



## REQUEST FOR QUALIFICATIONS (RFQ)

CONSTRUCTION OF BRIARWOOD PARK POOL PROJECT  
2235 Briarwood Way, Brookhaven, GA 30319

Release: **July 17, 2019**  
RFQ No 19-315

RFQ Documents AND Cost Proposal Due: **August 19, 2019, 2:00pm EST.**  
Submit RFQ Documents AND Cost Proposal documents to City of Brookhaven Purchasing Office at  
4362 Peachtree Road Brookhaven, GA 30319

Mandatory Pre-Bid Conference and Site Visit will be held **July 30, 2019, 10:00am EST** at  
City of Brookhaven City Hall

**Deadline for Questions: August 6, 2019, 12:00 Noon EST**

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. No questions shall be submitted to the Parks Bond Program Manager, Project Engineer/Architect, or Parks & Recreation Department.

### Instructions to Proposers

All spaces below are to be completed and the Qualification Letter page must be signed where indicated.  
Failure to sign and return the Qualification Letter may cause rejection of the Qualification & Bid.

### **Proposer Information:**

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

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

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

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

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

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

**Request for Qualifications (RFQ) & Cost Proposal shall be presented in SEPARATE sealed opaque envelopes with the bid number and name RFQ 19-315 (Briarwood Park Pool Project) clearly marked on the outside of the envelopes. The name of the company or firm submitting the qualifications and bid must also be clearly marked on the outside of each envelope. ONE (1) ORIGINAL PAPER COPY AND ONE DISK/FLASH DRIVE OF BOTH THE QUALIFICATIONS & COST PROPOSAL MUST BE SUBMITTED IN SEPARATE ENVELOPES.**

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## SCOPE OF WORK

The proposed project is located at Briarwood Park near the existing Recreation Center on the north portion of the property, and includes the following:

- Demolition of the existing pool house, pool deck, pool shell, splash pad, and mechanical / chemical enclosure. Demolition includes the full depth removal of all pavement and foundations, removal of several small retaining structures, removal of fencing including all footings and gates, removal of all lighting including footings, conduit runs, and other elements of the existing pool lighting system. Additional portions of pavement are to be removed as shown on the plans and should be removed such that a clean joint can be made between existing pavement to remain and proposed pavement to be installed.
- Several utilities will require being capped or plugged. The contractor will be required to remove the existing utility lines to the limits of disturbance, at which point the services may be capped or plugged and abandoned in place.
- 3 existing shade structures are to be salvaged and stored for reuse on the proposed project.
- Construction of a new building (approx. 4,000 sf enclosed) that will include restrooms, locker rooms, and showers; an office; a warm and serve concessions space; storage space; and a mechanical room for the proposed pool;
- Construction of a new pool (approx. 6,000 sf of surface) featuring a beach entry with several overhead sprays (included as alternate bid items), an open water area, and a 6-lane lap portion intended for local swim meets;
- Construction of a concrete pool deck (approx. 12,000 sf of area) with deck drainage;
- Installation of an 8' tall chain link perimeter fence (vinyl coated) with several gates managed by electronic locks.
- Provide new electrical service from a transformer (to be placed by Georgia Power) for the building and pool operations
- Install new lighting for the pool deck as shown on the drawings;
- Install new concrete sidewalk and asphalt pavement as shown on the drawings to connect to existing pavements to remain;
- Installation of water and sanitary sewer services (note that the existing water meter is to be reused).
- Installation of Landscape Materials as shown on the drawings;
- Start up, owner training, and collection of operations and owner's manuals for delivery to the owner at the completion of the project;
- Procure and provide site amenities for the pool, including life safety equipment (life guard towers, flotation devices, etc.), tables, umbrellas, chaise lounges, and other items identified on the drawings;
- Provide and install a shade pavilion as an alternate bid.

**The City plans to open the new pool facility for public use Memorial Day weekend in 2020. The new pool facility must be complete and ready for City occupancy on or before Monday, May 11, 2020.**

## REQUEST FOR QUALIFICATIONS

### Construction of Briarwood Park Pool – RFQ No. 19-315

- I. INTRODUCTION:** City of Brookhaven is in the process of qualifying experienced and qualified Building Contractors for the construction of its new Briarwood Park Pool. The proposed facility includes a 6,000 +/- s.f. pool and a 4,000 +/- s.f. one-story pool house.

Additional site amenities include access sidewalks, pool deck, shade structures, landscaping, fencing, and retaining walls. The building includes office space, restrooms, locker rooms, and a pump room with a pump pit. The project includes demolition and removal of the existing pool, pool deck, pool house, and all related items, both below grade and above grade.

### II. INSTRUCTIONS:

Failure to adhere to the instructions below may result in the bid being deemed non-responsive.

- A. Bidder shall not attach information in lieu of completion of the forms provided below and any specifically requested attachments. All information requested by the City must be provided.
- B. Bidder's qualifications and ability to complete this project will be determined based upon the information presented. All questions must be answered in full.
- C. Bidders must meet the following required experience qualifications.

### III. MINIMUM REQUIREMENTS:

- A. Bidder shall have a minimum of five (5) years of experience on projects of similar size and scope and shall provide a list of three (3) or more projects completed within the past five (5) years evidencing such experience. Reference projects shall be submitted in Section V of this form.
- B. Bidder must show experience for both the company, general contractor and pool contractor, and proposed personnel for both. Additional forms can be used as needed to show experience.
- C. **The pool contractor must be a DeKalb County Board of Health certified pool contractor. Evidence of this certification must be included in the RFQ response.**

- D. City of Brookhaven reserves the right to confirm all information provided in Section V and obtain references from the project manager and/or architect. A poor reference may be grounds for disqualification from this project.
- E. The bidder must confirm all references are still available at the company, address, and phone number provided. If references are not available at the contact information provided, the proposer/bidder may be deemed unqualified.
- F. Bidder shall not be currently under indictment for criminal misconduct involving any local, state, or federal government entity.
- G. Bidder shall provide information on any contract termination (by Owner) or any contract disputes that ended in litigation for each project.
- H. If Bidder chose to provide additional information on the three projects, materials shall be limited to two pages for each project.
- I. Bidder acknowledges receipt of the following addenda:

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

**IV. PROPOSER INFORMATION:**

- A. Experience of Proposer:
    - 1. Does Proposer have a minimum five (5) years' experience on projects of similar size and scope: \_\_\_\_\_
    - 2. Number of years has Proposer operated under current company name: \_\_\_\_\_
- If you answer "Yes" to any of the questions below, please attach a separate document providing the details of the situation.
- 3. Has Bidder failed to complete a construction project in the last 10 years? \_\_\_\_\_
  - 4. Has Bidder ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal or State department or agency? \_\_\_\_\_
  - 5. Attach copies of the following to this form:
    - a. Company Quality Control Program
    - b. Company Safety Program
    - c. OSHA Citations received in the past 5 years

**V. COMPANY EXPERIENCE – SIMILAR PROJECTS:**

The Bidder must demonstrate satisfactory work as described under Section III, above. Use the attached Project forms to demonstrate these requirements. Describe projects in detail in terms of degree of difficulty, problems encountered, etc., or any pertinent information that might be used to evaluate ability to complete the work described in this RFQ document. More than the minimum of 3 projects can be submitted to demonstrate the work performed by the company and personnel. Make additional copies of the form as needed.

**A. Project No. 1: Company and/or Personnel**

Project Name: \_\_\_\_\_  
Project Location: \_\_\_\_\_  
Project Type: \_\_\_\_\_

Owner: \_\_\_\_\_  
Project Manager: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Telephone: \_\_\_\_\_  
Contact Email: \_\_\_\_\_

Architect/Engineer firm: \_\_\_\_\_  
Project manager: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Telephone: \_\_\_\_\_  
Contact Email: \_\_\_\_\_

Construction Cost: \$ \_\_\_\_\_  
Completion Date (approx.): \_\_\_\_\_

Project Size:  
Pool size (water surface area in square feet): \_\_\_\_\_  
Building size (in square feet): \_\_\_\_\_

Approximate percentage of cost of the work performed by Bidder's own workforce: \_\_\_\_\_

General description of scope of work: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B. Project No. 2: Company and/or Personnel**

Project Name: \_\_\_\_\_  
Project Location: \_\_\_\_\_  
Project Type: \_\_\_\_\_

Owner: \_\_\_\_\_  
Project Manager: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Telephone: \_\_\_\_\_  
Contact Email: \_\_\_\_\_

Architect/Engineer firm: \_\_\_\_\_  
Project manager: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Telephone: \_\_\_\_\_  
Contact Email: \_\_\_\_\_

Construction Cost: \$ \_\_\_\_\_  
Completion Date (approx.): \_\_\_\_\_

Project Size:  
Pool size (water surface area in square feet): \_\_\_\_\_  
Building size (in square feet): \_\_\_\_\_

