



**Invitation to Bid, No. 20-103  
Legal Services**

January 15, 2020

The City of Brookhaven is seeking the Professional Legal Services of a qualified attorney or attorneys for the acquisition of 11 properties in the City of Brookhaven.

Questions regarding the ITB process should be directed in writing to the Purchasing Manager via email at [purchasing@brookhavenga.gov](mailto:purchasing@brookhavenga.gov). Only questions received prior to **4:00 p.m. on Tuesday, January 28, 2020**, will be considered.

**BID DUE DATE and PUBIC OPENING: Tuesday, February 18, 2020, at 2:30 p.m. EST.**  
Submit bids to Brookhaven City Hall, 4362 Peachtree Road NE., Brookhaven, GA 30319 Any bid received after this date and time will not be accepted.

**Instructions to Bidders:**

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

**Bidder Information:**

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

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

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

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

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

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

The Delivery shall include two (2) sealed bids (one (1) original, one (1) copies) and one (1) USB flash drive, along with one (1) copy of the bid schedule in a sealed envelope to the Purchasing Department, City of Brookhaven, 4362 Peachtree Road NE., Brookhaven, Georgia 30319. Delivery of bids shall be submitted via hand delivery or commercial carrier (i.e. U.S. Postal Service, UPS, FedEx, etc.) only. **FAILURE TO RETURN THE CONTRACT DOCUMENTS MAY RESULT IN THE BID BEING DEEMED NON-RESPONSIVE AND AUTOMATIC REJECTION**

## CONTRACT FOR ITB 20-103

### LEGAL SERVICES

This **CONTRACT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Brookhaven, (Party of the First Part, hereinafter called the “City”), and - \_\_\_\_\_ Party of the Second Part, hereinafter called the “Service Provider” or “Contractor”).

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

#### 1. **TERMS:**

The services to be performed under this Contract shall commence upon the date stated in the Notice to Proceed Letter. The contract period for this contract is 90 days from the date stated in the Notice to Proceed Letter. Upon the completion of the full scope of work the contract shall terminate absolutely and without further obligation as required by O.C.G.A. §36-60-13, as amended, unless terminated earlier in accordance with the provisions of this Contract.

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

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

Exhibit A:	General Conditions.
Exhibit B:	Specifications and Scope of Work (ITB 20-103 reference herein).
Exhibit C:	Determination of Responsibility.
Exhibit D:	Bond Documents: N/A
Exhibit E:	Georgia Security and Immigration Compliance Affidavit.
Exhibit F:	Drug-Free Workplace.
Exhibit G:	Purchasing Policy Addendum.
Exhibit H:	Affidavit Verifying Status for Public Benefit Application.
Exhibit I:	Bid Documents: References and Subcontractor Form.
Exhibit J:	Non-Collusion Affidavit.
Exhibit K:	Bid Schedule.
Exhibit L:	Hazard Mitigation Grant Agreement.

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

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

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

The City agrees to pay the Service Provider following receipt by the City of a detailed invoice reflecting the actual work performed by the Service Provider, provided, however, Service Provider guarantees that the maximum price for materials, labor, and expenses, shall be the amount reflected in Exhibit K.

**5. INDEMNIFICATION AND HOLD HARMLESS:**

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

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

**6. TERMINATION FOR CAUSE:**

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

**7. TERMINATION FOR CONVENIENCE:**

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

**8. TERMINATION FOR FUND APPROPRIATION:**

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

**9. CONTRACT NOT TO DISCRIMINATE:**

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

**10. CONTRACT NOT TO DISCRIMINATE:**

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

**11. ASSIGNMENT:**

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

**12. WAIVER:**

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

**13. SEVERABILITY:**

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

**14. GOVERNING LAW:**

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

**15. MERGER CLAUSE:**

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

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

*Signatures on the following page.*

**Brookhaven, GEORGIA**

By: \_\_\_\_\_  
John Arthur Ernst, Jr.  
Mayor City of Brookhaven, Georgia

ATTEST: \_\_\_\_\_  
Susan Hiott  
City Clerk

APPROVED AS TO FROM:  
\_\_\_\_\_  
Chris Balch., City Attorney

**SERVICE PROVIDER:**

Signature \_\_\_\_\_

Date \_\_\_\_\_

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

Print Title \_\_\_\_\_

ATTEST:  
\_\_\_\_\_

Date \_\_\_\_\_

Signature

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

Print Title \_\_\_\_\_

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GENERAL CONDITIONS

**1. SCOPE OF WORK**

The Contract will be to provide services to the City in accordance with the Contract Documents. All work shall be performed in accordance with the Scope of Services attached hereto as Exhibit B.

**2. REGULATIONS**

- 2.1 The Service Provides shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of the work specified herein.
- 2.2 The Service Provider shall obtain all permits, licenses, and certificates, or any such approvals of plans or specifications as may be required by Federal, State, and local laws, ordinances, rules, and regulations, for the proper execution of the work specified herein.
- 2.3 During the performance of this Contract, the Service Provider shall keep current and, if requested by the City, provide copies of any and all licenses, registrations or permits required by applicable governing agencies, The Service Provider shall keep a copy of any and all licenses, registrations, and permits on the job site while performing the Contract work.
- 2.4 The Service Provider will comply with the City of Brookhaven's Financial Management and Purchasing Policies.
- 2.5 Service Provider 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 Work hours will be determined by the respective designee appointed by the City Manager.
- 3.2 In the event an emergency condition is declared by the City's Manager of his respective designee, the Contractor will perform work during such hours as requested by the City.
- 3.3 The City may order the Service Provider to suspend, delay, or interrupt all or any part of the work on for such a 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 they work is suspended. The City shall not be responsible for any claims, damages or costs stemming from any delay of the work.

**4. SERVICE PROVIDER'S PERSONNEL**

- 4.1 The Service Provider will abide by all State and Federal regulations on wages and hours of an employee dealing with the employment relationship between the Service Provider and its subsidiaries or related parties and its employees, including but not limited to the Federal National Labor Relations Act, the Federal Fair Labor Standards Act, the Federal Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act.
- 4.2 The Service Provider shall require all prospective employees to show proof of citizenship, or proof from the United States Immigration and Naturalization Service of valid entry permits and/or work permits for legal aliens and proof that such legal aliens are eligible to be employed in the United States. This includes any requirement for participation in the DHS e-Verify or SAVE program.

## EXHIBIT A

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### GENERAL CONDITIONS

- 4.3 Should the Service Provider engage employees who are illiterate in English, it will be the Service Provider's responsibility and obligation to train such employees to be able to identify and understand all signs and notices in and /or around the areas that relate to them or the services being performed by them pursuant to this Contract. In addition, the Service Provider will have someone in attendance at all times who can communicate instructions to said employee.
- 4.4 The Service Provider shall maintain a drug-free workplace within the meaning of the Georgia Drug-free Workplace Act. No employee shall be hired by a Service Provider for work on the City's premises prior to such employee having tested negative for drugs. In addition, existing employees have tested negative for drugs. In addition, existing employees of the Service Provider must be subject to drug testing by the Service Provider upon reasonable suspicion of drug use. Results of all such drug tests are to be retained by the Service Provider. Copies shall be provided to the City if requested.
- 4.5 The Service Provider shall transfer promptly from the City any employee or employees that the City advises are not satisfactory and replace such personnel with employees satisfactory to the City; but in no event shall the City be responsible for monitoring or assessing the suitability of any employee or agent of the Service Provider.
- 4.6 The Service Provider's employees shall be instructed that no gratuities shall be solicited or accepted for any reason whatsoever from the tenants, customers or other persons at the City.
- 4.7 A valid driver license (Commercial Driver License, if applicable) will be required of all personnel operating motor vehicles or motorized equipment on roadways in or around the City.
- 4.8 While working on city property all Service Provider's employees shall wear neat-appearing business casual attire or uniforms with the company name and/ or logo and footwear of a style that complies with all legal and safety requirements, including and without limitation, the requirements of OSHA.
- 4.9 Designation of Supervisor-the Service Provider 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 Service Provider 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 the City's discretion.
- 4.9.3 In the event that the designated Supervisor terminates employment with the Service Provider 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 Service Provider replaces a proposed team member, the Service Provider shall replace that team member of similar experience. The City reserves the

## EXHIBIT A

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### GENERAL CONDITIONS

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 Service Provider to provide for all tools, parts, and equipment necessary to perform work under this Contract.

#### 6. PERFORMANCE REQUIREMENTS

- 6.1 The Service Provider shall perform all of its obligations and functions under the Contract in accordance with the Contract specifications and industry standards. The Service Provider shall adjust and coordinate its activities to the needs and requirements of the City and perform its activities so as not to annoy, disturb, endanger, unreasonably interfere with or delay the operations or activities of the City.
- 6.2 The Service Provider's personnel shall perform work in compliance with all Federal, State, and City of Brookhaven regulations.
- 6.3 Dates for commencement and completion of work shall be coordinated with the City's Authorized Representative (CAR).
- 6.4 Any work required beyond that which is specified herein shall be reported in advance to the City. At no time shall work beyond the scope be performed without prior written authorization from the City.
- 6.5 The Service Provider shall utilize maximum safety procedures. Tools and equipment will be in a good state of repair, safe to use, and be used in the manner in which they were intended. The Service Provider is required to inform all workers and concerned persons of the Material Safety Data on all products being utilized on this project. No materials or equipment will be left unattended at any time.

#### 7. CONFIDENTIAL INFORMATION

- 7.1 In the course of performing the contract work, the Service Provider may gain access to security-sensitive and other sensitive information of the City.
- 7.2 The Service Provider agrees to hold all City data and information in confidence and to make such information known only to its employees and subcontracts who have a legitimate need to know such information and only after advising such persons of the Service Provider's non-disclosure obligations.
- 7.3 The Service Provider shall seek the City's prior written consent before using for any purpose other than the fulfillment of the Service Provider's obligations hereunder, or before releasing, disclosing, or otherwise making such information available to any other person.
- 7.4 The Service Provider shall employ such practices and take such actions to protect the City's information from unauthorized use or disclosure as the Service



## EXHIBIT A

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### GENERAL CONDITIONS

Provider employs and takes to protect its own information, but in no event shall the Service Provider use less than reasonable efforts to protect the City's information.

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

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

During the progress of the work specified herein, to the extent any work is performed on the City's premises, the Service Provider shall keep the premises free from accumulation of waste materials, and other debris resulting from, work and about the premises as well as tools, equipment, machinery and surplus material, and leave the site clean and ready for occupancy by the City.

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

The Service Provider shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the worksite and other persons including, but not limited to, the general public who may be affected thereby.

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

- 10.1 The City shall pay the Service Provider, subject to any authorized deductions, the applicable prices set forth for each service authorized by the City, and actually delivered or performed, as the case may be, by the Service Provider to the satisfaction and acceptance, as appropriate, of the City. The timing of such payments shall be as set forth below in the Section.
- 10.2 The Service Provider shall invoice with such supporting documentation and other backup material as the City may reasonably require. The Service Provider shall provide the Proof of Payment attached as an Exhibit hereto, indicating all subcontractors have paid, with each invoice.
- 10.3 The Service Provider shall deliver to the City approval and acceptance, and before eligible for final payment of any amounts due, all documents and material prepared by the Service Provider for the City under this Contract.
- 10.4 The City shall pay the undisputed amount of the Service Provider's invoice, as it may be reduced to reflect unsubstantiated or unsatisfactory service. 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.
- 10.5 The Service Provider shall be obligated to pay promptly all proper charges and costs incurred by the Service Provider for labor and expenses incurred for the work performed hereunder. The City shall have the right, but not the obligation, to pay directly to third parties (including subcontractors) all past due amounts owed by the Service Provider to third parties for labor and materials used for the work

## EXHIBIT A

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### GENERAL CONDITIONS

hereunder, based on invoices submitted by such third party, and all such amounts paid by the City shall be applied toward, and shall reduce, amount owed to Service Provider hereunder.

10.6 The Service Provider shall submit all invoices City of Brookhaven Public Works Department electronically to [pwadmin@Brookhavenga.gov](mailto:pwadmin@Brookhavenga.gov) and copy to  
City of Brookhaven, GA, Accounts Payable, 4362 Peachtree Road NE,  
Brookhaven, GA 30319.

