Hole (H) <input type="checkbox"/>	Sediement/Deposits <input type="checkbox"/>	Unauthorized connections <input type="checkbox"/>	Damaged Grate/Frame <input type="checkbox"/>
Deformed (D) <input type="checkbox"/>	Exfiltration <input type="checkbox"/>	Cannot Remove Cover <input type="checkbox"/>	Other* <input type="checkbox"/>
Collapse (X) <input type="checkbox"/>	Infiltration <input type="checkbox"/>		
*Other: _____			

<b>Structure Type :</b>	<b>Sediment Buildup Depth :</b>	<b>Description of Flow:</b>	<b>Street Name/ Structure Location:</b>
Manhole Drop Inlet Single Wing Catch Basin Double Wing Catch Basin Area Drain Blind Box	0-6 (in): - 6-12(in): - 12-18 (in): - 18-24 (in): - 24 + (in): -	Heavy Moderate Slight Trickling	

<b>*If the outlet is submerged check yes and indicate approximate height of water above the outlet invert. h above invert (in):</b>		Yes _____	No _____
<b>Flow</b> <b>Standing Water</b> (check one or both)	<b>Observations:</b>	<b>Circle those present:</b>	
	Color: _____ Odor: _____	Foam _____	Oil Sheen _____
<b>Weather Conditions :</b>	Dry > 24 hours _____	Wet _____	Sanitary Waste _____
<b>Sample of Screenings Collected for Analysis? Yes <input type="checkbox"/> No <input type="checkbox"/></b>		Orange Staining _____	Floatables _____
<b>Comments:</b>		Excessive sediment _____	Pet Waste _____
		Other: _____	
<b>Follow up required: Yes No Specify on Corrective Action Sheet</b>			



# Stormwater Conveyance Inspection Form

**Conveyance Inspection Data:**

Date: \_\_\_\_\_ Inspector: \_\_\_\_\_  
 Time: \_\_\_\_\_

<b>Conveyance I.D.</b>		<b>Final Discharge from Conveyance?</b> Yes _____ No _____ If Yes, Discharge to Outfall No: _____
<b>Conveyance Material:</b>	Concrete <input type="checkbox"/> PVC <input type="checkbox"/> Corrugated metal <input type="checkbox"/> HPE <input type="checkbox"/> Grass <input type="checkbox"/> Brick <input type="checkbox"/> Stone <input type="checkbox"/> Other: <input type="checkbox"/>	<b>Conveyance Condition:</b> Excellent (5) <input type="checkbox"/> Good (4) <input type="checkbox"/> Fair (3) <input type="checkbox"/> Poor (2) <input type="checkbox"/> Repair Required (1) <input type="checkbox"/>

**Conveyance Measurements:** Diameter: \_\_\_\_\_ Length: \_\_\_\_\_ Width (b): \_\_\_\_\_ Height (h): \_\_\_\_\_

Problems (check all that apply):

Cracks (CL, CM, CM)	<input type="checkbox"/>	Joint (J)	<input type="checkbox"/>	Obstacles & Obstructions	<input type="checkbox"/>	Roots: Light	<input type="checkbox"/>
Fractures (F)	<input type="checkbox"/>	Surface Damage (S)	<input type="checkbox"/>	Vermin	<input type="checkbox"/>	Roots: Medium	<input type="checkbox"/>
Broken Pipe (B)	<input type="checkbox"/>	Lining Features (LF)	<input type="checkbox"/>	Grout & Seal	<input type="checkbox"/>	Roots: Heavy	<input type="checkbox"/>
Hole (H)	<input type="checkbox"/>	Sediment/Deposits	<input type="checkbox"/>	Reverse/flat grades	<input type="checkbox"/>	Other: _____	
Deformed (D)	<input type="checkbox"/>	Exfiltration	<input type="checkbox"/>	Unauthorized connections	<input type="checkbox"/>	_____	
Collapse (X)	<input type="checkbox"/>	Infiltration	<input type="checkbox"/>			_____	

<b>Conveyance Type :</b>	<b>Sediment Buildup Depth :</b>	<b>Description of Flow:</b>	<b>Street Name/ Structure Location:</b>
Circular:	0-6 (in): -	Heavy	
Box culvert:	6-12(in): -	Moderate	
Pipe Arch:	12-18 (in): -	Slight	
Elliptical:	18-24 (in): -	Trickling	
Other: _____	24 + (in): -		

\*If the outlet is submerged check yes and indicate approximate height of water above the outlet invert. h above invert (in):