Approximate percentage of cost of the work performed by Bidder's own workforce: \_\_\_\_\_

General description of scope of work: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**C. Project No. 3: Company and/or Personnel**

Project Name: \_\_\_\_\_  
Project Location: \_\_\_\_\_  
Project Type: \_\_\_\_\_

Owner: \_\_\_\_\_  
Project Manager: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Telephone: \_\_\_\_\_  
Contact Email: \_\_\_\_\_

Architect/Engineer firm: \_\_\_\_\_  
Project manager: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Telephone: \_\_\_\_\_  
Contact Email: \_\_\_\_\_

Construction Cost: \$ \_\_\_\_\_  
Completion Date (approx.): \_\_\_\_\_

Project Size:  
Pool size (water surface area in square feet): \_\_\_\_\_  
Building size (in square feet): \_\_\_\_\_

Approximate percentage of cost of the work performed by Bidder's own workforce: \_\_\_\_\_

General description of scope of work: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Proposals for Qualifying should include pages 1 through 9 of this document.**

1. Pursuant to the provisions of the city ordinance, the City of Brookhaven has determined that the use of competitive sealed bidding will not be practical or advantageous to the City in completing the acquisition of the services described herein. A competitive sealed RFQ shall be submitted in response hereto and shall be opened in the same manner as competitive sealed bids. All RFQ submitted pursuant to this request shall be made in accordance with the provisions of the City of Brookhaven Vendor Manual, these instructions, and specifications.
2. The RFQ response should include a narrative of the contractor's approach that demonstrates a full understanding of the project's scope of work.
3. The RFQ response should include a schedule, such as a Gantt chart, that demonstrates the contractor's understanding and ability to meet the project's contract completion date.
4. From the issue date of this RFQ until contractors are selected and selections announced, offerors are not allowed to communicate for any reason with any City Staff or representatives of the City except through the Buyer of Record or as provided by existing work agreement(s). For violation of this provision, the City shall reserve the right to reject the RFQ of the offending offeror. All questions concerning this RFQ must be submitted in writing (e-mail preferred) to the Finance Director. No questions other than written will be accepted. No response other than written will be binding upon the City. The Buyer of Record for this project is:

Linda Nabers  
Finance Director  
City of Brookhaven  
[purchasing@brookhavenga.gov](mailto:purchasing@brookhavenga.gov)

5. **The RFQ package shall and must be organized in a manner such that the requirements in the RFQ are cross-referenced with the RFQ document.** It is mandatory that the requirements from the RFQ be captured at one location at the beginning of the RFQ. The locations with the RFQ where each requirement is met shall and must be identified next to the requirement.
6. The packages shall be in **sealed envelopes** and identified as follows:  
  
RFQ No. 19-315 Briarwood Park Pool Project  
Opening Date and Time: August 19, 2019 @ 2:00pm EST  
Question due August 6, 2019 @ 12:00 noon EST
7. All packages are due at the location specified no later than the date and time specified herein. The Qualifications Letter (page 1), included in this RFQ, must be included in the package and must be signed by a person authorized to legally bind the company. One (1) original document and one USB/Flash Drive of the RFQ must be submitted

in a separate sealed envelope. One (1) original document and one USB/Flash Drive of the COST PROPOSAL must be submitted in a separate sealed envelope. **Any submitted RFQ response that contains the COST PROPOSAL in the same envelope will be deemed disqualified.**

8. All RFQs received will be opened and reviewed by the Purchasing Manager to ensure that all administrative requirements of the RFQ package have been met by the Offerors. Each RFQ will be reviewed to ensure that the Offeror submitted all information required in the RFQ and that all documents requiring a signature have been signed. Failure to meet these requirements may be cause for rejection. All RFQ's that meet the administrative requirements will then be turned over to the City's evaluation committee for further review and rankings

Each acceptable submitted proposal will be ranked based on the following weighted criteria:

Experience- General Contractor and Pool Contractor- 25 pts

Experience- Proposed personnel for General Contractor and Pool Contractor- 25 pts

References- 25 pts

Understanding of scope- 10 pts

Thoroughness of proposed schedule to meet required completion date- 15 pts

The Evaluation Committee will review all submittals received and rank Offerors based on submittal information required. Discussions may be conducted by the City of Brookhaven with responsible Offerors who submit RFQ determined to be reasonably susceptible of being selected for award for clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of statements; and such revisions may be permitted after submissions and prior to award. In conducting any such discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors. Cost will not be a deciding factor in this RFQ evaluation, only qualifications.

The COST PROPOSAL of the highest ranked company will be opened to determine if their COST PROPOSAL is within budget. If the COST is acceptable, the project will be awarded to that Bidder. If the opened COST PROPOSAL is found to be over budget and unacceptable, the COST PROPOSAL for the next highest ranked company will be opened and evaluated. This process will be followed until the project can be awarded or all qualified bidders and bids have been opened.

9. Each bidder must be able to provide evidence of a valid City of Brookhaven business license if the bidder maintains an office within the City of Brookhaven. Unincorporated, out of City, and out of State bidders are required to provide evidence of a certificate to do business in any town, County or municipality in the State of Georgia, or as otherwise required by City ordinance or resolution.

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

**COST PROPOSAL**

In compliance with this RFQ and Cost Proposal, the undersigned, hereinafter termed the Bidder, proposes to enter into a Contract with the City of Brookhaven, Georgia, to provide the necessary machinery, tools, apparatus, other means of construction, and all materials and labor specified in the Contract Documents or as necessary to complete the Work in the manner therein specified within the time specified, as therein set forth, for:

**Briarwood Park Pool Project**

The Bidder has carefully examined and fully understands the Contract, Specifications, Construction Drawings, and other documents hereto attached, has made a personal examination of the Site of the proposed Work, has satisfied himself as to the actual conditions and requirements of the Work, and hereby proposes and agrees that if their bid is accepted, they will contract with the City of Brookhaven in full conformance with the Contract Documents.

All work performed shall be in accordance with the Contract, Specifications, Construction Drawings, and other project documents. All materials used in the process of completion of the work included in the Contract must meet project requirements.

It is the intent of this Bid to include all items of construction and all Work called for in the Specifications, or otherwise a part of the Contract Documents.

In accordance with the foregoing, the undersigned proposes to furnish and construct the items listed in the attached Bid schedule for the unit prices stated.

The Bidder agrees that the cost of any work performed, materials furnished, services provided, or expenses incurred, which are not specifically delineated in the Contract Documents, but which are incidental to the scope, intent, and completion of the Contract, shall be deemed to have been included in the prices bid for the various items scheduled.

Bidder acknowledges receipt of the following addenda:

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

Bidder further declares that the full name and resident address of Bidder's Principal is as follows:

Signed, sealed, and dated this \_\_\_\_\_ day of \_\_\_\_\_

Notarized \_\_\_\_\_ (Seal)

Company Name and Address:

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

Principal: \_\_\_\_\_

Title: \_\_\_\_\_

## **BIDDING INSTRUCTIONS**

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

1. City Document Cover Page,
2. Applicable Compliance Specifications Sheets
3. Applicable Addenda Acknowledgement
4. One (1) original copy of the bid documents
5. One Flash Drive or USB with all documents
6. Bid Bond, Performance Bond, and Payment Bond
7. General Contractor's License Certification
8. Subcontractor Listing
9. Qualifications Signature and Certification

### **BIDDING REQUIREMENTS**

Interested parties shall submit their completed bid by the date and time designated on the cover sheet to the City of Brookhaven Purchasing Office. The completed bid shall be delivered by mail or in person with the name of firm submitting, address, phone, and primary point of contact. Any bids received after the deadline will be returned to the bidder. It is understood and agreed that this bid shall be valid and held open for a period of ninety (90) days from bid opening date.

The following items will be included in the bid response package.

1. Bid Cost
2. Signed Bonds
3. SAVE Affidavit
4. Exhibits B, C, D, E need to be included in your bid package.

Omission of any of the above items may disqualify the bidder from competition.

### **BID SCHEDULE:**

Release of Bid	July 17, 2019
<b>Mandatory Pre-bid Conference</b>	July 30, 2019 10:00 am at City of Brookhaven City Hall
Deadline for Questions	August 6, 2019 5:00 p.m.
Response to Questions	August 12, 2019
<b>Bid Due Date:</b>	<b>August 19, 2019 2:00 p.m. EST.</b>

**Submit your bid to: City of Brookhaven 4362 Peachtree Road NE Brookhaven, GA 30319**

The City of Brookhaven reserves the right to reject any or all bids and to waive technicalities and informalities, and to make award in the best interest of the City of Brookhaven.

Contact with any departments regarding this procurement will disqualify you from participating in this procurement. All questions must be submitted to the Finance Director.