- 10.7 The Service Provider will agree to comply with the City of Brookhaven's Financial Policies and Purchasing Policy, to the extent applicable.
- 10.8 The Service Provider 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.
- 10.9 The Service Provider 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 are 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 Service Provider shall perform its obligations and functions hereunder in compliance with the applicable laws of the United States, the State of Georgia, DeKalb County, the City of Brookhaven, any applicable rules, regulations or directives of any agency thereof, and the applicable regulations of the City. OSHA rules and regulations shall be followed at all times. The City shall have the right (but not the obligation) to contest or challenge by any means whatsoever any law, regulation, rule or directive which in any way affects or otherwise impacts upon the Service Provider's performance of its obligations and functions hereunder; the Service Provider shall cooperate to the fullest extent and take whatever action (including becoming a party in any litigation) the City should reasonable request in connection with any such challenge or contest by the City.
- 11.2 The Service Provider shall obtain and keep current all licenses, permits and authorizations, whether municipal, county, state or deferral, required for the performance of its obligations and functions hereunder and shall pay promptly when due all fees, therefore.
- 11.3 The Service Provider shall abide by all applicable state and federal regulations pertaining to wages and hours of employees; including but not limited to the Service Provider's compliance with requirements of O.C.G.A. 13-10-91 AND Rule 300-104-1-.02.

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GENERAL CONDITIONS

**12. SERVICE PROVIDER'S LIABILITY**

The Service Provider shall be responsible for the prompt payment of any fines imposed on the city or the Service Provider by any other federal, state or local governmental agency as a result of the Service Provider's, or its subcontractor's (or the officers' directors', employees' or agents' of either), failure to comply with the requirements of any law or any governmental agency rule, regulation, order or permit. The liability of the Service Provider under this Section 12 is in addition to and in no way a limitation upon any other liabilities and responsibilities which may be imposed by applicable law or by the indemnification provision of Section 13 hereof, and such liability shall survive the expiration or earlier termination of this Contract.

**13. INDEMNIFICATION AND INSURANCE**

13.1 The Service Provider shall, to the extent allowed under Georgia law, indemnify, defend and hold completely harmless the City, and the members (including, without limitation, members of the City's Council, and members of the boards and of the City), officers, employees and agents of each, from and against any and all liabilities (including statutory liability and liability under Workers' Compensation Laws), losses, suits, claims, demands, judgments, fines, damages, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, paralegal and expert fees and reasonable attorneys' fees) which may be incurred by, charged to or recovered from any of the foregoing by (i) reason or on account of damage to or destruction or loss of any property of the City, or any property of, injury to or death of any person resulting from or arising out of or in connection with the performance of this Contract, or the acts or omissions of the Service Provider's directors, officers, agents, employees, subcontractors, licensees or invitees, in connection with the performance of this contract regardless of where the damage, destruction, injury or death occurred, **unless** such liability, loss, suit, claim, demand, judgment, fine, damage, cost or expense was proximately caused solely by the City's negligence or by the joint negligence of the City and any person other than the Service Provider or the Service Provider's directors, officers, agents, employees, subcontractors, licensees, or invitees, or (ii) arising out of or in connection with the failure of the Service Provider to keep, observe or perform any of the covenants or agreements in this Contract which required to be kept, observed or performed by the Service Provider, or (iii) arising out of or in connection with any claim, suit, assessment or judgment prohibited by Section 13.4 below by or in favor of any person described in Section 13.5 below, or (iv) arising out of or in connection with any action by Service Provider or its directors, officers, agents, employees, subcontractors, licensees or invitees. The City agrees to give the Service Provider reasonable notice of any suit or claim for which indemnification will be sought hereunder, to

allow the Service Provider or its insurer to compromise and defend the same to the extent of its interest, and to reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations under this section, the Service Provider shall engage counsel reasonably acceptable to the City. In any suit,

## EXHIBIT A

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### GENERAL CONDITIONS

action, proceeding, claim or demand brought in respect of which the City may pursue indemnity, the City shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the City unless (1) the Service Provider and the City shall have mutually agreed to the contrary, (2) the Service Provider has failed within a reasonable time to retain counsel reasonably satisfactory to the City, or (3) the City and the Service Provider are both name parties in any such proceeding and, in the sole judgment of the City, representation of both the City and the Service Provider by the same counsel would be inappropriate due to actual or potential differing interests between them. The indemnification provisions of 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 foregoing indemnity, any claim for indemnity by the City for claims of third parties alleging harm due to the professional services provided by Service Provider, to the fullest extent permitted by law, Service Provider shall indemnify City from and against losses, damages, and judgments arising from such claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to have been caused by a negligent act, error or omission of Service Provider or its sub-Service Providers in the performance of professional services under this Agreement.

- 13.2 In addition to indemnification provisions stated above, if the City's use of any service, software, firmware, programming, or other item provided by or on behalf of the Service Provider is enjoined due to infringement of another person or entity's intellectual property rights, the Service Provider shall promptly, at its sole cost and expense, modify the infringing item so that it no longer infringes, procure for the City the legal right to continue using the infringing item, or procure for the City a non-infringing item, or procure for the City a non-infringing replacement item having equal or greater functional capabilities as the infringing item.
- 13.3 The Service Provider shall assume all responsibility for loss caused by neglect or violation of any state, federal, municipal or agency law, rule, regulation or order. The Service Provider shall give to the proper authorities all required notices relating to its performance, obtain all official permits and licenses, and pay all proper fees and taxes. It shall promptly undertake proper monetary restitution with respect to any injury that may occur to any building, structure or utility in consequence of its work. The Service Provider will notify the City in writing of any claim made or suit instituted against the Service Provider because of its activities in the performance of the Contract.
- 13.4 No recourse under or upon any obligation, covenant or agreement contained in this Contract, or any other agreement or document pertaining to the work or services of the Service Provider hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or any judgment obtained against the City, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or

## EXHIBIT A

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### GENERAL CONDITIONS

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, or any sum that may remain due and unpaid by the City, is expressly waived and released as a condition of and in consideration of the execution of this Contract and the promises made to the Service Provider pursuant to this Contract.

- 13.5 In any and all claims against the City, or any of their officers, members, agents, servants or employees, by any employee of the Service Provider, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of the Service Provider under this Section 13 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Service Provider or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.
- 13.6 No provisions of Section 13 herein shall be construed to negate, abridge, or otherwise reduce any other right of indemnity that the City may have as to any party or person described therein.

#### 13.7 Insurance

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

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

(2) Automobile liability insurance with policy limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per

## EXHIBIT A

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### GENERAL CONDITIONS

accident or occurrence covering each motor vehicle operated on City property.

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

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

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

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

## EXHIBIT A

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### GENERAL CONDITIONS

- 13.7.9 Deductibles. The Service Provider's policies of insurance required by this Section 13.7 may require the Service Provider's payment of a deductible, provided the Service Provider's insurer is required to pay claims from the first dollar at 110% of the claim value without any requirement that the Service Provider pays 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 be provided that they are primary insurance with respect to any other valid insurance the City may possess and that any other insurance the City does possess shall be considered excess insurance only. All such insurance shall be carried with a company or companies which meet the requirements of Section 14.2 of these General Conditions and said policies shall be in a form satisfactory to the City. A properly completed and executed Certificate of Insurance on a form provided or approved by the City (such as a current ACORD certificate of insurance) evidencing the insurance coverage required by this Section shall be furnished to the City upon the Service Provider shall provide the City with at least thirty (30) days' prior written notice of any adverse material change in the Service Provider's required insurance coverage except that ten (10) days' notice of cancellation for non-payment is required. For purposes of this Section 13.7.10, and "adverse material change" shall mean any reduction in the limits of the insurer's liability, any reduction, non-renewal or cancellation of any insurance coverage, or any increase in the Service Provider's self-insured retention. Prior to the expiration of any such policy, the Service Provider shall file with the City a certificate of insurance showing that such insurance coverage has been renewed. If the insurance coverage is canceled or reduced, the Service Provider shall, within five (5) days after such cancellation or reduction in coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies approved by the City. If the Service Provider fails to obtain or have such insurance reinstated, the City may, if it so elects, and without waiving any other remedy it may have against the Service Provider, immediately terminate this Contract upon written notice to the Service Provider. The City Manager shall have the right to alter the monetary limits or coverage herein specified from time to time during the term of this Contract, and the Service

## EXHIBIT A

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### GENERAL CONDITIONS

Provider shall comply with all reasonable requests of the City Manager with respect thereto.

#### 14. LIABILITY INSURANCE

14.1 N/A

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

#### 15. CONTRACT ADJUSTMENTS

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

15.2 Notwithstanding the foregoing, the City shall have the right to terminate this Contract herein should the Service Provider and the City fail to reach agreement on the adjusted compensation within thirty (30) days after the date of the Contract Adjustment.

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

#### 16. SUBCONTRACTORS

16.1 The Service Provider 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, relative, management, or employees common to the Service Provider; 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 Service Provider shall



## EXHIBIT A

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### GENERAL CONDITIONS

continuously monitor the subcontractor's performance, shall remain fully responsible to ensure that the subcontractor performs as required and itself performs or remedy any obligations or functions which the subcontractor fails to perform properly.

Nothing contained herein shall be construed to prevent the Service Provider from using the services of a common carrier for delivering goods to the City. The City approves the sub-Service Providers listed in the Statement of Qualifications.

- 16.2 This Contract shall be referred to and incorporated within any contractual arrangement between the Service Provider 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 Service Provider. 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 Service Provider employs a subcontractor, then the City may require that copies of invoices for all work (including invoices submitted to the Service Provider for work performed by a subcontractor) shall be submitted to the City by the Service Provider and the City shall pay all compensation to the Service Provider. It shall be the sole responsibility of the Service Provider to deal with a subcontractor with respect to the collection 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 Service Provider shall fail to keep, perform or observe any of the promises, covenants or agreements set forth in this Contract (provided that notice of the first failure shall have been given to the Service Provider, but whether or not the Service Provider shall have remedied any such failure); or
- 17.1.2 the Service Provider shall fail to keep, perform or observe any promise, covenant, or agreement set forth in this Contract, and such failure shall continue for a period of more than five (5) days after delivery to the Service Provider of a written notice of such breach or default; or
- 17.1.3 the Service Provider's occupational or business license shall terminate, or the Service Provider shall fail to provide the City with any bond, letter of credit, or evidence of insurance as required by the Contract Documents, for any reason; or
- 17.1.4 the Service Provider fails for any reason to provide the City with an acceptable renewal or replacement bond or letter of credit within the time period specified by a provision for this Contract; or
- 17.1.5 the Service Provider shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditor, or file a voluntary petition in bankruptcy or a petition or

## EXHIBIT A

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### GENERAL CONDITIONS

- answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws, or under any other law or statute of the United States or any State thereof, or shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
- 17.1.6 the Service Provider shall have a petition under any part of the Federal Bankruptcy laws, or an action under any present or future insolvency laws or statute filed against it, which petition is not dismissed within thirty (30) days after the filing thereof; or
- 17.1.7 there is an assignment by the Service Provider of this Contract or any of the Service Provider's rights and obligations hereunder for which the City has not consented in writing; or
- 17.1.8 the Service Provider shall default on any other agreement entered into by and between Service Provider and the City, then, in its discretion, the City shall have the right to terminate this Contract for default, which termination shall be effective upon delivery of written notice of such termination to the Service Provider. In the event that the City terminates this Contract for default, or the Service Provider abandons or wrongfully terminates the Contract, the Service Provider shall be paid for compensation earned to the date of termination or abandonment (but the City shall have the right to reduce by off-set any amounts owed to the Service Provider hereunder or under any other Contract or obligation by the amount of the City's damages and any amounts owed by the Service Provider to the City), but the Service Provider shall not be compensated for any profits earned or claimed after the receipt of the City's notice of termination by default or after abandonment or wrongful termination. The City's election to terminate or not to terminate this Contract in part or whole for the Service Provider's default shall in no way be construed to limit the City's right to pursue and exercise any other right or remedy available to it pursuant to the terms of the Contract or otherwise provided by law or equity.
- 17.2 Notwithstanding anything else herein contained, the City may terminate this Contract in whole or in part at any time for its convenience by giving the Service Provider thirty (30) days written notice. In that event, the Service Provider shall proceed to complete any part of the work, as directed by the City, and shall settle all its claims and obligations under the Contract, as directed by the City. The Service Provider shall be compensated by the City in accordance with the provisions hereof, including in particular Section 2 of these General Conditions, provided, however, that in no event shall Service Provider be entitled to compensation for work not performed or for anticipatory profits. Service Provider shall justify its claims, as requested by the City, with accurate records and data.
- 17.3 Bankruptcy and Liquidation – In the event the Service Provider (1) makes an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (2) commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any

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**GENERAL CONDITIONS**

jurisdiction whether now or hereafter in effect; (3) has had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of sixty(60) days or more; (4) takes any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or substantial part of its assets; or (5) permits any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more causing the Service Provider or any third party, including, without limitation, a trustee in bankruptcy, to be empowered under state or federal law to reject this Contract or any agreement supplementary hereto, the City shall have the following rights:

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

(ii) In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code.