Yes	No
-----	----

<b>Flow Standing Water (check one)</b>	<b>Observations:</b>	<b>Circle those present:</b>	
	Color: _____	Foam	Oil Sheen
<b>Weather Conditions :</b>	Odor: _____	Sanitary	Bacterial
	Dry > 24 hours <input type="checkbox"/> Wet <input type="checkbox"/>	Waste	Sheen
<b>Sample of Screenings Collected for Analysis? Yes <input type="checkbox"/> No <input type="checkbox"/></b>		Orange Staining	Floatables
<b>Comments:</b>		Excessive sediment	Pet Waste
		Other: _____	

**Follow up required:** Yes \_\_\_\_\_ No \_\_\_\_\_ Specify on Corrective Action Sheet





# City of Brookhaven

## APPENDIX B SAMPLE CONTRACT AGREEMENT

### CONTRACT FOR PROFESSIONAL SERVICES

This **CONTRACT** made and entered into this \_\_\_ day of \_\_\_\_\_, 2018 by and between the City of Brookhaven, (Party of the First Part, hereinafter called the "City"), and \_\_\_\_\_ (Party of the Second Part, hereinafter called the "Service Provider" or "Contractor").

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

#### 1. **TERM:**

The services to be performed under this Contract shall commence on \_\_\_\_\_. This Contract shall terminate absolutely and without further obligation on the part of the City on December 31, 2018.

#### 2. **ATTACHMENTS:**

The following documents are attached and are specifically incorporated herein by reference; and, along with this Contract and the General Conditions attached as Exhibit A encompass all of the Contract documents:

- Exhibit A: General Conditions
- Exhibit B: Scope of Services
- Exhibit C: Fee
- Exhibit D: Response to RFP 18-888
- Exhibit E: Request for Statement of Qualifications, RFP 18-888
- Exhibit F: Contractor's Affidavit and Agreement
- Exhibit G: Drug Free Workplace
- Exhibit H: Purchasing Policy Addendum

#### 3. **PERFORMANCE:**

Service Provider agrees to furnish all skill and labor of every description necessary to carry out perform the services in accordance with the Contract Documents (the "work").

#### 4. **PRICE:**

The Service Provider agrees to charge the amount reflected in Exhibit A.

#### 5. **INDEMNIFICATION AND HOLD HARMLESS:**

[See Section 13 of Exhibit A.---General Conditions]

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

**6. TERMINATION FOR CAUSE:**

The City may terminate this Contract for cause upon ten (10) days prior written notice to the Service Provider of the Service Provider's default in the performance of any term of this Contract. Such termination shall be without prejudice to any of the City's rights or remedies provided by law.

**7. TERMINATION FOR CONVENIENCE:**

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

**8. TERMINATION FOR FUND APPROPRIATION:**

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

**9. CONTRACT NOT TO DISCRIMINATE:**

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

**10. ASSIGNMENT:**

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

**11. WAIVER:**

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

**12. SEVERABILITY:**

The parties agree that each of the provisions included in this Contract is separate, distinct and severable from the other and remaining provisions of this Contract, and that the invalidity of any Contract provision shall not affect the validity of any other provision or provisions of this Contract.

**13. GOVERNING LAW:**

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

**14. MERGER CLAUSE:**

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

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

Brookhaven, GEORGIA

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

John A. Ernst  
Mayor  
City of Brookhaven, Georgia

ATTEST:

\_\_\_\_\_  
Susan Hiott  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Chris Balch, City Attorney

SERVICE PROVIDER:

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name  
Corporate Secretary  
(Seal)

Exhibit A

**GENERAL CONDITIONS**

## **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 Scope of Services attached hereto as Exhibit B.

## **2. REGULATIONS**

- 2.1 The Service Provider 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 Service Provider 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 Service Provider 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 Service Provider shall keep a copy of any and all licenses, registrations and permits on the job site while performing the Contract work.
- 2.4 The Service Provider will comply with the City of Brookhaven's Financial Management and Purchasing Policies.

## **3. [INTENTIONALLY OMITTED]**

## **4. SERVICE PROVIDER'S PERSONNEL**

- 4.1 The Service Provider will abide by all State and Federal regulations on wages and hours of an employee dealing with the employment relationship between the Service Provider 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 Service Provider 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 Service Provider engage employees who are illiterate in English, it will be the Service Provider'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 Service Provider will have someone in attendance at all times who can communicate instructions to said employee.
- 4.4 The Service Provider shall maintain a drug-free workplace within the meaning of the Georgia Drug-free Workplace Act. No employee shall be hired by a Service Provider for work on the City's premises prior to such employee having tested negative for drugs. In addition, existing employees of the Service Provider must be subject to drug testing by the Service Provider upon reasonable suspicion of drug use. Results of all such drug tests are to be retained by the Service Provider. Copies shall be provided to the City, if requested.