**Cost Incurred by Bidders:** All expenses involved with the preparation and submission of the Cost Proposal to the City of Brookhaven, or any work performed in connection therewith shall be borne by the Bidder. No payment will be made for any responses received or for any other effort required of or made by Bidder(s) prior to commencement of work as defined by a contract approved by the governing body of the City of Brookhaven.

The Bidder must include a unit or lump sum price for all items shown on the Bid Form; failure to comply may be cause for rejection. Additionally, Unbalanced Bids will be subject to rejection. Conditional Bids will not be accepted. The special attention of all Bidders is called to this provision, for should conditions make it necessary to revise the quantities, no limit will be fixed for such increased or decreased quantities or extra per unit compensation allowed.

**Discrepancy in Unit Price:** In case of discrepancy between a unit price and an extended price and total amount, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

No interpretation of the meaning of the Drawings, Specifications or other pre-bid documents will be made to any Bidder orally.

All such interpretations and any supplemental instructions will be in the form of written Addenda to the Contract Documents which, if issued, will be emailed to those bidders soliciting documents from the Architect or will be mailed, or shipped to all prospective Bidders who purchased documents from the Printer. The costs of printing and shipping the addenda will be the responsibility of the Bidder requesting the documents.

The City of Brookhaven will issue responses to inquiries and any other corrections of amendments it deems necessary in written addenda issued prior to the Bid opening date. Bidders should not rely on any representations, statements or explanations other than those made in this invitation for Bid or in any addendum to this Invitation for Bid. Where there appears to be a conflict between the Invitation for Bid and any addenda issued, the latest addendum issued will prevail.

The City of Brookhaven assumes no responsibility for Bidders' failure to receive and acknowledge any addenda issued.

**On-Site Visit:** The Site is available to visit at any time between dawn and dusk. Each bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the contract documents. The failure or omission of any bidder to inspect the site shall in no way relieve any bidder from any obligation in respect to his bid.

**Late Submittal, Late Modifications and Late Withdrawals:** Bid submittals received after the Bid opening date and time are late and may not be considered. Revised bids received or withdrawal of bids after the Bid opening date are also late and will not be considered. No responsibility shall attach to the City of Brookhaven for the premature opening of a Bid not properly addressed and identified, and/ or delivered to the improper designation.



Rejection of Bids: The City of Brookhaven reserves the right to accept or reject any and all Bids and reserves the right to waive any irregularities or informalities or technical defects and to accept or reject any Bid, if in the judgment of the City of Brookhaven that its best interest will be served. Award may be refused to any Bidder who, in the opinion of the City of Brookhaven, is not a responsible Bidder, is in default of any bid, proposal, purchase order, or contract with the City prior to the date of Bid under consideration, or whose performance under any prior proposal or contract was determined by the City to be unsatisfactory. The Bidder's performance on behalf or other entities (public or private) may be considered.

### **1.0 Contract Documents**

- A. The Contract Documents include the Contract Agreement, Request for Qualifications, Cost Proposal, Instructions to Bidders, Contractor's Cost Proposal (including all documentation accompanying the Bid and any post Bid documentation required by the Owner prior to the Notice of Award), Bonds, all Special Provisions, General Conditions, Supplementary Conditions, Specifications, Drawings, and addenda, together with written amendments, change orders, field orders and the Architect's written interpretations and clarifications issued in accordance with the General Conditions on or after the date of the Contract Agreement.
- B. Shop drawing submittals reviewed in accordance with the General Conditions, geotechnical investigations and soils reports, and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, are not Contract Documents.
- C. The Contract Documents shall define and describe the complete work to which they relate.
- D. All bids received will become a part of the official contract file and may be subject to disclosure under Georgia Open Records Act.
- E. Bidders are expected to examine the specifications, bid form, and all instructions. Failure to do so will be at the bidders' risk. Each offeror shall furnish the information required by the solicitation.

### **2.0 Subcontractors**

- A. Names of principal subcontractors must be listed using the Subcontractor Listing Form and attached to Bid. There shall be only one subcontractor named for each specific trade.
- B. The Bidder is specifically advised that any person, firm or other party to whom it is proposed to award a subcontract under this Contract must be acceptable to the Owner.

### **3.0 Conditions of the Project**

- A. Each Bidder must be informed fully of the conditions relating to the construction of the Project and the employment of labor thereon. Failure to do so will not relieve a successful Bidder of the obligation to furnish all material and labor necessary to carry out the provisions of the

Contract. Insofar as possible, the Contractor, in carrying out the work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.

- B. The Bidder is advised to examine the location of the Project and to be informed fully as to its conditions; the conformation of the ground; the character, quality and quantity of the products needed preliminary to and during the prosecution of the work; the general and local conditions and all other matters which can in any way affect the work to be done under the Contract. Failure to examine the site will not relieve the successful Bidder of an obligation to furnish all products and labor necessary to carry out the provisions of the Contract.
- C. The Bidder shall notify the Owner of the date and time Bidder proposes to examine the location of the Project. The Bidder shall confine examination to the specific areas designated for the proposed construction, including easements and public rights-of-way. The Bidder is solely responsible for any damages caused by examination of the site.
- D. The Contractor will not be given extra payments for conditions which can be determined by examining the site and documents.
- E. If any special federal, state, county or city laws, and municipal ordinances, and the rules and regulations of any authorities having jurisdiction over construction of the Project, enclosed herein referred to, or applicable by law to the Project, conflict with requirements of the Contract Documents, then the most stringent requirement prevails.
- F. By submission of a Bid, the Bidder warrants that Bidder has inspected the site and has read and is thoroughly familiar with the Contract Documents (including all addenda). The failure or omission of any Bidder to examine any form, instrument or document shall in no way relieve any Bidder from any obligation in respect to the Bid.
- G. By submission of a Bid, the Bidder warrants that it has notified, prior to the opening of Bids, the Architect and/or Owner in writing, of any conflict, error, ambiguity or discrepancy which the Bidder may discover prior to the opening of Bids, which would have an impact on the cost of the Project on the performance of the constructed Work.
- J. It is the intent of the Owner to award the Contract to the submitting Contractor deemed the most qualified complying with the conditions of the Contract Documents.
- K. Add alternates and deductive alternates may be accepted as part of initial contract or by Change Order at the Bid Price within 90 days of the Contract Date. Bidders that do not fill out add alternate prices will be deemed as non-responsive.
- I. The Bidder to whom the award is made will be notified. The Owner reserves the right to reject any and all Bids and to waive any minor irregularities in Bids received whenever such rejection or waiver is in the Owner's best interest.
- J. A responsive Bidder shall be one who submits a Bid in the proper form without qualification or intent other than as called for in the Contract Documents, and who binds

himself or herself on behalf of the Bid to the Owner with the proper Bid Bond completed and attached, and who properly completes all forms required to be completed and submitted at the time of the Bidding. The Bidder shall furnish all data required by these Contract Documents. Failure to do so may result in the Bid being declared non-responsive.

**BASE BID**

Base Bid, Single-Prime (All Trades) Contract: The undersigned Bidder, having carefully examined the Procurement and Contracting Requirements, Conditions of the Contract, Drawings, Specifications, and all subsequent Addenda, as prepared by Lose Design and their consultants, having visited the site, and being familiar with all conditions and requirements of the Work, hereby agrees to furnish all material, labor, equipment services, and all calculated allowances below, necessary to complete the construction of the above-named project, according to the requirements of the Procurement and Contracting Documents, for the stipulated sum of:

\_\_\_\_\_ Dollars  
(\$\_\_\_\_\_)

**ALTERNATE BID**

Alternate Bid, Single-Prime (All Trades) Contract: The undersigned Bidder, having carefully examined the Procurement and Contracting Requirements, Conditions of the Contract, Drawings, Specifications, and all subsequent Addenda, as prepared by Lose Design and their consultants, having visited the site, and being familiar with all conditions and requirements of the Work, hereby agrees to furnish all material, labor, equipment and services, necessary to complete the following Alternate Bid Items as defined in Section 012300 Alternates, according to the requirements of the Procurement and Contracting Documents, for the stipulated sums of:

**No. 1: Poligon Shade Pavilion**

\_\_\_\_\_ Dollars  
(\$\_\_\_\_\_)

**No. 2: Water Jelly No. 1**

\_\_\_\_\_ Dollars  
(\$\_\_\_\_\_)

**Company:** \_\_\_\_\_

**No. 3: Vortex Turtle No. 2**

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_)

**No. 4: Vortex Frog No. 1**

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_)

**No. 5: Vortex Snail No. 4**

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_)

**No. 6: Vortex Cascades No. 2**

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_)

**No. 7: Vortex Frog No. 6**

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_)

**No. 8: Vortex Flower No. 5**

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_)

**No. 9: Vortex Wavy Palm**

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_)

**No. 10: Vortex Leaf No. 3**

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_)

**Company:** \_\_\_\_\_

**No. 11: Kookdeck Topping**

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_)

**UNIT PRICES**

Should rock or other unforeseen conditions be encountered, and for other indicated construction items, **the Base Bid shall include performing the work below**. The stated unit prices include only those times listed in Section 012200 Unit Prices.