Upon written request of the City to, as applicable, the Service Provider or the bankruptcy trustee or receiver. The Service Provider or such bankruptcy trustee or receiver shall not interfere with the rights of the City as licensee as provided in this Contract or in any agreement supplementary hereto to obtain the Source Material(s) from the bankruptcy trustee and shall, if requested, cause a copy of such Source Material (s) to be available to the City.

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

**EXHIBIT A**

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**GENERAL CONDITIONS**

modify or terminate this Contract, or make final decisions with respect to amendments, time extensions, assignments, cost or payment adjustments or payment disputes.

**19. ASSIGNMENT**

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

**20. NOTICES**

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

20.2 Unless otherwise stated herein, all notices or other writings which the Service Provider is required or permitted to give to the City may be hand-delivered to the City Manager, mail via U.S. Certified Mail. Or sent next-day delivery by a nationally-recognized overnight delivery service for next day delivery to City or three (3) days following submission to the City by U.S. Certified Mail. Any such notice shall be sent to:

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

Service Provider  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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GENERAL CONDITIONS

**21. NONDISCRIMINATION**

21.1 During the performance of this Contract, the Service Provider, for itself, its assignees and successors in interest agrees as follows:

21.1.1 Compliance with Regulations. The Service Provider shall comply with the Law and Regulations as they may be amended from time to time (hereafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this Contract.

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

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

21.1.4 Information and Reports. The Service Provider shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources or information, and its facilities as may be determined by the City to be pertinent to ascertain compliance with such regulations, orders, and instructions, the Service Provider shall so certify to the City, as appropriate, and shall set forth what efforts it has made to obtain the information.

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

21.5.1 Withholding of payments to the Service Provider under the Contract until the Service Provider complies, and/or

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

21.1.3 Incorporation of Provisions, The Service Provider shall include the provisions of subsections 21.1.1 through 21.1.5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Service Provider shall take such action with respect to any subcontractor

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**GENERAL CONDITIONS**

procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Service Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Service Provider may request the City to enter into such litigation to protect the interest of the City and, in addition, the Service Provider may request the interest of the City and, in addition, the Service Provider may request the United States to enter into such litigation to protect the interests of the United States.

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

**22. COPYING DOCUMENTS**

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

**23. GENERAL PROVISIONS**

- 23.1 The Contract Documents consist of the Contract, the Proposal Forms, the Instructions to Proposers, Request for Qualifications, all Addendum(s) issued prior to execution of this Contract, these General Conditions, and Specifications. Together, these documents comprise the Contract and all the documents are fully a part of the Contract as if attached to the Contract or repeated herein. Precedence of the Contract Documents shall be as follows: (i) addendum(s) to the Contract Documents, (ii) the Contract, (iii) the General Conditions, (iv) the Scope of Work in Exhibit B, (v) the 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 representation made by any party other than those contained herein. No verbal or written representations shall be relied upon outside the Contract

## EXHIBIT A

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### GENERAL CONDITIONS

terms and amendments. Without exception, all deletions or additions to the scope of work will be set forth in a written amendment to this Contract. No amendment, modification, or waiver of this Contract, or any part thereof, shall be valid or effective unless in writing signed by the party or parties sought to be bound or charged therewith; and no waiver of any breach or condition of this Contract shall be deemed to be a waiver of any other subsequent breach or condition, whether of a like or different nature.

- 23.3 The Service Provider shall, during the term of this Contract, repair any damage caused to real or personal property of the City and/or its tenants, wherever situated, caused by the intentional, reckless, or negligent acts or omissions of the Service Provider's officers, agents, or employees, and any subcontractors and their officers, agents, or employees, or, at the option of the City, the Service Provider shall reimburse the City for the cost of repairs thereto and replacement thereof accomplished by or on behalf of the City.
- 23.4 The Service Provider warrants to the City that no work performed or materials purchased pursuant to the Contract, whether by, from, or through the Service Provider or a subcontractor, shall cause any claim, lien or encumbrance to be made against any property of the City, and the Service Provider shall indemnify and save the City harmless from and against any and all losses, damages and costs, including attorneys' fees, with respect thereto. If any such claim, lien or encumbrance shall be filed, the Service Provider shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, an order of a court of competent jurisdiction or otherwise. This provision shall survive the expiration or termination of the Contract.
- 23.5 The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either the City or the Service Provider. This Contract shall be deemed to be made, construed and performed according to the laws of the State of Georgia. Any suit or proceeding initiated for the purpose of interpreting or enforcing any provision of this Contract or any matter in connection therewith shall be brought exclusively in a court of competent jurisdiction in DeKalb County, Georgia, and the Service Provider waives any venue objection, including, but not limited to, any objection that a suit has been brought in an inconvenient forum. The Service Provider agrees to submit to the jurisdiction of the Georgia courts and irrevocably agrees to acknowledge service of process when requested by the City.
- 23.6 The section headings herein are for the convenience of the City and the Service Provider and are not to be used to construe the intent of this Contract or any part thereof 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 performance of any of the terms, conditions, and covenants herein shall not be deemed a waiver of that breach or

## EXHIBIT A

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### GENERAL CONDITIONS

any subsequent breach or default in the terms, conditions, or covenants of this Contract. The Service Provider shall not be relieved of any obligation hereunder on account of its failure to perform by reason of any strike, lockout, or other labor disturbance.

- 23.9 If the City shall, without any fault, be made a party to any litigation commenced between the Service Provider and a third party arising out of the Service Provider's operations and activities at the premises, then the Service Provider shall pay all costs and reasonable attorney's fees incurred by or imposed upon the City in connection with such litigation for all trial and appellate proceedings. The City shall give prompt notice to the Service Provider of any claim or suit instituted against it by such third party. The provisions of this Section supplement and are not intended to be in lieu of the indemnification provisions of Section 5 hereof. The provisions of this Section shall survive the acceptance of the services and payment, therefore, and the expiration or earlier termination of this Contract.
- 23.10 The City shall have the right to recover from the Service Provider all of the City's costs and expenses incurred in enforcing the provisions of this Contract including, but not limited to, (1) the cost of administrative investigation and enforcement ( including, without limitation, audit fees and costs, attorneys' fees) and (2) the cost of any trial, appellate or bankruptcy proceeding (including, without limitation, investigation costs, audit fees and costs, attorney's fees, court costs, paralegal fees and expert witness fees). This provision shall survive the expiration or termination of the Contract.
- 23.11 The Service Provider shall not during the term of the Contract knowingly hire or employ (on either a full-time or part-time basis) any employee of the City.
- 23.12 The Service Provider shall be required, during the term of the Contract at no additional cost to the City, to take such reasonable security precaution with respect to its operations at City Hall as the City in its discretion may from time to time prescribe. The Service Provider shall comply with all regulations, rules, and policies of any governmental authority, including the City, relating to security issues.
- 23.13 The City may, but shall not be obligated to, cure, at any time, upon five (5) days written notice to the Service Provider (provided, however, that in any emergency situation to the City shall be required to give only such notice as is reasonable in light of all the circumstances), any default by the Service Provider under this Contract; whenever the City so cures a default by the Service Provider, all costs and expenses incurred by the City in curing the default, including but not limited to, reasonable attorneys' fees, shall be paid by the Service Provider to the City on demand.
- 23.14 The City shall, in its discretion, be entitled to deduct from the compensation to which the Service Provider is otherwise entitled hereunder, an amount equal to any liabilities of the Service Provider to the City which is then outstanding. In the event that additional work beyond the scope of this Contract is requested by the City Manager and it results in any extra charges to the City, the Service Provider shall so advise the City in writing of the amount of the extra charges. The City is not required to pay any extra charges for additional work unless such work and the charges, therefore, have been approved in



## EXHIBIT A

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### GENERAL CONDITIONS

advance and have been confirmed in writing within twenty-four (24) hours by the City Manager, in his or her exclusive discretion.

- 23.15 The Service Provider is an Independent Service Provider, and nothing contained herein shall be construed as making the Service Provider an employee, agent, partner or legal representative of the City for any purpose whatsoever. The Service Provider acknowledges that it does not have any authority to incur any obligations or responsibilities on behalf of the City and agrees not to hold itself out as having any such authority. Nothing contained in this Contract shall be construed to create a joint employer relationship between the City and the Service Provider with respect to any employee of the Service Provider or of its subcontractors.
- 23.16 The Service Provider and its subcontractors if any, shall maintain complete and accurate books and records in accordance with generally accepted accounting principles, consistently applied, and shall be in a form reasonably acceptable to the City Manager or designee. The Service Provider and its subcontractors shall account for all expenses of any nature related to transactions in connection with the Contract in a manner which segregates in detail those transactions from other transactions of the Service Provider and subcontractors and which support the amounts reported and /or invoiced to the City. At a minimum, the Service Provider's and subcontractor's accounting for such expenses and transactions shall include such records in the form of electronic media compatible with or convertible to a format compatible with computers utilized by the City at its offices; a computer run hard copy; or legible microfilm or microfiche, together with access to the applicable reader. All such books and records and computerized accounting systems shall upon reasonable notice from the City be make available in Dekalb County, Georgia, for inspection, examination, audit and copying by the City through and by its duly authorized representatives at any time for up to four (4) years after the year to which books and records pertain. Such inspection, examination, or audit may include but is not limited to a review of the general input, processing and output controls of information systems, using read-only access, for all computerized applications used to record financial transactions and information. The Service Provider and subcontractor shall freely lend its own assistance in a timely manner in making such inspection, examination, audit, or copying and, if such records are maintained in electronic and other machine-readable formats, shall provide the City and/or its representative such assistance as may be required to allow complete access to such records. The City Manager may require the Service Provider and subcontractors to provide other records the City Manager, in his or her sole discretion, deems necessary to enable the City to perform an accurate inspection, examination or audit of expenses incurred in and transactions related to performance of this Contract. Such records shall be provided within thirty (30) days or request thereof. In the event that expenses incurred or reimbursed are found by such inspection, examination, or audit to have been overpaid, the Service Provider and its subcontractors agree that such amounts shall be payable to the City. If, prior to the expiration of the above-state four (4) year record retention period, an audit or investigation is commenced by the City, or any claim is made or litigation commenced relating to this Contract by the City, the Service Provider, or third party, the Service Provider shall continue to maintain all such records, and the City shall continue to have the right to inspect such records in

## EXHIBIT A

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### GENERAL CONDITIONS

the manner stated above, until the inspection, examination, audit, claim, or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal). This provision shall survive the expiration or earlier termination of this Contract. In the event of any conflict between any provision of this Contract and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Contract shall control even where this Contract references such provisions or standards. In particular, without limitation, the Service Provider and subcontractors shall maintain all records required under this Contract to the full extent required hereunder, even if some or all such records would not be required under such generally accepted accounting principles or auditing standards. If as a result of an inspection, examination or audit, it is established that amounts are due from the Service Provider to the City, the Service Provider shall forthwith, upon written demand from the City, pay the City such amount, together with interest on the amount due at the rate of 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 Service Provider has overbilled such amounts for any Contract period by two (2%) percent or more, then the entire expense of such inspection, examination or audit shall be paid by the Service Provider.