- 4.5 The Service Provider 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 Service Provider.
- 4.6 The Service Provider'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.
- 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 Service Provider's employees shall wear 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 [INTENTIONALLY OMITTED]
- 4.10 [INTENTIONALLY OMITTED]

## **5. TOOLS AND EQUIPMENT**

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

## **6. PERFORMANCE REQUIREMENTS**

- 6.1 The Service Provider shall perform all of its obligations and functions under the Contract in accordance with the Contract specifications and industry standards. The Service Provider 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.
- 6.2 The Service Provider's personnel shall perform work in compliance with all Federal, State, and City of Brookhaven regulations.
- 6.3 Dates for commencement and completion of work shall be coordinated with the City's Authorized Representative (CAR).
- 6.4 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.
- 6.5 The Service Provider shall utilize maximum safety procedures. 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 Service Provider 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 at any time.

## **7. CONFIDENTIAL INFORMATION**

- 7.1 In the course of performing the Contract work, the Service Provider may gain access to security-sensitive and other sensitive information of the City.
- 7.2 The Service Provider 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 Service Provider's non-disclosure obligations.
- 7.3 The Service Provider shall seek the City's prior written consent before using for any purpose other than the fulfillment of the Service Provider's obligations hereunder, or before releasing, disclosing, or otherwise making such information available to any other person.
- 7.4 The Service Provider shall employ such practices and take such actions to protect the City's information from unauthorized use or disclosure as the Service Provider employs and takes to protect its own information, but in no event shall the Service Provider use less than reasonable efforts to protect the City's information.
- 7.5 The provisions of this Section shall survive the expiration or earlier termination of the Contract.

#### **8. USE OF PREMISES**

During the progress of the work specified herein, to the extent any work is performed on the City's premises, the Service Provider 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 Service Provider 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.

#### **9. SAFETY AND PROTECTION**

The Service Provider shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Service Provider 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.

#### **10. COMPENSATION - INVOICE AND PAYMENT FOR SERVICES**

- 10.1 The City shall pay the Service Provider, 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 Service Provider to the satisfaction and acceptance, as appropriate, of the City. The timing of such payments shall be as set forth below in this Section.
- 10.2 The City shall pay the Service Provider the price as set forth within 30 days after completion of the services for the previous month, or 30 days after the City's receipt of the invoice for the month, whichever is later. The Service Provider 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.
- 10.3 The Service Provider shall invoice with such supporting documentation and other backup material as the City may reasonably require.

- 10.4 The Service Provider 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 Service Provider for the City under this Contract.
- 10.5 The City shall pay the undisputed amount of the Service Provider'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.
- 10.6 The Service Provider shall be obligated to pay promptly all proper charges and costs incurred by the Service Provider for labor and expenses incurred 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 Service Provider 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 Service Provider hereunder.
- 10.7 The Service Provider shall submit all invoices to: City of Brookhaven, GA, Accounts Payable, 4362 Peachtree Road NE, Brookhaven, GA 30319.
- 10.8 The Service Provider will agree to comply with the City of Brookhaven's Financial Policies and Purchasing Policy, to the extent applicable.

## **11. COMPLIANCE WITH LAWS AND REGULATIONS**

- 11.1 The Service Provider 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 Brookhaven, 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 Service Provider's performance of its obligations and functions hereunder; the Service Provider 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.
- 11.2 The Service Provider 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.
- 11.3 The Service Provider shall abide by all applicable state and federal regulations pertaining to wages and hours of an employee; including but not limited to the Service Provider's compliance with requirements of O.C.G.A. 13-10-91 and Rule 300-10-1-.02.

## **12. SERVICE PROVIDER'S LIABILITY**

The Service Provider shall be responsible for the prompt payment of any fines imposed on the City or the Service Provider by any other federal, state or local governmental agency as a result of the Service Provider'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 Service Provider under this Section 12 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 13 hereof, and such liability shall survive the expiration or earlier termination of this Contract.