Base Bid includes all work described in the project description and items 1 through 5 described below.

**Unit Price 1: Rock, Open Excavation (Estimated Quantity 250 Cubic Yards):**

Unit Price:\_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) per CY

Total:\_\_\_\_\_ Dollars (\$\_\_\_\_\_ )

**Unit Price 2: Rock, Trench Excavation (Estimated Quantity 150 Cubic Yards):**

Unit Price:\_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) per CY

Total:\_\_\_\_\_ Dollars (\$\_\_\_\_\_ )

**Unit Price 3: Excavation of Unsatisfactory Materials and Replacement with Crushed Stone (Estimated Quantity 500 Cubic Yards):**

Unit Price:\_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) per CY

Total:\_\_\_\_\_ Dollars (\$\_\_\_\_\_ )

**Unit Price 4: Excavation of Unsatisfactory Materials and Replacement with Earth Fill (Estimated Quantity 500 Cubic Yards):**

Unit Price:\_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) per CY

Total:\_\_\_\_\_ Dollars (\$\_\_\_\_\_ )

**Unit Price 5: Silt Fence (Estimated Quantity 250 LF):**

Unit Price:\_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) per LF

Total:\_\_\_\_\_ Dollars (\$\_\_\_\_\_ )

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

**BID GUARANTEE**

The undersigned Bidder agrees to execute a contract for this Work in the above amount and to furnish surety as specified within 10 ten days after a written Notice of Award, if offered within 60 sixty days after receipt of bids, and on failure to do so agrees to forfeit to Owner the Bid Bond, as liquidated damages for such failure, in the following amount constituting five percent (5%) of the Base Bid amount above:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_)

**SUBCONTRACTORS AND SUPPLIERS**

The Bidder shall execute subcontracts for the portions of the Work as indicated on the attached List of Sub-contractors.

**TIME OF COMPLETION**

The undersigned Bidder proposes and agrees hereby to commence the Work of the Contract Documents on a date specified in a written Notice to Proceed to be issued by Owner and shall fully complete the Work within **240** calendar days **or** on or before **May 11, 2020**, if earlier.

The City of Brookhaven will charge the Contractor Five Hundred Dollars and no cents (\$500.00) per day for liquidated damages for every day beyond May 11, 2020 that the Work is not complete.

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

**LIST OF SUBCONTRACTORS  
(To be submitted with the Bid)**

I do \_\_\_\_\_, do not \_\_\_\_\_, propose to subcontract some of the work on this project. I propose to Subcontract work to the following subcontractors:

Company Name: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
Type of work: \_\_\_\_\_

Company Name: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
Type of work: \_\_\_\_\_

Company Name: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
Type of work: \_\_\_\_\_

Company Name: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
Type of work: \_\_\_\_\_

Company Name: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
Type of work: \_\_\_\_\_

Company Name: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
Type of work: \_\_\_\_\_

Company Name: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
Type of work: \_\_\_\_\_

Company Name: \_\_\_\_\_  
Company Address: \_\_\_\_\_  
Type of work: \_\_\_\_\_

**Company:** \_\_\_\_\_

## INSURANCE REQUIREMENTS

Within 10 days of Notice of Award, and at all times that this Contract is in force, the Contractor shall obtain, maintain and furnish the City Certificates of Insurance from licensed companies doing business in the State of Georgia with an A.M. Best Rating A-10 or higher and acceptable to the City covering:

1. Workers' Compensation & Employer's Liability Insurance. Workers' Compensation Insurance in compliance with the applicable Workers' Compensation Act(s) of the state(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statutes. Employer's Liability Insurance, with limits of liability of not less than \$1,000,000 per accident for bodily injury or disease.
2. Commercial General Liability Insurance, including contractual liability insurance, product and completed operations, personal and advertising injury, and any other type of liability for which this Contract applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate for personal injury, bodily injury, and property damage. Commercial General Liability Insurance shall be written on an "occurrence" form.
3. Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage if automobiles are to be used in the delivery of or in the completion of services and work or driven onto the City's property. Insurance shall include all owned, non-owned and hired vehicle liability.
4. Umbrella Insurance with limits of liability excess of Employer's Liability Insurance, Commercial General Liability Insurance and Automobile Liability Insurance in the amount of not less than \$3,000,000.
5. Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits not less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
6. Professional (Errors and Omissions) Insurance- For Professional Services and for all Design/Build Projects with limits of liability of not less than \$3,000,000 per occurrence or claim / \$3,000,000 policy aggregate. Such policy shall also include coverage for losses arising from the breach of information security or cyber liability (including Errors & Omissions, Security and Privacy Liability and Media Liability), whether combined with the Professional Liability policy or placed as a separate policy, but carrying the same limits of liability. Such coverage shall insure damage, injury and loss caused by error, omission or negligent acts, including all prior acts without limitation, related to the professional services to be provided under this Contract. The policy shall be amended to include independent contractors providing professional services on behalf of or at the direction of the Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. Further, coverage shall be afforded for fraudulent acts, misappropriation of trade secrets, internet professional services, computer attacks, personal injury, regulatory actions, wrongful



acts, contractual liability, privacy policy, and insured versus insured. The Contractor shall ensure that coverage under this policy continues for a period of thirty-six (36) months after completion of services.

7. Fidelity Bond (Employee Dishonesty) in the sum of not less than \$50,000.

All such insurance shall remain in effect until final payment is made and the Project is accepted by the City. If the Contractor receives notice of non-renewal or material adverse change of any of the required coverages, the Contractor shall promptly advise the City in writing. Failure of the Contractor to promptly notify the City on non-renewal or material adverse change of any of the required coverages terminates the Agreement as of the date that the Contractor should have given notification to the City. The insurance policies shall contain or be endorsed to contain, the following provisions:

A provision that coverage afforded under such policies shall not expire, be canceled or altered without at least thirty (30) days prior written notice to the City.

Workers' Compensation and Employer's Liability and Property insurance policies shall contain a waiver of subrogation in favor of the City and the City's boards, officials, directors, officers, employees, representatives, agents, and volunteers.

Commercial General Liability, Automobile Liability Contractors' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) insurance policies shall include an endorsement making the City and the City's boards, officials, directors, officers, employees, representatives, agents, and volunteers Additional Insureds under such policies.

A copy of these endorsements shall be provided to the City.

Certificates of Insurance showing that such coverage is in force shall be filed under this Contract by the Contractor to the City.

The obligations for the Contractor to procure and maintain insurance shall not be construed to waive or restrict other obligations and it is understood that insurance in no way limits liability of the Contractor whether or not same is covered by insurance.

Certificate Holder should read: The City of Brookhaven, 4362 Peachtree Road Brookhaven, Georgia 30319.

## **BONDING REQUIREMENTS**

Each bid must be accompanied with a BID BOND (bond only: certified checks or other forms are not acceptable) in an amount equal to five percent (5%) of the base bid, payable to the City of Brookhaven. Said bid bond guarantees the bidder will enter into a contract to construct the project strictly within the terms and conditions stated in this bid and in the bidding and contract documents, should the construction contract be awarded.

The Successful Bidder shall be required to furnish a bond for the faithful performance on the contract and a bond to secure payment of all claims for materials furnished and/or labor performed in performance of the project, both in amounts equal to one hundred percent (100%) of the contract price.

Bonds shall be issued by a corporate surety appearing on the Treasury Department's most current list (Circular 570 as amended) and be authorized to do business in the State of Georgia.

Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners shall execute Bond.

Performance and Payment bond will be required from awarded contractor.

Bid bond guarantees the bidder will enter into a contract to construct the project strictly within the terms and conditions stated in this bid and in the bidding and contract documents, should the construction contract be awarded. Each Bond must be accompanied by original signatures for both Bidder and Surety, and Power of Attorney (with Surety Seal), prepared on the form of Bid Bond included herein or a Surety Company's Standard Bid Bond, duly executed by the Bidder as principal and having as surety thereon a surety company authorized to do business in the State of Georgia. Bid Bonds must contain, at a minimum, the following:

1. Bidder named as Principal on Bid Bond.
2. The City of Brookhaven named as Obligee. Specific Bid Project referenced on Bid Bond.
3. Bid Bond meets minimum dollar amount (5% of total bid sum).
4. Bid Bond signed by same representative signing Bid.
5. Bid Bond signed by Attorney-in-fact representing Surety (exact name).
6. Bid Bond dated the same date as Power of Attorney and Bid Form.
7. Surety on Federal Treasury's list of approved sureties; Bid Bond amount within underwriting limit and Surety authorized to do business in Georgia.
8. If awarded Bidder refuses to enter into a Contract, the Owner will retain bid security as liquidated damages, but not as a penalty.