- 23.17 The Service Provider and subcontractors shall prepare and provide the City with all detailed reports as required under the Contract on a timely basis. The City reserves the right to modify the reporting procedures or the form and content of any report as it deems necessary.
- 23.18 There are no third-party beneficiaries to this Contract, and nothing contained herein shall be construed to create such.
- 23.19 Time is of the essence for the performance of each of the Service Provider's obligations under this Contract.
- 23.20 In computing any period of time established under this Contract, except as otherwise specified herein the word "days" when referring to a period of time is ten (10) days or less means business days, and when referring to a period of time that is more than ten (10) days means calendar days. The day of the event, from which the designated period of time begins to run shall not be included. A business day is any day other than Saturday, Sunday, or Federal, State of Georgia or City holidays.
- 23.21 The Service Provider agrees to perform all acts and execute all supplementary instruments or documents which may be reasonably necessary to carry out or complete the transaction(s) contemplated by this Contract.
- 23.22 The City reserves the right to further develop, improve, repair and alter the facilities and all roadways, and parking areas, as it may reasonably see fit, free from any and all liability to the Service Provider for loss of business or damages of any nature whatsoever to the Service Provider occasioned during the making of such improvements, repairs,

## EXHIBIT A

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### GENERAL CONDITIONS

alterations and additions, including, but not limited to, any damages resulting from negligence of the City or its employees, agents or Service Providers.

- 23.23 The Service Provider and the City hereby mutually waive any claim against each other and their respective members, officials, officers, agents and employees for damages ( including damages for loss of anticipated profits) caused by any suit or proceedings brought by either of them or by any third party directly or indirectly attacking the validity of this Contract or any part thereof, or any addendum or amendment hereto, or the manner in which this Contract was solicited, awarded or negotiated, or arising out of any judgment or award in any suit or proceeding declaring this Contract, or any addendum or amendment hereto, null, void or voidable or delaying the same, or any part thereof, from being carried out.
- 23.24 At the option of the Service Provider, the products and/or services provided under the Contract resulting from this solicitation may be provided to other governmental agencies, including the State of Georgia, its agencies, political subdivisions, counties and cities under the same terms and conditions, including price, as such products and/or services are provided under this Contract. Each governmental agency allowed by the Service Provider to purchase products and/or services in connection with this Contract shall do so independent of the City or any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods and services ordered, received and accepted by it. The City shall have no liability to Service Provider or any governmental agency resulting from the purchase by that agency of products and /or services from the Service Provider in connection with this Contract.

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

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

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

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

## EXHIBIT B

---

### SPECIFICATIONS AND SCOPE OF WORK

#### **Project Description:**

The City of Brookhaven is seeking the professional legal services of a qualified attorney or attorney's for the acquisition of 11 properties in the City of Brookhaven.

#### **Scope**

The attorney or attorneys must be able to provide a full professional scope of services of an attorney engaging in the practice of real property law in the State of Georgia. These services shall include, but shall not be limited to the following:

- Real Estate Title
- Title Insurance
- Escrow Services

The attorney or attorneys shall be specifically familiar with the Georgia Statutes and ordinances referenced in this solicitation and otherwise generally familiar with real property law. The following requirements must be met:

- 10 years' experience with Real Estate Law
- Agent for a national title insurer authorized to do business in Georgia
- Pricing requested per transaction, flat fee requested
- Must have experience with Georgia Municipality acquiring properties via FEMA Hazard Mitigation Property Acquisition

#### **Street Addresses of Properties**

1756 Dresden Drive, NE. Brookhaven, GA. 30319

1764 Dresden Drive, NE. Brookhaven, GA. 30319

2652 South Bamby Lane, NE. Brookhaven, GA. 30319

2658 South Bamby Lane, NE. Brookhaven, GA. 30319

2662 South Bamby Lane, NE. Brookhaven, GA. 30319

2668 South Bamby Lane, NE. Brookhaven, GA. 30319

2674 South Bamby Lane, NE, Brookhaven, GA. 30319

2680 South Bamby Lane, NE, Brookhaven, GA. 30319

2686 South Bamby Lane, NE, Brookhaven, GA. 30319

2692 South Bamby Lane, NE., Brookhaven, GA. 30319

2696 South Bamby Lane, NE. Brookhaven, GA. 30319

\*\*\*\*\***END EXHIBIT B**\*\*\*\*\*

## EXHIBIT C

---

### INFORMATION REQUESTED TO ASSIST IN THE DETERMINATION OF RESPONSIBILITY

**Bidders shall provide the following information on attached sheets; this information shall be submitted with the bid in the format specified. Provide the response, to each section of the information, on a separate sheet of paper, preferably typewritten, and attached to the bid at the time it is submitted. Failure to provide information requested in complete and accurate detail may result in rejection of the bid.**

#### **1. History and Organizational Structure of the Firm**

Provide a cover letter introducing the company and including the corporate name, address and telephone number of the corporate headquarters and local office. **The name and phone number of one individual who will be the company's primary contact with the City of Brookhaven for contract negotiation and the name of the project manager.** A brief history of the company and the present organizational structure of the firm describing the management organization, permanent employees by discipline, and this project's coordination structure; if the firm is a partnership, indicate the name of all partners; if incorporated indicate where and when. If the Contractor has changed names or incorporation status within the last five (5) years, then please list all of such preceding organizations and a brief reason for the change. Contractor shall also provide a business license indicating that the Contractor can conduct business in Dekalb County, Georgia. Further, Contractor shall provide documentation showing that the Contractor is properly registered to conduct business in the State of Georgia. Contractor acknowledges and agrees that any business license and registration must remain current for the duration of the contract and such documents are material term to this agreement.

#### **2. References**

List as references (names, addresses, contact persons and toll-free phone numbers) a minimum of three (3) government municipalities or other clients of similar size and nature to City of Brookhaven for which a project comparable to the scope of this project was completed.

#### **3. Subcontractors**

Indicate the names and addresses and degree of utilization of any and all subcontractors which would be used in the performance of this contract.

#### **4. Previous Default**

Indicate if you or any predecessor organization have ever defaulted on a contract or denied a bid due to non-responsibility to perform. If so, provide the facts and circumstances. If your firm or any successor organization is now involved in any litigation or in the past ten (10) years have been involved in litigation with owners, please list the parties to the litigation, the civil action number and a brief explanation of the matter.

**EXHIBIT D**  
**BOND DOCUMENTS**

**BLANK PAGE**

*End of Exhibit D.*



**EXHIBIT E  
GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT**

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

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

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 which is 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 established in O.C.G.A. § 13-10-91.

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™ Company Identification Number

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

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

\_\_\_\_\_  
Date

SUBSCRIBED AND SWORN BEFORE  
ME ON THIS THE

\_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_

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

[NOTARY SEAL]

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

\* or any subsequent replacement operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603.

**Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with (name of contractor) on behalf of (name of public employer) has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five business days of receipt, a copy of the notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

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

\_\_\_\_\_  
Name of Subcontractor

\_\_\_\_\_  
Name of Project

\_\_\_\_\_  
Name of Public Employer

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE

\_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_

[NOTARY SEAL]

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

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

*End of Exhibit E.*



**EXHIBIT F  
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 Service Provider’s employees during the performance of the Contract; and

(2) Each Service Provider who hires a subcontractor to work in a drug-free workplace shall secure from the subcontractor the following written certification:

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

Also, the undersigned further certifies that he/she 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  
(Service Provider Signature)

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

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

*End of Exhibit F.*



**EXHIBIT G**  
**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                      Date  
(Service Provider Signature)

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

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

*End of Exhibit G.*

**EXHIBIT H**  
**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 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:  
\_\_\_\_\_

**EXHIBIT I**  
**REFERENCES**  
**ITB 20-103, LEGAL SERVICES**

Please provide as references, the names of at least three (3) local corporate clients you have served for at least three (3) years.

1.     Company Name: \_\_\_\_\_  
       Address: \_\_\_\_\_  
       Contact: \_\_\_\_\_ Phone: \_\_\_\_\_
  
2.     Company Name: \_\_\_\_\_  
       Address: \_\_\_\_\_  
       Contact: \_\_\_\_\_ Phone: \_\_\_\_\_
  
3.     Company Name: \_\_\_\_\_  
       Address: \_\_\_\_\_  
       Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

**SUBCONTRACTORS**  
**ITB 20-103, LEGAL SERVICES**

Please provide the names, address, contact name and phone number of all Subcontractors that will be utilized by the Contractor for the duration of any resulting award.

1. Company Name: \_\_\_\_\_

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

Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

2. Company Name: \_\_\_\_\_

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

Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

3. Company Name: \_\_\_\_\_

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

Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

4. Company Name: \_\_\_\_\_

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

Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

5. Company Name: \_\_\_\_\_

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

Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

*End of Exhibit I.*

**EXHIBIT J**  
**NON-COLLUSION AFFIDAVIT**  
**ITB 20-103, LEGAL SERVICES**

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

**OATH AND AFFIRMATION**

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR PUBLIC WORKS ARE TRUE AND CORRECT.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Name of Organization)

\_\_\_\_\_  
(Title of Person Signing)

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

\_\_\_\_\_  
(Bid Number)

**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature

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

**EXHIBIT K**  
**BID SCHEDULE**  
**ITB 20-103, LEGAL SERVICES**

<b>Item</b>	<b>Property Address</b>	<b>Unit of Measure</b>	<b>Total Cost</b>
<b>1</b>	<b>1756 Dresden Drive, NE.</b>	<b>Flat Fee</b>	<b>\$</b>
<b>2</b>	<b>1764 Dresden Drive, NE.</b>	<b>Flat Fee</b>	<b>\$</b>
<b>3</b>	<b>2652 South Bamby Lane, NE</b>	<b>Flat Fee</b>	<b>\$</b>
<b>4</b>	<b>2658 South Bamby Lane, NE</b>	<b>Flat Fee</b>	<b>\$</b>
<b>5</b>	<b>2662 South Bamby Lane, NE</b>	<b>Flat Fee</b>	<b>\$</b>
<b>6</b>	<b>2668 South Bamby Lane, NE</b>	<b>Flat Fee</b>	<b>\$</b>
<b>7</b>	<b>2674 South Bamby Lane, NE</b>	<b>Flat Fee</b>	<b>\$</b>
<b>8</b>	<b>2680 South Bamby Lane, NE</b>	<b>Flat Fee</b>	<b>\$</b>
<b>9</b>	<b>2686 South Bamby Lane, NE</b>	<b>Flat Fee</b>	<b>\$</b>
<b>10</b>	<b>2692 South Bamby Lane, NE</b>	<b>Flat Fee</b>	<b>\$</b>
<b>11</b>	<b>2696 South Bamby Lane, NE</b>	<b>Flat Fee</b>	<b>\$</b>
<b>Total Cost</b>			<b>\$</b>

**EXHIBIT K**  
**BID SCHEDULE**  
**ITB 20-103, LEGAL SERVICES**

---

**Total Bid Excludes City Controlled Contingency**

**Total Base Bid Amount:** \_\_\_\_\_

**Total Base Bid Amount in Words:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

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

**Print:** \_\_\_\_\_

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

---

**THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR BID**



# **EXHIBIT L**

## **HAZARD MITIGATION GRANT AGREEMENT**

**EXHIBIT L**

---

**HAZARD MITIGATION GRANT AGREEMENT  
ITB 20-103, LEGAL SERVICES**

I, \_\_\_\_\_, hereby certify that I have received a copy of the Hazard Mitigation Grant Program Agreement, which can be found in Exhibit M of ITB 20-103, Legal Services. I agree to comply with all requirements of the FEMA Hazard Mitigation Grant to the extent the policy is applicable to the undersigned.

---

BY: Authorized Officer or Agent      Date  
(Service Provider Signature)

---

Title of Authorized Officer or Agent of Service Provider

---

Printed Name of Authorized Officer or Agent      Date

## **HAZARD MITIGATION GRANT PROGRAM Recipient-Subrecipient Agreement**

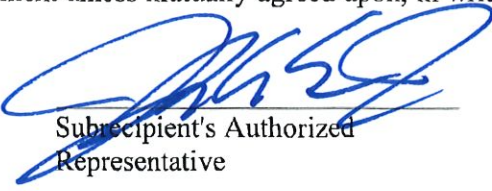
On October 8, 2016, the President declared that a major disaster exists in the State of Georgia. This declaration was based on damage resulting from Hurricane Matthew. This document is the Recipient-Subrecipient Hazard Mitigation Assistance Agreement for the major disaster, designated FEMA-4284-DR, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288 as amended by Public Law 100-707, 42 USC 5121 et seq. ("The Act"), in accordance with 44 CFR 206 Subpart N, Hazard Mitigation Grant Program. Under this Agreement, the interests and responsibilities of the Recipient, herein after referred to as the State, will be executed by the Georgia Emergency Management and Homeland Security Agency (GEMA/HS). The individual designated to represent the State is the GEMA/HS Director, the Governor's Authorized Representative. The Subrecipient to this Agreement is the City of Brookhaven. The interests and responsibilities of the Subrecipient will be executed by the City of Brookhaven's agent, the Subrecipient Authorized Representative.