### 13. INDEMNIFICATION AND INSURANCE

- 13.1 The Service Provider 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 boards and of the City), 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 Service Provider's directors, officers, agents, employees, subcontractors, licensees or invitees, in connection with the performance of this contract 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 Service Provider or the Service Provider's directors, officers, agents, employees, subcontractors, licensees, or invitees, or (ii) arising out of or in connection with the failure of the Service Provider 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 Service Provider, or (iii) arising out of or in connection with any claim, suit, assessment or judgment prohibited by Section 13.4 below by or in favor of any person described in Section 13.5 below, or (iv) arising out of or in connection with any action by Service Provider or its directors, officers, agents, employees, subcontractors, licensees or invitees. The City agrees to give the Service Provider reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow the Service Provider 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 Service Provider 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 Service Provider and the City shall have mutually agreed to the contrary, (2) the Service Provider has failed within a reasonable time to retain counsel reasonably satisfactory to the City, or (3) the City and the Service Provider are both named parties in any such proceeding and, in the sole judgment of the City, representation of both the City and the Service Provider 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. Notwithstanding anything contained in the forgoing indemnity, any claim for indemnity by the City for claims of thirds parties alleging harm due to the professional services provided by Service Provider, to the fullest extent permitted by law, Service Provider shall indemnify City from and against losses, damages, and judgments arising from such claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to have been caused by a negligent act, error or omission of Service Provider or its sub-Service Providers in the performance of professional services under this Agreement.

- 13.2 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 Service Provider is enjoined due to infringement of another person or entity's intellectual property rights, the Service Provider 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.
- 13.3 The Service Provider shall assume all responsibility for loss caused by neglect or violation of any state, federal, municipal or agency law, rule, regulation or order. The Service Provider 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 Service Provider will notify the City in writing of any claim made or suit instituted against the Service Provider because of its activities in performance of the Contract.
- 13.4 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 Service Provider 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 Service Provider pursuant to this Contract.
- 13.5 In any and all claims against the City, or any of their officers, members, agents, servants or employees, by any employee of the Service Provider, 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 Service Provider under this Section 13 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 Service Provider or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.
- 13.6 No provisions of Section 13 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.
- 13.7 Insurance

13.7.1 General Liability and Automobile Liability. The Service Provider shall purchase and maintain in force during the term of the Contract, at its own cost and expense, to protect the Service Provider, 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 Service Provider'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 Service Provider'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.

13.7.1.1 Self-Insured Retention. Service Provider'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. Service Provider's automobile liability insurance policies shall not be subject to a self-insured retention exceeding \$10,000, unless approved by the City Manager.

13.7.1.2 Additional Insured Endorsement. Service Provider 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.

13.7.2 Workers' Compensation and Employer's Liability. If Service Provider has any employee working on City property, Service Provider 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 Service Provider'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 Service Provider is self insured, the Service Provider shall provide proof of self-insurance and authorization to self-insure as required by applicable state laws and regulations.

13.7.3 Professional Liability Insurance. The Service Provider 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 Service Provider from the project's inception date and until such time as the Statue of Limitations has run for the work done on the project.

13.7.4 Health Insurance. Not applicable.

- 13.7.5 Garage Liability Insurance..Not applicable.
- 13.7.6 Garage Keeper's Legal Liability Insurance. Not applicable.
- 13.7.7 Crime Coverage. Not applicable.
- 13.7.8 Pollution Liability Insurance. Not applicable.
- 13.7.9 Deductibles. The Service Provider's policies of insurance required by this Section 13.7 may require the Service Provider's payment of a deductible, provided the Service Provider's insurer is required to pay claims from the first dollar at 100% of the claim value without any requirement that the Service Provider pay the deductible prior to its insurer's payment of the claim.
- 13.7.10 Other Insurance Requirements. All insurance policies required by this Section 13.7 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 14.2 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 Service Provider's execution of the Contract. The Service Provider shall provide the City with at least thirty (30) days' prior written notice of any adverse material change in the Service Provider's required insurance coverage except that ten (10) days notice of cancellation for non-payment is required. For purposes of this Section 13.7.10, 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 Service Provider's self-insured retention. Prior to the expiration of any such policy, the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider, immediately terminate this Contract upon written notice to the Service Provider. 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 Service Provider shall comply with all reasonable requests of the City Manager with respect thereto.

#### **14. SURETY BONDS/LETTERS OF CREDIT/LIABILITY INSURANCE**

- 14.1 A surety Bond/Letter of Credit is not required for this Contract.
- 14.2 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.