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, THAT \_\_\_\_\_

(Name of Contractor) \_\_\_\_\_

(Address of Contractor) at

\_\_\_\_\_

(Corporation, Partnership and or Individual) hereinafter called Principal, and \_\_\_\_\_

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

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

City of Brookhaven Georgia  
(Name of Obligee)  
4362 Peachtree Road NE, Brookhaven, Georgia 30319  
(Address of Obligee)

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

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

Briarwood Park Pool Project

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

NOW, THEREFORE, the conditions of this obligation are such that if the bid is accepted, the Principal shall within ten days after receipt of notification of the acceptance execute a Contract in accordance with the Bid and upon the terms, conditions, and prices set forth in the form and manner required by the City of Brookhaven, Georgia, and execute a sufficient and satisfactory Performance Bond and Payment Bond payable to the City of Brookhaven, Georgia, each in an amount of 100% of the total Contract Price, in form and with security satisfactory to said the City of Brookhaven, Georgia, and otherwise, to be and remain in full force and virtue in law; and the Surety shall, upon failure of the Principal to comply with any or all of the foregoing requirements within the time specified above, immediately pay to the City of Brookhaven, Georgia, upon demand, the amount hereof in good and lawful money of the United States of

America, not as a penalty, but as liquidated damages.

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

Signed, sealed, and dated this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_

ATTEST:

\_\_\_\_\_  
(Principal Secretary)

\_\_\_\_\_  
(Principal)

(SEAL)

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

\_\_\_\_\_  
(Witness to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

(Surety)

\_\_\_\_\_

ATTEST

BY: \_\_\_\_\_  
(Attorney-in-Fact) and Resident Agent

\_\_\_\_\_  
(Attorney-in-Fact)

(Seal)  
(Address)

\_\_\_\_\_

\_\_\_\_\_  
(Witness as to Surety)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: THAT

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_  
(Corporation, Partnership or Individual)

Hereinafter called Principal, and

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

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

The City of Brookhaven, Georgia  
(Name of Obligee)

4362 Peachtree Road NE, Brookhaven, GA. 30319  
(Address of Obligee)

hereinafter referred to as Obligee; are held firmly bound unto said Obligee and all persons doing work or furnishing skill, tools, machinery, supplies, or material under or for the purpose of the Contract hereinafter referred to, in the penal sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

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

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

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

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

**Signed, sealed, and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019**

**ATTEST:**

\_\_\_\_\_  
(Principal Secretary)

\_\_\_\_\_  
(Principal)

(SEAL)

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

\_\_\_\_\_  
(Witness to Principal)

\_\_\_\_\_  
(Address)

(Surety)

**ATTEST:**

\_\_\_\_\_  
Attorney-in-Fact) and Resident Agent

\_\_\_\_\_  
(Attorney-in-Fact)

(Seal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Witness as to Surety)

\_\_\_\_\_  
(Address)

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: THAT

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_  
(Corporation, Partnership or Individual)

Hereinafter called Principal, and

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

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

The City of Brookhaven Georgia  
(Name of Obligee)  
4362 Peachtree Road NE, Brookhaven, Georgia 30319  
(Address of Obligee)

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

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

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

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

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

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

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

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

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

**Signed, sealed, and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019**

**ATTEST:**

\_\_\_\_\_  
(Principal Secretary)  
(Seal)

\_\_\_\_\_  
(Principal)

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

\_\_\_\_\_  
(Witness to Principal)

\_\_\_\_\_  
(Address)



\_\_\_\_\_  
(Surety)

**ATTEST**

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

\_\_\_\_\_  
(Attorney-in-Fact) and Resident Agent

\_\_\_\_\_  
(Attorney-in-Fact)

(Seal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Witness as to Surety)

\_\_\_\_\_  
(Address)

**QUALIFICATIONS SIGNATURE AND CERTIFICATION**  
**(Bidder to sign and return)**

I certify that this offer 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 \_\_\_\_\_

**CORPORATE CERTIFICATE**

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Contractor in the foregoing bid; that \_\_\_\_\_ who signed said bid in behalf of the Contractor, was then (title) \_\_\_\_\_ of said Corporation; that said bid was duly signed for and in behalf of said Corporation by authority of its Board of Directors, and is within the scope of its corporate powers; that said Corporation is organized under the laws of the State of \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_(Seal)  
(Signature)

## SPECIAL PROVISIONS

In the event there are any discrepancies between the following provisions and other provisions in these documents, the following provisions shall prevail.

1. **The pool contractor or pool sub-contractor must be a DeKalb County, GA, certified pool contractor as defined by the DeKalb County Board of Health.** The contract design plans will be revised to include the pool contractor's name to allow the swimming pool building permit to be issued to the pool contractor. The contractor is responsible for paying any required fees for the pool building permit.

2. MATERIAL TESTING AND INSPECTIONS

The City will contract with a firm that will provide construction material testing for soil, concrete, mortar, grout, asphalt, and other materials requiring testing per the contract documents. It is the contractor's responsibility to schedule the testing with the designated firm as required.

The contractor is responsible for contracting with a certified firm to conduct structural Special Inspections as required by the contract documents.

It is the contractor's responsibility to schedule all required City of Brookhaven, DeKalb County, and DeKalb County Board of Health inspections.

Completed work not inspected as required by any of the authorizing agencies or contract documents will be subject to rejection.

3. Individuals, firms and businesses seeking an award of a City of Brookhaven contract may not initiate or continue any verbal or written communications regarding a solicitation with any City official, employee or other City representative without permission of the Finance Director named in the solicitation between the date of the issuance of the solicitation and the date of the final contract award by the City. Violations will be reviewed by the Finance Director. If determined that such communication has compromised the competitive process, the offer submitted by the individual, firm or business may be disqualified from consideration for award.
4. All references to "Engineer", "Landscape Architect", "Architect", or "owner" in General Conditions, drawings or in specifications are deemed to mean the Program Manager and/or "owner's representative", as designated by the City.

5. PERMIT FEES

Contractor is required to obtain all permits necessary for all temporary work, office trailers, water and sewer construction permit, and retaining walls at their own expense.

6. EROSION, SEDIMENTATION AND POLLUTION CONTROL MAINTENANCE

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

7. WEATHER DAYS

The following bad weather calendar days shall be anticipated and included in the contractual time period given for project completion. The Contractor's request for additional time due to weather shall only be granted for days beyond those listed below, considering the full term of the contract. The burden of proof and documentation for such request for additional time shall rest solely upon the Contractor. Requests shall be submitted to the City on a monthly basis. Failure to submit documentation on a monthly basis may result in requests for weather day extensions to be rejected.

January	10 days	July	4 days
February	10 days	August	2 days
March	7 days	September	2 days
April	6 days	October	3 days
May	4 days	November	5 days
June	3 days	December	9 days

Data submitted in support of a request for contract extension due to inclement weather shall include, but not be limited to: documentation of impact on the critical path; daily high and low temperatures at the jobsite; daily rainfall amount at the jobsite; time that rainfall started and stopped; documented snow or ice accumulation; specific work impacted by inclement weather and date stamped photos of the impacted work or work area. A rain gauge and thermometer shall be placed at the jobsite to accurately record rainfall and temperature data.

8. APPROVED VENDORS

All references to vendors and "approved manufacturers" are included for description of quality and content of the designated equipment/materials as basis of design. Equivalent items may be accepted if they meet all standards of quality and purpose for the intended use, as determined by the City. Any and all costs associated with providing required testing or documentation for complete evaluation of proposed equivalents shall be the

contractors' responsibility.

9. SCHEDULE OF VALUES

Contractor, after award of the contract, shall submit a detailed Schedule of Values. The schedule of values shall include costs for all areas of the Work by specification divisions, such that progress payments can be easily evaluated, as determined by the City. The schedule of values shall be broken down in detail to facilitate thorough review.

The schedule of values shall specifically include any unit price items identified in the contract.

10. PAYMENT FOR GRASSING

Seeded and sodded lawns will be acceptable provided the conditions of the construction documents have been met, including maintenance, and a healthy, uniform, close stand of grass is established, free of bare spots in excess of 6 inches square and surface irregularities.

Payment for sod will be paid at 50% of the sodded amount when placed. Payment will be increased to 100% for the amount of sod that has fully rooted to prevent lifting of the sod, and all seams and bare spots have been rooted and grown in, to be able to be used as intended. Installation shall be properly scheduled for complete establishment during the growing season.