1. The following Exhibits are attached and made a part of this agreement:
  - Exhibit "A": Application for Federal Assistance
  - Exhibit "B": Assurances – Construction Programs
  - Exhibit "C": Project Administration Guidelines: Financial Assistance, Hazard Mitigation Grant Program
  - Exhibit "D": Certification regarding Drug-Free Workplace Requirements
  - Exhibit "E": Certification regarding Lobbying
  - Exhibit "F": Certification of Compliance with National Historic Preservation Act, Section 106
  - Exhibit "G": Certification Hazardous Substance Compliance
  - Exhibit "H": Certification of Safeguarding Duplication of Benefits Information
  - Exhibit "I": Sample Contract for Sale of Real Property, with Exhibits
    - Exhibit "1": Bill of Sale
    - Exhibit "2": Subrecipient's Right to Enter and Inspect and Notice of Intent to Take Soil Boring and Ground Water Samples
    - Exhibit "3": Certificate of Removal of Personal Property and Debris
    - Exhibit "4": Disclosure and Certification of Flood Assistance
    - Exhibit "5": Property Inventory
  - Exhibit "J": Clear Title
  - Exhibit "K": General Warranty Deed
  - Exhibit "L": Determination of Fair Market Value
  - Exhibit "M": Appraisal Guidelines
  - Exhibit "N": Statement of Voluntary Participation
  - Exhibit "O": Scope of Work
  - Exhibit "P": Progress Payment Request Form
  - Exhibit "Q": Federal Funding Accountability and Transparency Act Certification
2. Pursuant to Section 404 of the Act, funds are hereby awarded to the Subrecipient on a 75 percent federal cost share and 10 percent state cost share basis for the hazard mitigation project(s) described in Exhibits "A" and "F". The Subrecipient shall be responsible for

the remaining 15 percent share of any costs incurred under Section 404 of the Act and this Agreement. Allowable costs will be governed by 2 CFR Part 200.

3. If the Subrecipient violates any of the conditions of disaster relief assistance under the Act, this Agreement, or applicable federal and state regulations; the State shall notify the Subrecipient that additional financial assistance for the project in which the violation occurred will be withheld until such violation has been corrected to the satisfaction of the State. In addition, the State may also withhold all or any portion of financial assistance which has been or is to be made available to the Subrecipient for other disaster relief projects under the Act, this or other agreements, and applicable federal and state regulations until adequate corrective action is taken.
4. The Subrecipient agrees that federal or state officials and auditors, or their duly authorized representatives may conduct required audits and examinations. The Subrecipient further agrees that they shall have access to any books, documents, papers and records of any recipients of federal disaster assistance and of any persons or entities which perform any activity which is reimbursed to any extent with federal or state disaster assistance funds distributed under the authority of the Act and this Agreement.
5. The Subrecipient will establish and maintain an active program of nondiscrimination in disaster assistance as outlined in implementing regulations. This program will encompass all Subrecipient actions pursuant to this Agreement.
6. The Subrecipient agrees that the mitigation project contained in this agreement will be completed by City of Brookhaven on or before March 31, 2021. Completion dates may be extended upon justification by the Subrecipient and approval by FEMA and the Governor's Authorized Representative.
7. The written assurances provided by the City of Brookhaven pertaining to FEMA's post award approval conditions apply to this Award Agreement and are incorporated by reference.
8. The Subrecipient shall follow Uniform Administrative Requirements for awards found in 2 CFR Part 200 and FEMA HMA (Hazard Mitigation Assistance) program guidance to implement this award.
9. There shall be no changes to this Agreement unless mutually agreed upon, in writing, by both parties to the Agreement.

\_\_\_\_\_  
Governor's Authorized  
Representative

  
\_\_\_\_\_  
Subrecipient's Authorized  
Representative

\_\_\_\_\_  
Date

12/10/2019  
\_\_\_\_\_  
Date

**EXHIBIT "A"**

**COVER PAGE FOR CURRENT  
APPLICATION FOR FEDERAL ASSISTANCE**

**Application for Federal Assistance SF-424**

Version 02

<b>* 1. Type of Submission:</b> <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	<b>* 2. Type of Application:</b> <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision	<b>* If Revision, select appropriate letter(s):</b> <input type="text"/> <b>* Other (Specify)</b> <input type="text"/>
---	---	---

<b>* 3. Date Received:</b> <input type="text" value="09/25/2019"/>	<b>4. Applicant Identifier:</b> <input type="text"/>
---	---

<b>5a. Federal Entity Identifier:</b> <input type="text"/>	<b>* 5b. Federal Award Identifier:</b> <input type="text"/>
---	--

**State Use Only:**

<b>6. Date Received by State:</b> <input type="text"/>	<b>7. State Application Identifier:</b> <input type="text"/>
--	--

**8. APPLICANT INFORMATION:**

<b>* a. Legal Name:</b> <input type="text" value="City of Brookhaven"/>
---

<b>* b. Employer/Taxpayer Identification Number (EIN/TIN):</b> 46-1567295	<b>* c. Organizational DUNS:</b> <input type="text" value="0486384410000"/>
--	--

**d. Address:**

<b>* Street1:</b> <input type="text" value="4362 Peachtree Rd"/>
<b>Street2:</b> <input type="text"/>
<b>* City:</b> <input type="text" value="Brookhaven"/>
<b>County:</b> <input type="text"/>
<b>* State:</b> <input type="text" value="GA: Georgia"/>
<b>Province:</b> <input type="text"/>
<b>* Country:</b> <input type="text" value="USA: UNITED STATES"/>
<b>* Zip / Postal Code:</b> <input type="text" value="30319-3023"/>

**e. Organizational Unit:**

<b>Department Name:</b> <input type="text"/>	<b>Division Name:</b> <input type="text"/>
---	---

**f. Name and contact information of person to be contacted on matters involving this application:**

<b>Prefix:</b> <input type="text" value="Ms."/>	<b>* First Name:</b> <input type="text" value="Patricia"/>
<b>Middle Name:</b> <input type="text"/>	
<b>* Last Name:</b> <input type="text" value="Hansen"/>	
<b>Suffix:</b> <input type="text"/>	

<b>Title:</b> <input type="text" value="Director of Strategic Partnerships"/>
---

<b>Organizational Affiliation:</b> <input type="text"/>
--

<b>* Telephone Number:</b> <input type="text" value="770-853-4720"/>	<b>Fax Number:</b> <input type="text"/>
--	---

<b>* Email:</b> <input type="text" value="Patty.Hansen@Brookhavenga.gov"/>
--

**Application for Federal Assistance SF-424**

Version 02

**9. Type of Applicant 1: Select Applicant Type:**

City Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

\* Other (specify):

**\* 10. Name of Federal Agency:**

Federal Emergency Management Agency

**11. Catalog of Federal Domestic Assistance Number:**

97.039

CFDA Title:

Hazard Mitigation Grant Program (HMGP)

**\* 12. Funding Opportunity Number:**

HMGP 4284-0051

\* Title:

Hazard Mitigation Grant Program

**13. Competition Identification Number:**

Title:

**14. Areas Affected by Project (Cities, Counties, States, etc.):**

**\* 15. Descriptive Title of Applicant's Project:**

City of Brookhaven Property Acquisition Project

Attach supporting documents as specified in agency instructions.

**Application for Federal Assistance SF-424**

Version 02

**16. Congressional Districts Of:**

\* a. Applicant 06

\* b. Program/Project 06

Attach an additional list of Program/Project Congressional Districts if needed.

**17. Proposed Project:**

\* a. Start Date: 11/01/2019

\* b. End Date: 07/31/2021

**18. Estimated Funding (\$):**

* a. Federal	2,750,850.00
* b. Applicant	550,170.00
* c. State	366,780.00
* d. Local	0.00
* e. Other	0.00
* f. Program Income	0.00
* g. TOTAL	3,667,800.00

**\* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- a. This application was made available to the State under the Executive Order 12372 Process for review on [ ]
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E.O. 12372.

**\* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)**

Yes  No

21. \*By signing this application, I certify (1) to the statements contained in the list of certifications\*\* and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances\*\* and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

\*\* I AGREE

\*\* The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

**Authorized Representative:**

Prefix: [ ] \* First Name: John

Middle Name: A

\* Last Name: Ernst

Suffix: Jr

\* Title: Mayor

\* Telephone Number: 404-637-0500 Fax Number: [ ]

\* Email: John.Ernst@Brookhavenga.gov

\* Signature of Authorized Representative:  \* Date Signed: 12/10/2019



**EXHIBIT "B"**

**COVER PAGE FOR CURRENT  
ASSURANCES-CONSTRUCTION PROGRAMS**

ASSURANCES – CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

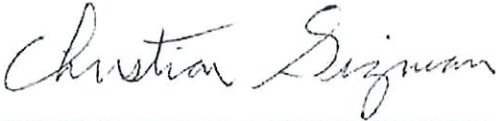
NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse

patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

<p>SIGNATURE OF AUTHORIZED APPLICANT AGENT</p> 	<p>TITLE Christian Sigman City Manager</p>
<p>APPLICANT ORGANIZATION City of Brookhaven, GA</p>	<p>DATE SUBMITTED July 31, 2017</p>

SF-424D (Rev. 7-97) Back

**EXHIBIT "C"**  
**GEORGIA EMERGENCY MANAGEMENT**  
**and HOMELAND SECURITY AGENCY**  
**Hazard Mitigation Grant Program**  
**Project Administration Guidelines: Financial Assistance**

This fact sheet provides a synopsis of information contained in the Recipient-Subrecipient Agreement and other applicable documents. Its purpose is to provide general guidelines for efficient and timely Hazard Mitigation Grant Program project administration.

1. Project Identification – The Federal Emergency Management Agency (FEMA) has assigned project number HMGP 4284-0051 to this project. Please reference this number in all correspondence, as doing so will greatly assist us in processing any actions for this project.
2. Documentation – You must keep full documentation to get maximum payment for project related expenditures. Documentation will be required as part of the approved Hazard Mitigation Grant Program project file. Documentation consists of:
  - A. Recipient-Subrecipient Agreement
  - B. Copies of checks, vouchers or ledger statements
  - C. Contracts awarded
  - D. Invoices or other billing documents
  - E. Progress reports
  - F. Record of advance or progress payments (where applicable)
3. Funding – Cost sharing has been established at 75% federal, 10% state, and 15% applicant.
4. Debarred and Suspended Parties – You must not make any award or permit any award (subaward or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension".
5. Procurement Standards – You may use your own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal laws and standards. Below is a summary of key procurement standards that a Subrecipient should incorporate as discussed in 2 CFR Sections 200.318 to 200.326.
  - A. Conflict of Interest Policy – The Subrecipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts as required in 2CFR Section 200.318.

- B. Procurement – Perform procurement transactions in a manner providing full and open competition. Contracts and Procurements must be of reasonable cost, generally must be competitively bid, and must comply with Federal, State, and local procurement standards. FEMA finds five methods of procurement acceptable:
    - 1) Micro-purchase procedures: an informal method for securing services or supplies that do not cost more than \$3,000. Micro-purchases may be awarded without soliciting competitive quotes if the Subrecipient considers the price to be reasonable.
    - 2) Small purchase procedures: an informal method for securing services or supplies that do not cost more than \$100,000 by obtaining several price quotes from different sources.
    - 3) Sealed bids: a formal method where bids are publicly advertised and solicited, and the contract is awarded to the responsive bidder whose proposal is the lowest in price.
    - 4) Competitive proposals: a method similar to sealed bid procurement in which contracts are awarded on the basis of contractor qualifications instead of on price.
    - 5) Non-competitive proposals: a method whereby a proposal is received from only one source, because the item is available only from a single source; there is an emergency requirement that will not permit delay.
  - C. Maintain sufficient records to detail the significant history of procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, and contractor selection or rejection.
  - D. Take affirmative steps to assure the use of small and minority firms, women's business enterprises, and labor surplus area firms when possible.
  - E. Include specific provisions in Subrecipient's contracts to allow changes, remedies, changed conditions, access and records retention, suspension of work and other clauses approved by the Office of Federal Procurement Policy.
6. Payments
- A. Progress Payments
    - 1) When progress payments are desired, you must submit a written request (on provided form at Exhibit "P") and provide supporting documentation, such as an invoice and copies of check.
    - 2) The Hazard Mitigation Risk Reduction Specialist reviews the request and supporting documentation. The Hazard Mitigation Manager reviews and approves or denies the request.