## **15. CONTRACT ADJUSTMENTS**

- 15.1 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 Service Provider's obligations under this Contract (Contract Adjustments) in whatever manner it determines to be reasonably necessary for the proper completion of the Service Provider's work hereunder. Both parties agree that, should any Contract Adjustments be made, the Service Provider's compensation 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 Service Provider 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.
- 15.2 Notwithstanding the foregoing, the City shall have the right to terminate this Contract herein should the Service Provider and the City fail to reach agreement on the adjusted compensation within thirty (30) days after the date of the Contract Adjustment.
- 15.3 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 Service Provider, its employees, agents, or its subcontractors to properly perform its obligations and functions under this Contract.

## **18. [INTENTIONALLY DELETED].**

## **17. DEFAULT AND TERMINATION**

- 17.1 In the event that:
  - 17.1.1 the Service Provider shall fail to keep, perform or observe any of the promises, covenants or agreements set forth in this Contract (provided that notice of the first failure shall have been given to the Service Provider, but whether or not the Service Provider shall have remedied any such failure); or
  - 17.1.2 the Service Provider 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 Service Provider of a written notice of such breach or default; or
  - 17.1.3 the Service Provider's occupational or business license shall terminate or the Service Provider 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
  - 17.1.4 the Service Provider 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

- 17.1.5 the Service Provider 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
  - 17.1.6 the Service Provider 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
  - 17.1.7 there is any assignment by the Service Provider of this Contract or any of the Service Provider's rights and obligations hereunder for which the City has not consented in writing; or
  - 17.1.8 the Service Provider shall default on any other agreement entered into by and between Service Provider 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 Service Provider. In the event that the City terminates this Contract for default, or the Service Provider abandons or wrongfully terminates the Contract, the Service Provider 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 Service Provider hereunder or under any other Contract or obligation by the amount of the City's damages and any amounts owed by the Service Provider to the City), but the Service Provider 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 Service Provider'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.
- 17.2 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 Service Provider thirty (30) days written notice. In that event, the Service Provider 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 Service Provider 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 Service Provider be entitled to compensation for work not performed or for anticipatory profits. Service Provider shall justify its claims, as requested by the City, with accurate records and data.
- 17.3 Bankruptcy and Liquidation - In the event the Service Provider (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 Service Provider 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 Service Provider or the bankruptcy trustee or receiver. The Service Provider 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.

#### **18. 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 (CAR) and an Assistant CAR designated to serve in that capacity in the absence of the CAR, 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 CAR 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.

#### **19. ASSIGNMENT**

Neither this Contract nor any of the Service Provider's rights or obligations hereunder may be assigned by the Service Provider 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 Service Provider 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 Service Provider shall constitute an assignment of this Contract for purposes of this Section. In the event the Service Provider 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.

**20. NOTICES**

- 20.1 Unless otherwise stated herein, all notices or other writings which the City is required or permitted to give to the Service Provider may be hand delivered, mailed via U.S. Certified Mail or sent next-day delivery by a nationally-recognized overnight delivery service to the Service Provider'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 Service Provider, or three (3) days following submission to the Service Provider by U.S. Certified Mail.
  
- 20.2 Unless otherwise stated herein, all notices or other writings which the Service Provider 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 Brookhaven, GA  
ATTN: City Manager  
4362 Peachtree Road NE  
Brookhaven, GA 30319

Service Provider

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

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

**21. NONDISCRIMINATION**

- 21.1 During the performance of this Contract, the Service Provider, for itself, its assignees and successors in interest agrees as follows:
  - 21.1.1 Compliance with Regulations. The Service Provider 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.
  
  - 21.1.2 Nondiscrimination. The Service Provider, 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 Service Provider shall not participate either directly or indirectly in the discrimination prohibited by the Regulations.

- 21.1.3 Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive proposing or negotiation made by the Service Provider 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 Service Provider of the Service Provider's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- 21.1.4 Information and Reports. The Service Provider 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 Service Provider is in the exclusive possession of another who fails or refuses to furnish this information, the Service Provider shall so certify to the City, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 21.1.5 Sanctions for Noncompliance. In the event of the Service Provider'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:
- 21.1.5.1 Withholding of payments to the Service Provider under the Contract until the Service Provider complies, and/or
- 21.1.5.2 Cancellation, termination or suspension of the Contract, in whole or in part.
- 21.1.6 Incorporation of Provisions. The Service Provider shall include the provisions of subsections 21.1.1 through 21.1.5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Service Provider 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 Service Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Service Provider may request the City to enter into such litigation to protect the interest of the City and, in addition, the Service Provider may request the United States to enter into such litigation to protect the interests of the United States.
- 21.2 The Service Provider 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 Service Provider from the period beginning with the initial solicitation through the completion of the Contract.