Payment for seeding, if applicable, will be paid at 50% of the total contract amount for seeding until germination and grow-in of permanent grassing has achieved 95% on all areas to be seeded. Payment will be increased to 90% after 95% grow-in has been achieved. Final payment, and payment of retainage, will be made only after 100% grow-in has been achieved. Permanent seeding may only take place seasonally as listed in the Manual for Erosion and Sediment control in Georgia tables for permanent seeding region M-L. If the permanent Bermuda grass seeding cannot be installed during the specified dates, the contractor, at no additional expense to the owner, shall install temporary seeding and maintain temporary cover until the next season for permanent seeding. In areas where seeding was installed at the proper time per the Manual for Erosion and Sediment Control in Georgia and less than full coverage is achieved per the requirements of the specifications, which would prevent the owner from opening the facility to the public before the next planting season, the contractor will sod all areas that do not have full coverage – at no cost to the owner. Temporary seeding in high pedestrian traffic areas will not be permitted for facilities that are to open before the next growing season. These areas must be sodded at no additional cost to the owner.

Final payment and release of retainage will not be made until establishment of permanent grass over 100% of the project is acceptable to the County.

11. LIST OF SUBCONTRACTORS

Contractor must submit a full List of Subcontractors with the Bid. Any changes during construction must be approved, in advance, by the City.

12. FINAL ACCEPTANCE

All references to guarantee, warranty or payments that are commencing upon "Final Approval", "Final Certificate for Payment", or "Substantial Completion" or other similar wording shall commence upon acceptance of the Work by the City.

13. PARK OPERATION

The construction will be performed while the rest of the park is open to the public. The public will be permitted to access into areas not under construction including the parking lots. All park areas not fenced off as construction zones will be fully open to the public per normal park hours during construction. Contractor shall take necessary precautions to secure the construction site to maintain a safe environment to the public.

The construction shall not impede the flow of traffic on the existing park drive during construction. Any entry drive or parking lot activities must be coordinated with and approved by the City. The parking lot and park roads shall be kept clean and free of debris.

The contractor shall obtain approval for location of temporary work trailers before setting the trailers in place.

14. GENERAL CONTRACTOR LICENSE

All bidders must be licensed by the State of Georgia to be a General Contractor

15. CONSTRUCTION LAYOUT

The Contractor is responsible for all construction layout and control for the project. Layouts of construction items must consider all elements of the Work adjacent and/or in close proximity.

The Contractor shall proceed with construction layout in such a manner that discrepancies between construction items, existing built features and site conditions that are in conflict with the plans may be examined by the Owner's Representative prior to construction of items in conflict. Failure to notify the Owner's Representative of conflicts prior to constructing items will result in all remedial actions being paid for by the Contractor including but not limited to additional materials, re-inspection fees,

professional service fees and survey cost by all parties to the projects.

16. COORDINATION WITH SUBCONTRACTORS

The contractor is responsible for becoming familiar with the requirements of all construction documents, which includes drawings, bid and contract documents, specifications and all addenda.

Letter prefixes for each drawing sheet indicating the engineering discipline are for convenience only. Information affecting the scope of work for all trades will be found throughout all documents and is not limited to only those documents with the appropriate letter prefix. The contractor is responsible for providing subcontractors all necessary information and drawings.

The drawings and specifications are complementary to each other and what is called for by one shall be binding as if called for by both. If a discrepancy exists between the drawings and specifications, the higher cost item shall be included in the scope, and the Owner notified of the discrepancy.

17. GEOTECHNICAL

A subsurface exploration and geotechnical engineering evaluation was issued for this project on May 30, 2019 by Geo-Hydro Engineers. The report has been included with the Contract Documents for reference. The contractor is responsible for examining the information included in the report and incorporating this information into the scope of work.

Contractor shall coordinate geotechnical and testing services during construction with a firm designated by, and under separate contract with the City. Payment for these services will be made by the City. If contractor request services, but conditions are not ready for the services to be performed, Contractor will be responsible for such costs, and for costs associated with re-tests due to failure to meet specifications.

18. PROJECT DURATION

The project duration shall be as stated elsewhere within the documents. Arbitrary assignment of a contract extension to minor change order requests will be rejected. All requests for contract duration extension due to a proposed change in work must include documentation that demonstrates the impact of the change on the critical path of the project.

19. COORDINATION WITH UTILITIES

Contractor shall coordinate his work with the provider of all utilities located on the site that has the potential to have an impact on the work. Contractor shall ensure existing utilities are protected and not damaged by the construction unless specifically noted otherwise.

Contractor is responsible for locating tie in points, where applicable, to existing utilities and advising the Owner if existing utilities are not located as shown on the plans.

20. EARTHWORK

Contractor is responsible for all grading shown on the plans, unless noted otherwise. The Contractor shall conduct his own quantity take off based on the Bid Documents. Earthwork related quantities shown on the plans (if any) are provided for reference only and shall not be utilized for bidding purpose. Any haul off of excess materials or import of materials needed to complete the grading shall be by the Contractor. The Contractor is responsible for hauling the soil materials. Should the Contractor import materials from any another site, the Contractor shall provide sample(s) to the materials testing firm for testing and approval.

21. NOTICE OF COMMENCEMENT

The Contractor shall record a Notice of Commencement with the Superior Court of DeKalb County within 15 days after the contractor physically starts work on the property. A copy of the recorded Notice of Commencement shall be provided to the Owner.

22. The Contractor must sign an affidavit at the time of submitting their invoice to Owner, that all subcontractors have been paid for all materials and labor and must pass through the next payment to subcontractors within seven (7) days.

23. The City of Brookhaven shall not be liable to the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of delays, regardless of the cause. The sole remedy against the City of Brookhaven for delays shall be the allowance of additional time for completion of the Work, the amount of which shall be based on actual and unavoidable delay.

24. Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the City of Brookhaven.



**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.

**2. REGULATIONS**

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

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

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

2.4 The Contractor will comply with the City of Brookhaven's Financial Management and Purchasing Policies.

2.5 The Contractor will complete all work in accordance with all applicable legal requirements, including but not limited to O.C.G.A. § 50-5-63, as applicable.

**3. WORK HOURS**

3.1 The Contractor shall normally perform on-site work during Standard Work Hours which are between 7:30 a.m. and 8:30 p.m., Monday through Friday, excluding City's observed holidays. The City may require the Contractor to perform work on the city's premises during Non-standard Work Hours which are outside the Standard Work Hours. Non-Standard Work Hours may be arranged with prior written approval of the City. The Contractor shall advise the City no less than 48 hours in advance of its projected work schedule. The Contractor shall perform no work during City observed holidays without the prior written permission of the City.

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

3.3 The City may order the Contractor to suspend, delay, or interrupt all or any part of the work on for such period of time as he may determine appropriate for the convenience of the City. The time for completion of the work shall be extended by the

**number of days the work is suspended. The City shall not be responsible for any claims, damages or costs stemming from any delay of the work.**

#### **4. CONTRACTOR'S PERSONNEL**

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

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

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

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

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

**4.6 The Contractor's employees shall be instructed that no gratuities shall be solicited or accepted for any reason whatsoever from the tenants, customers or other persons at the City.**

**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 Contractor'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 Designation of Supervisor-** the Contractor shall designate an experienced Supervisor (“Supervisor”) acceptable to the City for all purposes related to the work. The initial Supervisor shall be (TBD).

**4.9.1** The Supervisor shall be fully responsible for the Contractor meeting all of its obligations under this Contract. The Supervisor shall provide the City with an appropriate status report on the progress of the project.

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

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

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

## **5. TOOLS AND EQUIPMENT**

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

## **6. PERFORMANCE REQUIREMENTS**

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

**6.2** The Contractor’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 Contractor 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 Contractor is required to inform all workers and concerned persons of the Material Safety Data on all products being utilized on this project. No materials or equipment will be left unattended at any time.

## **7. CONFIDENTIAL INFORMATION**

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

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

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

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

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

## **9. SAFETY AND PROTECTION**

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

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

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

**10.2** The City shall pay the Contractor 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 Contractor shall invoice the City for the implementation services that were completed and accepted under the Contract, accompanied by such supporting documentation and other backup material as the City may reasonably require.

**10.3** The Contractor shall invoice with such supporting documentation and other backup material as the City may reasonably require. The Contractor shall provide the Proof of Payment attached as an Exhibit hereto, indicating all subcontractors have been paid, with each invoice.

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

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

**10.6** The Contractor shall be obligated to pay promptly all proper charges and costs incurred by the Contractor 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 Contractor to third parties for labor and materials used for the work hereunder, based on invoices submitted by such third party, and all such amounts paid by the City shall be applied toward, and shall reduce, amounts owed to Contractor hereunder.

**10.7** The Contractor shall submit all invoices to: City of Brookhaven, GA, Accounts Payable, 4362 Peachtree Road NE, Brookhaven, GA 30319.

**10.8** The Contractor will agree to comply with the City of Brookhaven's Financial Policies and Purchasing Policy, to the extent applicable.

**10.9** The Contractor agrees that the compensation provided herein shall be full and final settlement of all claims arising against Brookhaven for work done, materials furnished, costs incurred or otherwise arising out of this Contract and shall release the City from any

and all further claims related to the payment for services and materials furnished in connection with this Agreement.