- 3) If the request is denied, the Hazard Mitigation Manager will inform you in writing that additional documentation is required to support the request.
  - 4) If the request is approved, the Hazard Mitigation Manager will authorize payment of the requested amount.
  - 5) Quarterly report submissions must be current in order to receive progress payments.
- B. Advance Payments – Advance payments will be made on an exception basis only.
7. Subrecipient Performance – The scope of work (see Exhibit “O”) must be initiated within 90 days of this award notification.
- A. If documentation, inspections or other reviews reveal problems in performance of the scope of work, the Hazard Mitigation Manager will inform you in writing of the deficiencies.
  - B. In addition, the State may also withhold all or any portion of financial assistance which has been made available under this agreement until adequate corrective action is taken.
8. Award Expiration Date
- A. The award expiration date runs through March 31, 2021 and has been established based on project milestones established by the applicant in their application. The award expiration date is the time during which the Subrecipient is expected to complete the scope of work. You may not expend FEMA or state funds beyond this date. All costs must be submitted for reimbursement within 60 days of the end of the award expiration date.
  - B. Requests for time extensions to the Award Expiration Date will be considered but will not be granted automatically. A written request must be submitted to the Hazard Mitigation Manager with an explanation of the reason or reasons for the delay. Without justification, extension requests will not be processed. Extensions will not be granted if the Subrecipient has any overdue quarterly progress reports. If an extension is requested, it must be received 90 days prior to the award expiration date. When fully justified, the State Hazard Mitigation Manager may extend the award expiration date.
9. Project Termination
- A. The Recipient, Subrecipient, or FEMA may terminate award agreements upon giving written notice to the other party at least seven (7) calendar days prior to the

effective date of the termination. All notices are to be transmitted via registered or certified mail.

- B. The Subrecipient's authority to incur new costs will be terminated upon the date of receipt of the notice or the date set forth in the notice. Any costs incurred prior to the date of the receipt of the notice or the date of termination set forth in the notice will be negotiated for final payment. Close out of the award will commence and be processed as prescribed under final inspection procedures described in this Recipient-Subrecipient Agreement.

10. Environmental and Historic Preservation Conditions

- A. The following Environmental Project Conditions must be followed to ensure the project remains in compliance through implementation:
- B. Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders. This review did not address all federal, state, and local requirements. Acceptance of federal funding requires Recipients to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.
- C. If ground-disturbing activities occur during construction or demolition, Subrecipient will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

11. Equipment/Supplies – The Subrecipient must comply with the regulations listed in 2 CFR 200.313 Equipment, 200.314 Supplies, and must be in compliance with state laws and procedures.

12. Award Modifications

- A. Any award modifications, including deviation from the approved scope of work or budget, must be submitted in writing for approval prior to implementation. Award Modifications include:
  - 1) Any revision which would result in the need for additional funding.
  - 2) Transfers between budget categories.
- B. The Subrecipient shall follow prior approval requirements for budget revisions found in 2 CFR 200.308. Transfer of funds between total direct cost categories in the approved budget shall receive the prior approval of FEMA when such cumulative transfers among those direct cost categories exceed ten percent of the total budget.

13. Appeals – You may submit an appeal on any item related to award assistance. Appeals must be submitted to the State Hazard Mitigation Manager within 90 days of the action which is being appealed.
14. Progress Reports
  - A. Quarterly progress reports are required. The report will be supplied to you by GEMA/HS on a quarterly basis for your completion.
  - B. The initial progress report will cover the period through December 31, 2019. It must be submitted no later than January 15, 2020.
  - C. Subsequent reports must be filed by you within fifteen days after the end of each calendar quarter (March 31, June 30, September 30, and December 31).
15. Interim Inspections – Interim inspections may be conducted by GEMA/HS staff and/or FEMA staff.
16. Project Closeout
  - A. When all work has been completed, you must notify your Hazard Mitigation Risk Reduction Specialist in writing to request project closeout.
  - B. A desk review will be conducted by your Hazard Mitigation Risk Reduction Specialist.
17. Audits – If you receive \$750,000 or more in federal assistance from all federal sources, not just this award, during your fiscal year, you are responsible for having an audit conducted as prescribed by the Single Audit Act and sending a copy to the Georgia Department of Audits and Accounts. Mail reports to:

Department of Audits and Accounts  
Non-Profit and Local Government Audits  
270 Washington Street, SW, Room 1-156  
Atlanta, Georgia 30334-8400

If you need additional information or assistance, contact the GEMA/HS Hazard Mitigation Program at (404) 635-7522 or 1-800-TRY-GEMA.



**EXHIBIT "D"**  
**Certification Regarding Drug Free Workplace Requirements**

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 29 CFR Part 3001. The regulations require certification by Subrecipients, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to grant the award. False certification or violation of the certification shall be grounds for suspension of payments,

- A. The Subrecipient certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Recipient and Subrecipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) Establishing an ongoing drug-free awareness program to inform employees about--
    - (1) The dangers of drug abuse in the workplace;
    - (2) The Recipient's policy of maintaining a drug-free workplace;
    - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (c) Making it a requirement that each employee to be engaged in the performance of the award be given a copy of the statement required by paragraph (a);
  - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the award, the employee will--
    - (1) Abide by the terms of the statement; and
    - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - (e) Notifying the agency in writing within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to every award officer or other designee on whose award activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected award;
  - (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
    - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.; or
    - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
  - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

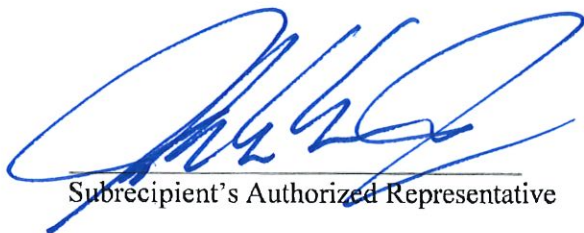
**EXHIBIT "E"**

**CERTIFICATION REGARDING LOBBYING**  
**Certification For Contracts, Awards, Loans, and Cooperative Agreements**

This certification is required by the regulations implementing the New Restrictions on Lobbying, 44 CFR Part 18. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal award, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, award, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, award, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub awards, and contracts under awards, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
Subrecipient's Authorized Representative

12/10/2019 Date

**EXHIBIT "F"**

**Certification of Compliance with the National Historic Preservation Act,  
Section 106**

1. APPLICANT NAME (hereinafter "the subrecipient") warrants that under no circumstances will the subrecipient demolish structures acquired under the Hazard Mitigation Grant Program which are being evaluated for potential historical significance under Section 106 of the National Historic Preservation Act of 1966, as amended, until receiving written notice and authorization to proceed with demolition from FEMA.
2. The subrecipient agrees to consider the recommendations of the State Historic Preservation Officer (SHPO) regarding historic preservation measures prior to demolition. Any extraordinary historic preservation measures conducted after acquisition will be at the expense of the subrecipient.
3. The subrecipient agrees to employ such protective measures as are reasonably necessary to protect acquired properties having potential historic significance from illegal entry and damage. The subrecipient shall be responsible for employing protective measures from the Closing Date until such time as written notice and authorization to proceed with demolition is received by the subrecipient from FEMA. "Protective measures" shall include, at a minimum, locking or otherwise securing all exterior entrances of acquired structures and posting a "NO TRESPASSING" sign.
4. NHPA (National Historic Preservation Act): Foundations of structures to be demolished shall be pushed in below grade within the original footprint and basements shall be backfilled using fill from an existing off-site material borrow source. Slabs, walkways, driveways, concrete stair footings, and similar appurtenances may be removed. Ground disturbance shall be limited to the immediate area of the demolished structures. Construction equipment will be operated within existing driveways and the perimeters of structures to limit ground disturbance. If human remains or intact archaeological deposits are uncovered, work in the vicinity of the discovery will stop immediately and all reasonable measures to avoid or minimize harm to the findings will be taken. The applicant will ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries. The applicant's contractor will provide immediate notice of such discoveries to the applicant. The applicant will notify GEMA/HS within 24 hours of the discovery and GEMA/HS shall promptly notify FEMA. Work in the vicinity of the discovery may not resume until FEMA has completed consultation with SHPO, Tribes, and other consulting parties as necessary. These conditions shall be included in instructions to the demolition contractor.

## EXHIBIT "G"

### Certification of Hazardous Substance Compliance

- A. The City of Brookhaven (hereinafter the " Subrecipient ") hereby represents and warrants to the State and FEMA that the soil and ground water of all properties acquired using Hazard Mitigation Grant Program funds are free from hazardous substances. "Hazardous Substances" include, but are not limited to, every material, waste, contaminant, chemical, toxic pollutant or other substance listed or described in any of the following sources, as amended: (i) the Resource Conservation and Recovery Act of 1976 (RCRA); (ii) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA); (iii) the Asbestos Hazard Emergency Response Act (AHERA), and any other federal, state, or local statute or ordinance which defines "hazardous waste" or "hazardous substance", or similar terms, and which could create liability; and (iv) any federal, state, or local regulations, rules or orders issued or promulgated under or pursuant to any of the foregoing or otherwise by any department, agency or other administrative, regulatory or judicial body having Subrecipient over the Properties to be acquired using Hazard Mitigation Grant Program funds.
- B. The Subrecipient hereby agrees and warrants the following relative to each property being considered for acquisition under the Hazard Mitigation Grant Program:
- (1) To make reasonable inquiry regarding current or past uses of the properties relative to hazardous substances contamination. Such current or past uses include, but are not limited to, use as a solid waste disposal site, underground storage tank site, or facility for the transport, treatment, storage, generation, installation, or any other uses involving hazardous substances.
  - (2) If, after reasonable inquiry, a property under consideration for acquisition under the Hazard Mitigation Grant Program is found to currently or previously have been used for a purpose or purposes involving hazardous substances, including, but not limited to those uses and purposes described in Subsection 1, the Subrecipient agrees and warrants that soil boring and testing shall be conducted, at the expense of the Subrecipient, for the purpose of determining whether the soil and/or ground water of such property is contaminated with a hazardous substance. If the results of such soil boring and testing show that the soil and/or ground water of such property is not currently contaminated with a hazardous substance, then the Subrecipient may proceed with acquisition of the property under the Hazard Mitigation Grant Program. If the results of such soil boring and testing show that the soil and/or ground water on the property is contaminated with a hazardous substance, then the Subrecipient may not use Hazard Mitigation Grant Program funds to acquire the property without first causing to be done, at the Subrecipient's own expense, such clean-up procedures as will produce negative test results for hazardous substances.
  - (3) All structures scheduled for demolition must be thoroughly inspected for the presence of friable and non-friable asbestos, including Category I & II nonfriable Asbestos Containing Materials (ACM). This should be done prior to the commencement of the demolition activity. If ACMs are found in the structure, asbestos abatement must be completed in accordance with federal and state regulations.

**EXHIBIT "H"**

**Certification of Safeguarding Duplication of Benefits Information**

The Subrecipient hereby agrees and warrants this Duplication of Benefits information is to be used for the sole purpose of applying for and administering Hazard Mitigation Grant Program funds. The Subrecipient hereby assures that all Duplication of Benefits information obtained from FEMA will be adequately safeguarded from improper disclosure, and confidentially maintained by the Subrecipient.

HMA funds cannot duplicate nor be duplicated by funds received by or available to Applicants, sub-applicants, or project participants from other sources for the same purpose, such as benefits received from insurance claims, other assistance programs (including HMA programs), legal awards, or other benefits associated with properties or damage that are or could be subject to litigation.