## **22. COPYING DOCUMENTS**

The Service Provider 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 Service Provider's Proposal or which are contained in the Contract Documents (the "Submittals"). The permission granted by the Service Provider shall be on behalf of the Service Provider 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.

### **23. GENERAL PROVISIONS**

- 23.1 The Contract Documents consist of the Contract, the Proposal Forms, the Instructions to Proposers, Request for Qualifications, all Addendum(s) issued prior to execution of this Contract, these General Conditions and 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 herein. 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 Scope of Work in Exhibit B, (v) the Proposal Forms, and (vi) the Request.
- 23.2 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.
- 23.3 The Service Provider 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 Service Provider's officers, agents, or employees, and any subcontractors and their officers, agents, or employees, or, at the option of the City, the Service Provider shall reimburse the City for the cost of repairs thereto and replacement thereof accomplished by or on behalf of the City.
- 23.4 The Service Provider warrants to the City that no work performed or materials purchased pursuant to the Contract, whether by, from, or through the Service Provider or a subcontractor, shall cause any claim, lien or encumbrance to be made against any property of the City, and the Service Provider 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 Service Provider 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.
- 23.5 The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either the City or the Service Provider. 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 Service Provider waives any venue objection, including, but not limited to, any objection that a suit has been brought in an inconvenient forum. The Service Provider agrees to

submit to the jurisdiction of the Georgia courts and irrevocably agrees to acknowledge service of process when requested by the City

- 23.6 The section headings herein are for the convenience of the City and the Service Provider, 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.
- 23.7 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.
- 23.8 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 Service Provider 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.
- 23.9 If the City shall, without any fault, be made a party to any litigation commenced between the Service Provider and a third party arising out of the Service Provider's operations and activities at the premises, then the Service Provider 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 Service Provider 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.
- 23.10 The City shall have the right to recover from the Service Provider 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.
- 23.11 The Service Provider 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.
- 23.12 The Service Provider 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 Service Provider shall comply with all regulations, rules and policies of any governmental authority, including the City, relating to security issues.
- 23.13 The City may, but shall not be obligated to, cure, at any time, upon five (5) days written notice to the Service Provider (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 Service Provider under this Contract; whenever the City so cures a default by the Service Provider, 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 Service Provider to the City on demand.

- 23.14 The City shall, in its discretion, be entitled to deduct from the compensation to which the Service Provider is otherwise entitled hereunder, an amount equal to any liabilities of the Service Provider 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 Service Provider 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.
- 23.15 The Service Provider is an independent Service Provider and nothing contained herein shall be construed as making the Service Provider an employee, agent, partner or legal representative of the City for any purpose whatsoever. The Service Provider 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 Service Provider with respect to any employee of the Service Provider or of its subcontractors.
- 23.18 The Service Provider 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 Service Provider 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 Service Provider and subcontractors and which support the amounts reported and/or invoiced to the City. At a minimum, the Service Provider'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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider, or a third party, the Service Provider 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 Service Provider 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 Service Provider to the City, the Service Provider 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 Service Provider 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 Service Provider.

- 23.17 The Service Provider 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.
- 23.18 There are no third party beneficiaries to this Contract and nothing contained herein shall be construed to create such.
- 23.19 Time is of the essence for the performance of each of the Service Provider's obligations under this Contract.
- 23.20 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.
- 23.21 The Service Provider 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.
- 23.22 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 Service Provider for loss of business or damages of any nature whatsoever to the Service Provider 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 Service Providers.
- 23.23 The Service Provider 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.

23.24 At the option of the Service Provider, 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 Service Provider 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 Service Provider or any governmental agency resulting from the purchase by that agency of products and/or services from the Service Provider in connection with this Contract.

**24. GRATUITIES, REBATES, OR KICKBACKS.**

24.1 GRATUITIES. It shall be unethical for any person to offer, give or agree to give any employee or official of the City or for any employee or official of the City to solicit, demand, accept from another person, a gratuity, rebate, loan, offer of employment or other services or property of value in connection with any decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase request, including the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any particular matter, pertaining to any program requirement or a Contract or subcontract, or to any solicitation or proposal therefore in any manner inconsistent with the State of Georgia's Department of Administrative Services Gratuity Policy. Rebates normally or routinely offered to customers in the ordinary course of business for the purchase of goods and services are acceptable and are the property of the City.

24.2 KICKBACK AND REBATES. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor to this Contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontractor or order.

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