**10.10** The Contractor and City agree that in any event a provision of this Contract pertaining to the time of payment, the rate of payment, and any rates of interest differs from any provision of the Prompt Pay Act, such provision of the Prompt Pay Act is hereby waived and said Contract provision shall control. The City shall not be responsible for any interest penalty or for any late payment.

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

**11.1** The Contractor shall perform its obligations and functions hereunder in compliance with the applicable laws of the United States, the State of Georgia, DeKalb County, the City of 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 Contractor's performance of its obligations and functions hereunder; the Contractor shall cooperate to the fullest extent and take whatever action (including becoming a party in any litigation) the City should reasonably request in connection with any such challenge or contest by the City.

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

**11.3** The Contractor shall abide by all applicable state and federal regulations pertaining to wages and hours of an employee; including but not limited to the Contractor's compliance with requirements of O.C.G.A. 13-10-91 and Rule 300-10-1-.02.

## **12. CONTRACTOR'S LIABILITY**

The Contractor shall be responsible for the prompt payment of any fines imposed on the City or the Contractor by any other federal, state or local governmental agency as a result of the Contractor's, or its subcontractor's (or the officers', directors', employees' or agents' of either), failure to comply with the requirements of any law or any governmental agency rule, regulation, order or permit. The liability of the Contractor under this Section 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 Contractor shall indemnify, defend and hold completely harmless the City, and the members (including, without limitation, members of the City's Council, and members of the 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 Contractor '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 Contractor or the Contractor 's directors, officers, agents, employees, subcontractors, licensees, or invitees, or (ii) arising out of or in connection with the failure of the Contractor to keep, observe or perform any of the covenants or agreements in this Contract which are required to be kept, observed or performed by the Contractor, or (iii) arising out of or in connection with any claim, suit, assessment or judgment prohibited by Section 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 Contractor or its directors, officers, agents, employees, subcontractors, licensees or invitees. The City agrees to give the Contractor reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow the Contractor or its insurer to compromise and defend the same to the extent of its interests, and to reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations under this section, the Contractor shall engage counsel reasonably acceptable to the City. In any suit, action, proceeding, claim or demand brought in respect of which the City may pursue indemnity, the City shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the City unless (1) the Contractor and the City shall have mutually agreed to the contrary, (2) the Contractor has failed within a reasonable time to retain counsel reasonably satisfactory to the City, or (3) the City and the Contractor are both named parties in any such proceeding and, in the sole judgment of the City, representation of both the City and the Contractor by the same counsel would be inappropriate due to actual or potential differing interests between them. The indemnification provisions of this Section 14 shall survive the expiration or earlier termination of this Contract with respect to any acts or omissions occurring during the term of the Contract. 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 Contractor, to the fullest extent permitted by law, Contractor 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 Contractor or its sub-Contractors 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 Contractor is enjoined due to infringement of another person or entity's intellectual

property rights, the Contractor shall promptly, at its sole cost and expense, modify the infringing item so that it no longer infringes, procure for the City the legal right to continue using the infringing item, or procure for the City a non-infringing item, or procure for the City a non-infringing replacement item having equal or greater functional capabilities as the infringing item.

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

**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 Contractor hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or any judgment obtained against the City, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Contract, shall be had against any member (including, without limitation, members of the City's Council, or members of the citizens advisory committees of each), any officer, employee or agent, as such, past, present, or future of the City, either directly or through the City or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for any sum that may be due and unpaid by the City. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, officer, employee, or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of or in connection with this Contract or the work or services conducted pursuant to it, or for the payment for or to the City, or any receiver therefore or otherwise, of any sum that may remain due and unpaid by the City, is expressly waived and released as a condition of and in consideration of the execution of this Contract and the promises made to the Contractor pursuant to this Contract.

**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 Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of the Contractor under this Section 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 Contractor 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 Contractor shall purchase and maintain in force during the term of the Contract, at its own cost and expense, to protect the Contractor, the City, and the members (including, without limitation, all members of the governing City's Council and the citizens' advisory committees of each), officers, agents, and employees of each, from and against any and all liabilities arising out of or in connection with the Contractor's performance of the Contract work:

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

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

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

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

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

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

**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 Contractor's policies of insurance required by this Section 13.7 may require the Contractor's payment of a deductible, provided the Contractor's insurer is required to pay claims from the first dollar at 100% of the claim value without any requirement that the Contractor pay the deductible prior to its insurer's payment of the claim.**

**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 Contractor's execution of the Contract. The Contractor shall provide the City with at least thirty (30) days' prior written notice of any adverse material change in the Contractor's required insurance coverage except that ten (10) days notice of cancellation for non-payment is required. For purposes of this Section 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 Contractor's self-insured retention. Prior to the expiration of any such policy, the Contractor shall file with the City a certificate of insurance showing that such insurance coverage has been renewed. If the insurance coverage is canceled or reduced, the Contractor shall, within five (5) days after such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies approved by the City. If the Contractor fails to obtain or have such insurance reinstated, the City may, if it so elects, and without waiving any other remedy it may have against the Contractor, immediately terminate this Contract upon written notice to the Contractor. The City Manager shall have the right to alter the monetary limits or coverage herein specified from time to time during the term of this Contract, and the Contractor shall comply with all reasonable requests of the City Manager with respect thereto.**

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

**14.1 The Contractor shall be required to provide the bonds as dictated in the**

**Procurement Documents in Exhibit D.**

**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 Contractor's obligations under this Contract (Contract Adjustments) in whatever manner it determines to be reasonably necessary for the proper completion of the Contractor's work hereunder. Both parties agree that, should any Contract Adjustments be made, the Contractor's compensation will be adjusted accordingly, in such amount or amounts as will be mutually agreed to by means of good faith negotiation by the City and the Contractor and, to the extent possible, by reference to any unit costs already established in the Proposal. Without exception, all deletions or additions to the scope of work will be set forth in a written Amendment to this Contract.

**15.2** Notwithstanding the foregoing, the City shall have the right to terminate this Contract herein should the Contractor 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 Contractor, its employees, agents, or its subcontractors to properly perform its obligations and functions under this Contract.

**16. SUBCONTRACTORS**

**16.1** The Contractor shall perform all of its obligations and functions under this Contract by means of its own employees, or by a duly qualified subcontractor which is approved in advance by the City. Such subcontractor which is an affiliate, parent, or subsidiary company; or had principal owners, relatives, management, or employees common to the Contractor; or any other party that has the ability to significantly influence the management or daily business operations of the subcontractor must be disclosed in writing to the City Manager. Goods and services provided by subcontractors which are reimbursed by the City must be bona fide arm's-lengths transactions. In the event a subcontractor is employed, the Contractor shall continuously monitor the subcontractor's performance, shall remain fully responsible to ensure that the subcontractor performs as required and itself perform or remedy any obligations or functions which the

subcontractor fails to perform properly. Nothing contained herein shall be construed to prevent the Contractor from using the services of a common carrier for delivering goods to the City. The City approves the sub-Contractors listed in the Statement of Qualifications.

**16.2** This Contract shall be referred to and incorporated within any contractual arrangement between the Contractor and a subcontractor and, in such contractual arrangement; the subcontractor shall give its express written consent to the provisions of this Section 16. To the extent feasible, the provisions of this Contract shall apply to any such subcontractor in the same manner as they apply to the Contractor. However, such application shall neither make any subcontractor a party to this Contract, nor make such subcontractor a third-party beneficiary hereof.

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

## **17. DEFAULT AND TERMINATION**

**17.1** In the event that:

**17.1.1** the Contractor 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 Contractor, but whether or not the Contractor shall have remedied any such failure); or

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

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

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

**17.1.5** the Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws, or under any other law or statute of the United States or any State thereof, or shall

consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

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

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

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

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

**17.3** **Bankruptcy and Liquidation** - In the event the Contractor (1) makes an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (2) commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction whether now or hereafter in effect; (3) has had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of sixty (60) days or more; (4) takes any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or

trustee for all or substantial part of its assets; or (5) permits any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more causing the Contractor or any third party, including, without limitation, a trustee in bankruptcy, to be empowered under state or federal law to reject this Contract or any agreement supplementary hereto, the City shall have the following rights:

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

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

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

#### **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 Contractor's rights or obligations hereunder may be assigned by the Contractor without the City's prior written consent, which consent may be granted or withheld at the City's sole discretion. Any transfer of this Contract by merger, consolidation or liquidation (unless the stock of the Contractor is traded on a national stock exchange or in a generally recognized over the counter securities market) any change in ownership of or power to vote a majority of the outstanding voting stock or ownership

interests of the Contractor shall constitute an assignment of this Contract for purposes of this Section. In the event the Contractor assigns or subcontracts or attempts to assign or subcontract any right or obligation arising under this Contract without the City's prior written consent, the City shall be entitled to terminate this Contract pursuant to the provisions of Section 17 hereof.