Individuals or entities must notify the Grantee and FEMA of all benefits that they receive or anticipate from other sources for the same purpose, and must seek all such benefits available to them. The total amount of eligible costs will be reduced by the amount of available benefits prior to calculating the required cost share. The cost share is based on the total eligible costs after DOB deductions have been made. Duplications may occur at any time; however FEMA must be reimbursed for benefits identified or received after an award.

**EXHIBIT "I"**

**Sample Contract for Sale of Real Property**

City of Brookhaven  
Voluntary Acquisition Program

THIS AGREEMENT made and entered into the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ and \_\_\_\_\_, herein designated as "Seller," and the City of Brookhaven, Georgia, WITNESSETH:

WHEREAS, the Seller is the owner of certain real property being described as follows:

[Legal Description]

AND WHEREAS, the City of Brookhaven, a local government of the State of Georgia (hereinafter referred to as the "Subrecipient "), acting pursuant to its legal authority in administering its GEMA/HS Hazard Mitigation Grant Program project, wishes to purchase the above described real property (hereinafter referred to as "Property").

NOW THEREFORE, for and in consideration of the covenants and obligations contained herein, the parties agree as follows:

1.

AGREEMENT TO SELL. The Seller agrees to sell the Property to the Subrecipient, together with the entire Seller's right, title, and interest in all Fixtures, Buildings, and Improvements located on the above-described real property, and under any easement and servitude for the benefit of the Seller, free and clear of all liens, encumbrances, reservations, exceptions, and modifications.

2.

PURCHASE PRICE: The Subrecipient agrees to purchase all the Seller's right, title, and interest in the Property for the sum of \$ \_\_\_\_\_, payable on the Closing Date, which sum shall be reduced by any amounts paid by the Subrecipient on behalf of the Seller for the purposes set forth in paragraph 10A, and shall be reduced by any amounts for required FEMA

deductions as set forth in paragraph 10B. The Seller shall receive no other compensation from the Subrecipient for all of Seller's right, title, and interest in the Property.

3.

TITLE: The Subrecipient shall cause to be prepared, at its expense, an Opinion of Title for the Property, continued to a date subsequent to the date of this Contract. The Opinion of Title shall show merchantable title in Seller, subject only to Permitted Exceptions in Paragraph 5. In the event that title curative work is necessary, such work shall be performed by the Subrecipient's title examiner, or an attorney of the Subrecipient's choosing. The Seller shall pay all costs required to perfect its title to the Property prior to Closing, or costs of title curative work shall be deducted from the Purchase Price of the Property at Closing.

4.

DEED: On \_\_\_\_\_, or other date as shall be mutually agreed upon by Seller and the Jurisdiction hereinafter referred to as the "Closing Date", the Seller shall have completed its obligations under Paragraph 8, and the Seller shall execute to the Subrecipient a General Warranty Deed for Property, in recordable form, conveying fee simple title to the Property to the Subrecipient, subject only to Permitted Exceptions in Paragraph 5. The Seller shall further deliver to the Subrecipient a bill of sale for any personal property included in the sale.

5.

PERMITTED EXCEPTIONS: The Seller agrees to convey good, clear, and marketable title to the Property, subject only to the following "Permitted Exceptions":

1. Zoning and building laws and ordinances;
2. Subject to prior approval of governing body, covenants, restrictions, reservations, and easements of record.

6.

FIXTURES AND PERSONAL PROPERTY: For the purposes of this document, Fixtures include all personal property that integrally belongs to or is part of the above-described real estate, whether attached or detached, such as light fixtures (including fluorescent tubes), shades, rods, blinds, Venetian blinds, awnings, storm windows, storm doors, storm sashes, screens, attached linoleum, plumbing fixtures, water heaters, water softeners, automatic heating equipment, air conditioning or other equipment other than window type, door chimes, built-in items and electrical service cable, fencing, gates and other attached fixtures, trees, bushes, shrubs, and plants.

7.

POSSESSION: On and after the Closing Date, the Subrecipient shall be entitled to immediate possession of the Property and to receipt of all rents and profits from the Property due thereafter.

8.

**INSPECTION OF THE PROPERTY:** The Subrecipient, at its expense, shall have the right to conduct such investigations, inspections, and inventories of the Property at reasonable times upon reasonable notice, oral or written, from time to time after the date of the making of this Contract for the purposes of investigating, inspecting, and performing inventories of the Property and for other purposes consistent with the Subrecipient's interest under this Contract.

9.

**REMOVAL OF PERSONAL PROPERTY AND DEBRIS:** Prior to the Closing Date, Seller at its own expense shall remove all personal property, equipment and debris from the Property, including but not limited to vehicles, vehicle parts, appliances, storage containers, household cleaners and solvents, construction materials, firewood, etc. In the event Seller fails to remove any such personal property, equipment, and debris prior to the Closing Date, the Subrecipient may use a portion of the Purchase Price to satisfy Seller's obligations under this paragraph.

10.

**NO HOLDOVER PERIOD FOR OCCUPANTS:** Seller shall ensure that it and all other current occupants vacate the Property prior to the Closing Date.

11.

**APPLICATION OF PURCHASE PRICE, DEDUCTIONS, FOR FLOOD ASSISTANCE RECEIVED.**

- A. Prior to disbursing payment to the Seller, the Subrecipient may use a portion of the Purchase Price to satisfy the Seller's obligations under this document to remove personal property and debris and to pay taxes, assessments, liens, acquisition of other parties' outstanding interests in the Property, abstracting, recording fees and other costs incidental to the conveyance by Seller of marketable title to the Subrecipient.
- B. Seller acknowledges that this voluntary acquisition is made pursuant of a program funded by the Federal Emergency Management Agency (FEMA). In order to prevent the duplication of Federal assistance made to flood disaster victims, FEMA requires that certain types of assistance received by Seller for flood-related damage be deducted from the Purchase Price.
- C. The Subrecipient, and the property owner, must identify any potential DOB. FEMA will deduct other available benefits from the purchase offer. Some examples when DOB may occur in a property acquisition and structure demolition or relocation project include the following:



- The Subrecipient offers full pre-event market value but the property owner has received insurance, loans, repair grants, compensation in compliance with a court order, or other assistance available to them to help address damages to the structure regardless of whether such benefits were sought or received. This is because payment of full pre-event market value compensates the owner for the loss of value that has occurred;
- The Subrecipient offers full-pre-event value, but legal claims are appropriate or legal obligations arise in connection to the property that may provide a benefit to the property owner. Parties involved in pending legal disputes must take reasonable steps to recover benefits available to them; and
- Relocated tenants receive relocation assistance and rental assistance but have received payments for the same purpose as part of the disaster assistance provided by any agency or payments from any source. Any acquisition-related assistance provided to tenants must be reduced accordingly. However, tenant-related DOB deductions do not affect amounts available to the property owner.

D. Pursuant to the FEMA requirements, the following shall be deducted from the Purchase Price: (Not Applicable when applicants are offering current FMV)

- an amount equal to all flood insurance proceeds received by the Seller after October 8, 2016.

Prior to the Closing date, Seller shall provide all information requested by the Subrecipient relating to FEMA, flood insurance, and SBA assistance received by the Seller for flood-related damage. At Closing, the Subrecipient shall prepare and deliver to Seller, a document setting forth the deductions from the Purchase Price required by FEMA.

12.

INSURANCE: Seller agrees to maintain and keep in force and affect all existing property and liability insurance until the Closing Date.

13.

MAINTENANCE OF THE PROPERTY: The Seller agrees that the Property shall be preserved in its present condition, and Seller shall deliver it intact at the time possession to the Subrecipient is given. All risk of loss or damage to the Property is on Seller until the Subrecipient takes possession. Prior to possession by the Subrecipient, Seller agrees to promptly give written notice to the Subrecipient of any loss or damage to the Property. In the event of loss, damage or destruction of all or part of the Property, the Subrecipient shall have the option to terminate this Agreement effective immediately. However, in the case of loss, damage or destruction of all or part of the property from causes covered by insurance, the Subrecipient shall have the option to either (1) take possession of the Property and accept an assignment of all Seller's right, title and

interest in and to any claims Seller has under the insurance policies covering the Property: or (2) terminate this Agreement.

14.

UTILITIES: The Seller shall be responsible for payment of all utility expenses incurred by it or incurred by any other occupants prior to the Closing Date.

15.

TAXES: Seller shall pay a pro-rata share of taxes on the Property (real and personal) for the year of Closing, and all unpaid taxes for prior years. To determine the pro-rata share of taxes for the current year, payable in the next year, the following procedure shall be used:

- A. The annual tax payment shown on the most recent tax figure for the Property shall be divided by 12 to determine the amount of tax owed for each month.
- B. The total number of months in the current year shall be determined and multiplied by the monthly amount of tax owed. That figure shall be the portion of taxes to be paid by the Seller on the pro-rata basis.
- C. When the Closing Date is on or before the 15th of a month, no taxes will be due for that month. When the Closing Date is after the 15th of the month, a full month's taxes shall be due for that month and shall be added to the Seller's pro-rata share.

16.

TIME IS OF THE ESSENCE: Time is of the essence in this agreement.

17.

LEASES: Seller represents and warrants to the Subrecipient that there are no leases, tenancies, or other rights of occupancy for use of any portion of the Property. The foregoing representation and warranty shall survive Closing Date. Seller shall hold harmless and indemnify the Subrecipient from and against any claims which may arise or be based upon any alleged leasehold interest, tenancy or other right of occupancy or use for any portion of the Property.

18.

APPROVAL OF COURT: If the Property is an asset of any estate, trust or guardianship, this document shall be subject to Court approval prior to payment of Purchase Price, unless declared unnecessary by the Subrecipient. If Court approval is necessary, the appropriate fiduciary shall proceed promptly and diligently to bring the matter to hearing for issuance of a deed.

19.

ENVIRONMENTAL ASSURANCES:

A. Environmental Representations and Warranties: For the purposes of this Contract, the terms "hazardous substance" shall include every material, waste, contaminant, chemical, toxic pollutant or other substance listed or described in any of the following sources, as amended: (i) the Resource Conservation and Recovery Act of 1976 (RCRA); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA); (iii) any other federal, state, or local statute or ordinance which defines "hazardous waste" or "hazardous substance", or similar terms, and which could create liability in the Subrecipient; and (iv) any federal, state, or local regulations, rules or orders issued or promulgated under or pursuant to any of the foregoing or otherwise by any department, agency or other administrative, regulatory or judicial body having Subrecipient over the Property. Without limiting the foregoing, the terms "hazardous waste" and "hazardous substance" shall also include all substances or materials containing asbestos, PCBs, or hydrocarbons.

The Seller hereby represents and warrants to the Subrecipient that:

- (1) There are no abandoned wells, agricultural drainage wells, solid waste disposal sites, or underground storage tanks located in, on, or about the Property;
- (2) There is not currently and has never been any hazardous waste stored, generated, treated, transported, installed, dumped, handled, or placed in, on, or about the Property;
- (3) At no time have any Federal or State hazardous waste cleanup funds been expended with respect to any of the Property;
- (4) There has never been any solid waste disposal site or underground storage tank located in, on, or about the Property, nor has there been any release from any underground storage tank on real property contiguous to the Property which has resulted in any hazardous substance coming in contact with the Property;
- (5) The Seller has not received any directive, citation, notice, letter, or other communication, whether written or oral, from the Environmental Protection Agency, the Georgia Department of Natural Resources, any other governmental agency with authority under any environmental laws of the federal, state, or local government, or any other person or entity regarding the release, disposal, discharge, or presence of any hazardous waste on the Property, or any violation of any such environmental laws;
- (6) To the best of Seller's knowledge and good faith inquiry, neither the Property, nor any real property contiguous to the Property, nor any predecessors in title to the Property, are in violation of or subject to any existing, pending or threatened

investigation or inquiry by any governmental authority or to any removal or remedial obligations under any environmental laws of the federal, state, or local government.

The foregoing representations and warranties, and the Environmental Indemnifications set forth in the following subparagraph B shall survive the Closing Date. In addition, the foregoing representations and warranties and the indemnification provisions in this Contract shall not be affected by any study, investigation or inspection of the Property by the Subrecipient, or any agent of the Subrecipient.