## **20. NOTICES**

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

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

City of Brookhaven, GA  
ATTN: City Manager  
4362 Peachtree Road NE  
Brookhaven, GA 30319

Contractor  
(TBD)

**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 Contractor, for itself, its assignees and successors in interest agrees as follows:

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

**21.1.2 Nondiscrimination.** The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin

**in the selection and retention of any subcontractor, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by the Regulations.**

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

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

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

**21.1.5.1 Withholding of payments to the Contractor under the Contract until the Contractor 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 Contractor 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 Contractor shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City to enter into such litigation to protect the interest of the City and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.**

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



## **22. COPYING DOCUMENTS**

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

## **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 Invitation to Bid, and (vii) the Bid Form.

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

**23.4** The Contractor warrants to the City that no work performed or materials purchased pursuant to the Contract, whether by, from, or through the Contractor or a subcontractor, shall cause any claim, lien or encumbrance to be made against any property

of the City, and the Contractor shall indemnify and save the City harmless from and against any and all losses, damages and costs, including attorneys' fees, with respect thereto. If any such claim, lien or encumbrance shall be filed, the Contractor shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. This provision shall survive the expiration or termination of the Contract.

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

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

**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 Contractor shall not be relieved of any obligation hereunder on account of its failure to perform by reason of any strike, lockout, or other labor disturbance.

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

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

shall survive the expiration or termination of the Contract.

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

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

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

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

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

**23.16 The Contractor and its subcontractors, if any, shall maintain complete and accurate books and records in accordance with generally accepted accounting principles, consistently applied, and shall be in a form reasonably acceptable to the City Manager or designee. The Contractor and its subcontractors shall account for all expenses of any nature related to transactions in connection with this Contract in a manner which segregates in detail those transactions from other transactions of the Contractor and subcontractors and which support the amounts reported and/or invoiced to the City. At a minimum, the Contractor's and subcontractor's accounting for such expenses and transactions shall include such records in the form of electronic media compatible with or convertible to a format compatible with computers utilized by the City at its offices; a**

computer run hard copy; or legible microfilm or microfiche, together with access to the applicable reader. All such books and records and computerized accounting systems, shall upon reasonable notice from the City be made available in DeKalb County, Georgia, for inspection, examination, audit and copying by the City through and by its duly authorized representatives at any time for up to four (4) years after the year to which books and records pertain. Such inspection, examination, or audit may include, but is not limited to a review of the general input, processing, and output controls of information systems, using read only access, for all computerized applications used to record financial transactions and information. The Contractor and subcontractor shall freely lend its own assistance in a timely manner in making such inspection, examination, audit, or copying and, if such records are maintained in electronic and other machine-readable format, shall provide the City and/or its representative such assistance as may be required to allow complete access to such records. The City Manager may require the Contractor and subcontractors to provide other records the City Manager, in his or her sole discretion, deems necessary to enable the City to perform an accurate inspection, examination or audit of expenses incurred in and transactions related to performance of this Contract. Such records shall be provided within thirty (30) days of request thereof. In the event that expenses incurred or reimbursed are found by such inspection, examination, or audit to have been overpaid, the Contractor and its subcontractors agree that such amounts shall be payable to the City. If, prior to the expiration of the above-stated four (4) year record retention period, any audit or investigation is commenced by the City, or any claim is made or litigation commenced relating to this Contract by the City, the Contractor, or a third party, the Contractor shall continue to maintain all such records, and the City shall continue to have the right to inspect such records in the manner stated above, until the inspection, examination, audit, claim, or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal). This provision shall survive the expiration or earlier termination of this Contract. In the event of any conflict between any provision of this Contract and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Contract shall control even where this Contract references such provisions or standards. In particular, without limitation, the Contractor and subcontractors shall maintain all records required under this Contract to the full extent required hereunder, even if some or all such records would not be required under such generally accepted accounting principles or auditing standards. If as a result of an inspection, examination or audit, it is established that amounts are due from the Contractor to the City, the Contractor shall forthwith, upon written demand from the City, pay the City such amount, together with interest on the amount due at the rate of twelve (12%) percent per annum, or if less, the maximum rate of interest allowed by law, from the date such additional amounts were overpaid by the City. Further if such inspection, examination or audit establishes that the Contractor has over billed such amounts for any Contract period by two (2%) percent or more, then the entire expense of such inspection, examination or audit shall be paid by the Contractor.

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

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

**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 Contractor for loss of business or damages of any nature whatsoever to the Contractor occasioned during the making of such improvements, repairs, alterations and additions, including, but not limited to, any damages resulting from negligence of the City or its employees, agents or Contractors.**

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

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

**24. 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 \* \* \* \* \***

**EXHIBIT B**

**GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT**

**Contractor(s) Name:** \_\_\_\_\_

By executing this affidavit, the undersigned person or entity verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation has registered with, is authorized to participate in, and is participating in the federal work authorization program commonly known as E-Verify\* in accordance with the applicable provisions and deadlines.

The undersigned person or entity further agrees that it will continue to use the federal work authorization program throughout the contract period, and it will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the undersigned with the information required by O.C.G.A. § 13-10-91(b).

The undersigned person or entity further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Brookhaven within five (5) business days after any subcontractor(s) is/are retained to perform such service.

\_\_\_\_\_  
E Verify  
TM Company Identification Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
BY: Authorized Officer or Agent  
(Name of Person or Entity)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent  
SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE  
\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
NOTARY SEAL

My Commission Expires:  
\_\_\_\_\_

\*or any subsequent replacement operated by the United States Department of Homeland Security or any equivalent work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of m1986 (IRCA) P.L. 99-60.

**THIS FORM MUST BE SIGNED AND RETURNED WITH BID DOCUMENTS**

**EXHIBIT C**

**AFFIDAVIT VERIFYING STATUS FOR CITY PUBLIC BENEFIT APPLICATION**

By executing this affidavit under oath, as an applicant for a City of Brookhaven, Georgia Business License or Occupation Tax Certificate, Alcohol License, Taxi Permit, execution of contract or other public benefit as referenced in O.C.G.A. § 50-36-1, I am stating the following with respect to my application for a City of Brookhaven license/permit and/or contract for

\_\_\_\_\_  
[Name of natural person applying on behalf of individual, business, corporation, partnership, or other private entity]:

1. \_\_\_\_\_ I am a United States citizen

**OR**

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

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

Signature of Applicant:\_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

\*Alien Registration number for non-citizens:  
\_\_\_\_\_

**\*\*PLEASE INCLUDE A COPY OF YOUR PERMANENT RESIDENT CARD, EMPLOYMENT AUTHORIZATION, GREEN CARD, PASSPORT WITH A COPY OF YOUR DRIVER'S LICENSE, OR OTHER DOCUMENTATION AS ALLOWED UNDER THE LAW IF YOU ARE A LEGAL PERMANENT RESIDENT (#2).**

Subscribed and Sworn Before Me, this the \_\_\_\_\_ day of \_\_, 20\_\_ .

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

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

**THIS FORM MUST BE SIGNED AND RETURNED WITH BID DOCUMENTS**



**EXHIBIT D**

**DRUG FREE WORKPLACE**

The undersigned certifies that the provisions of Code Sections 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the “Drug-free Workplace Act”, have been complied with in full. The undersigned further certifies that:

- (1) A drug-free workplace will be provided for the Contractor’s employees during the performance of the Contract; and
- (2) Each Contractor who hires a Subcontractor to work in a drug-free workplace shall secure from that Subcontractor the following written certification:

“As part of the subcontracting agreement with \_\_\_\_\_  
 (Contractor), \_\_\_\_\_ (Subcontractor) certifies to the  
 Contractor that a drug free workplace will be provided for the Subcontractor’s employees  
 during the performance of this Contract pursuant to paragraph (7) of subsection (b) of  
 Code Section 50-24-03.”

Also, the undersigned further certifies that he will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

Company Name

\_\_\_\_\_

BY: Authorized Officer or Agent Date  
(Contractor Signature)

\_\_\_\_\_  
Title of Authorized Officer or Agent of Contractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

\_\_\_\_\_  
Date

**THIS FORM MUST BE SIGNED AND RETURNED WITH BID DOCUMENTS**

**EXHIBIT E**

**Purchasing Policy Addendum**

I, \_\_\_\_\_, hereby certify that I have received a copy of the City of Brookhaven, GA, Financial Management Policies Purchasing Policy which can be found at <http://brookhavenga.gov/city-departments/purchasing> and agree to comply with all requirements of the City of Brookhaven, GA, Financial Management Policies Purchasing Policy to the extent the policy is applicable to the undersigned.

\_\_\_\_\_  
BY: Authorized Officer or Agent  
(Contractor Signature)

\_\_\_\_\_  
Title of Authorized Officer or Agent of Contractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

\_\_\_\_\_  
DATE

**THIS FORM MUST BE SIGNED AND RETURNED WITH BID DOCUMENTS**