- B. Environmental Indemnification: The Seller agrees to indemnify and hold harmless the Subrecipient from and against any and all claims, demands, fines, penalties, causes of action, losses, damages, liabilities, expenses, and costs (including court costs and reasonable attorney's fees -- which may include the value of services provided by the Subrecipient's attorney incurred by the Subrecipient to enforce this provision) asserted against or incurred by the Subrecipient by reason of or arising out of the breach of any representation or warranty of the Seller set forth above.
- C. Additional Environmental Provisions: The Seller shall not store, generate, treat, transport, install, dump, handle, or place in, on, or about any portion of the Property any hazardous waste or hazardous substance. If the Seller receives any notice from any governmental authority or any other party regarding the release or presence of any hazardous waste or hazardous substance on any portion of the Property, the Seller shall immediately notify the Subrecipient of such fact. In addition, the Subrecipient or its agents shall have the right to enter upon the Property at any time to perform additional environmental studies. If at any time the Subrecipient in its sole and unreviewable discretion determines that hazardous wastes or hazardous substances are present on any portion of the Property, the Subrecipient may terminate this Contract immediately.

20.

CONTRACT BINDING ON SUCCESSORS IN INTEREST: This document shall apply to and bind the heirs, executors, administrators, partners, assigns, and successors in interest of the respective parties.

21.

PARAGRAPH HEADINGS: The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this document.

22.

NO BROKERS: Each party hereto represents that no real estate broker commission shall be due on the conveyance of the Property in this Contract.

23.

**VOLUNTARY TRANSACTION:** The Seller, as owner of the Property acknowledges that the Subrecipient has entered this Contract for purchase of the Property pursuant to the Subrecipient's Voluntary Acquisition Program, and that the Seller's acceptance of the terms of this Contract is voluntary. Seller is under no duress or coercive action by the Subrecipient to accept the terms of this Contract, and the Subrecipient will not pursue acquisition of the Property by eminent domain or other means if the Seller declines to sell the Property under the Voluntary Acquisition Program. Seller further acknowledges that upon the Closing Date, it will be necessary to move permanently from the Property.

24.

**COUNCIL/COMMISSION APPROVAL:** This Contract is subject to approval of the Subrecipient governing body, and shall become binding and enforceable against the Subrecipient only after approval by the Subrecipient's governing body.

25.

**EXHIBITS:** Exhibit "1" (Bill of Sale); Exhibit "2" (Subrecipient's Right to Enter and Inspect and Notice of Intent to Take Soil Boring and Ground Water Sample); Exhibit "3" (Certificate of Removal of Personal Property and Debris); Exhibit "4" (Disclosure and Certification of Flood Assistance); Exhibit "5" (Property Inventory).

26.

**SEVERABILITY:** Any part or provision of this Contract held invalid will be severed from the Contract, without affecting the validity of any other provisions or the entire Contract.

IN WITNESS WHEREOF, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the parties hereto agree to the terms contained herein.

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Grantee Official

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires on: \_\_\_\_\_

**Exhibit "1"**

**BILL OF SALE**

I/We, \_\_\_\_\_ and \_\_\_\_\_, the hereinafter "Seller," for good and valuable consideration, receipt of which is hereby acknowledged, does hereby sell, convey, assign, transfer and release to the City of Brookhaven, Georgia, all the Seller's right, title, and interest in all Fixtures, improvements, and personal property located on the Property at \_\_\_\_\_ (Street Address, City, County, State) , and legally described as:

[Legal Description]

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

free and clear of all liens, encumbrances, reservations, exceptions, and modifications.

For the purposes of this document, said Fixtures, improvements, and personal property include all property that integrally belongs to or is part of the above-described real-estate, whether attached or detached, such as light fixtures (including fluorescent tubes), shades, rods, blinds, Venetian blinds, awnings, storm windows, storm doors, storm sashes, screens, attached linoleum, plumbing fixtures, water heaters, water softeners, automatic heating equipment, air conditioning or other equipment other than window type, door chimes, built-in items and electrical service cable, fencing, gates and other attached fixtures, trees, bushes, shrubs, and plants.

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

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires on: \_\_\_\_\_

**Exhibit "2"**

**SUBRECIPIENT'S RIGHT TO ENTER AND INSPECT AND  
NOTICE OF INTENT TO TAKE SOIL BORING AND GROUND WATER SAMPLES**

The undersigned owner(s) of the following described property commonly known as \_\_\_\_\_  
\_\_\_\_\_ (Street Address, City, County, and State), and legally described as:

[Legal Description]

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

hereby grant the City of Brookhaven, the right to enter upon and conduct such investigations, inspections, and inventories of the property as the County deems reasonable or necessary prior to closing. The right to enter shall include a temporary easement to allow the City of Brookhaven, its agents, contractors, or employees a right to enter in, upon, and onto the above described property for the purpose of hauling transporting, and storage of materials and equipment used for the purpose of soil boring or taking ground water samples.

It is understood and agreed that the City of Brookhaven will remove all of said materials and equipment except marks and location stakes from the premises within 10 days after the above described investigations, inspections, and inventories have been completed.

It is understood and agreed that City of Brookhaven will restore the test sample areas to original condition where reasonably possible.

It is understood and agreed that City of Brookhaven will report the test results of the soil and ground water samples to the Federal Emergency Management Agency and the Georgia Department of Natural Resources.

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires on: \_\_\_\_\_

**Exhibit "3"**

**CERTIFICATE OF REMOVAL OF PERSONAL PROPERTY AND DEBRIS**

I/We \_\_\_\_\_ and \_\_\_\_\_,  
owner(s) of the Property commonly referred to as \_\_\_\_\_  
(Street Address, City, County, State), hereby state that we have removed all personal property,  
equipment, and debris, including but not limited to, vehicles, vehicle parts, appliances, storage  
containers, household cleaners and solvents, construction materials, firewood, etc. from the  
Property site. I/We further declare that all personal property remaining on the premises is hereby  
abandoned and I/We relinquish any further claim thereto.

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires on: \_\_\_\_\_



**Exhibit "4"**

**DISCLOSURE AND CERTIFICATION OF FLOOD ASSISTANCE**  
**(Not Applicable when applicants are offering current FMV)**

I/We \_\_\_\_\_ and \_\_\_\_\_ are voluntary participants in the City of Brookhaven Voluntary Acquisition Program.

I/We understand that pursuant to the requirements of the Federal Emergency Management Agency (FEMA), the City of Brookhaven is required to deduct certain types of assistance which we have received for flood-related damage from the purchase price of my property.

I/We hereby certify that the following is a true and complete disclosure of flood-related assistance I/we received in the following categories:

1. FEMA Individual and Family Grant Program assistance for repairs to the Property: \$ \_\_\_\_\_
2. All flood insurance proceeds received after October 8, 2016: \$ \_\_\_\_\_
3. FEMA Minimal Repairs Assistance: \$ \_\_\_\_\_

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires on: \_\_\_\_\_

**Exhibit "5"**

**PROPERTY INVENTORY**

I/We \_\_\_\_\_ are voluntarily participating in the City of Brookhaven Voluntary Acquisition Program.

I/We understand that prior to Closing the \_\_\_\_\_ must conduct a property inventory for my Property commonly known as \_\_\_\_\_ (Street Address, City, County, State) for the purpose of inspecting the real property which the \_\_\_\_\_ will acquire, the personal property which I/We must remove prior to Closing, and any hazardous materials which I/We must remove from the property prior to Closing.

I/We agree to be present with a representative, employee, or agent of the \_\_\_\_\_ for inspection and inventory of the property at a time to be scheduled within a reasonable time prior to the Closing Date.

This the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires on: \_\_\_\_\_

## **Exhibit "J"**

### **Clear Title**

The Subrecipient shall conduct a title search for each property it plans to acquire. The purpose of the title search is to ensure that the owner is the sole and actual titleholder to the property, or identify other persons with a property interest, and to ensure that the title is clear. This means that there are no mortgages or liens outstanding upon sale of the property. In addition, there may not be incompatible easements or other encumbrances to the property that would make it either ineligible for acquisition or noncompliant with open space land use restrictions.

Other requirements include:

- A title insurance policy demonstrating that clear title conveys must be obtained for each approved property that will be acquired;
- A physical site inspection for each property verifying no physical encumbrances to the property (where appropriate this may require a site survey to clearly establish property boundaries);
- Title to the property must transfer by a warranty deed in all jurisdictions that recognize warranty deeds;
- All incompatible easements or encumbrances must be extinguished;
- The Subrecipient shall take possession at settlement;
- The Subrecipient must record the deed at the same time as and along with the programmatic deed restrictions;
- The deed transferring title to the property and the programmatic deed restrictions will be recorded according to State law and within 14 days after settlement; and
- All property transfers shall be consistent with 44 CFR Part 80 and FEMA guidance.

**Exhibit "K"**

**"Deed Restrictions"**

WITNESSETH

In reference to the property or properties ("Property") conveyed by the Deed between [*property owner*] participating in the federally-assisted acquisition project ("the Grantor") and the City of Brookhaven, ("the Grantee"), its successors and assigns:

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, ("The Stafford Act"), 42 U.S.C. § 5121 et seq., identifies the use of disaster relief funds under § 5170c, Hazard Mitigation Grant Program, including the acquisition and relocation of structures in the floodplain;

WHEREAS, the mitigation grant program provides a process for a local government, through the State, to apply for federal funds for mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

WHEREAS, Georgia has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency ("FEMA") and has entered into a mitigation grant program Grant Agreement dated September 24, 2019 with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

WHEREAS, the Property is located in the City of Brookhaven, and the City of Brookhaven participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of the Deed;

WHEREAS, the City of Brookhaven, acting by and through the City of Brookhaven Commission, has applied for and been awarded federal funds pursuant to an agreement with Georgia dated **INSERT EXECUTED RSA DATE**, and herein incorporated by reference, making it a mitigation grant program subgrantee;

WHEREAS, the terms of the mitigation grant program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-local Agreement require that the Grantee agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

Now, therefore, the grant is made subject to the following terms and conditions:

1. Terms. Pursuant to the terms of the Hazard Mitigation Grant Program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-local Agreement, the following conditions and restrictions shall apply in perpetuity to the Property described in the attached deed and acquired by the Grantee pursuant to FEMA program requirements concerning the acquisition of property for open space:

- a. Compatible uses. The Property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking

lots; buffer zones; and other uses consistent with FEMA guidance for open space acquisition, Hazard Mitigation Assistance, Requirements for Property Acquisition and Relocation for Open Space.

b. Structures. No new structures or improvements shall be erected on the Property other than:

- i. A public facility that is open on all sides and functionally related to a designated open space or recreational use;
- ii. A public rest room; or
- iii. A structure that is compatible with open space and conserves the natural function of the floodplain, including the uses described in Paragraph 1.a., above, and approved by the FEMA Administrator in writing before construction of the structure begins.

Any improvements on the Property shall be in accordance with proper floodplain management policies and practices. Structures built on the Property according to paragraph b. of this section shall be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required by FEMA, or if required by any State, Tribal, or local ordinance, and in accordance with criteria established by the FEMA Administrator.

c. Disaster Assistance and Flood Insurance. No Federal entity or source may provide disaster assistance for any purpose with respect to the Property, nor may any application for such assistance be made to any Federal entity or source. The Property is not eligible for coverage under the NFIP for damage to structures on the property occurring after the date of the property settlement, except for pre-existing structures being relocated off the property as a result of the project.

d. Transfer. The Grantee, including successors in interest, shall convey any interest in the Property only if the FEMA Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.

i. The request by the Grantee, through the State, to the FEMA Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.

ii. The Grantee may convey a property interest only to a public entity or to a qualified conservation organization. However, the Grantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a), of this section, with the prior approval of the FEMA Regional Administrator, and so long as the conveyance does not include authority to control and enforce the terms and conditions of this section.

iii. If title to the Property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

- a) The Grantee shall convey, in accordance with this paragraph, a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or

b) At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

iv. Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the property interest to revert to the State, Tribe, or local government in the event that the transferee ceases to exist or loses its eligible status under this section.

2. Inspection. FEMA, its representatives and assigns including the State or Tribe shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of this part, the Property conveyance and of the grant award.

3. Monitoring and Reporting. Every three years on March 31st, the Grantee (mitigation grant program subgrantee), in coordination with any current successor in interest, shall submit through the State to the FEMA Regional Administrator a report certifying that the Grantee has inspected the Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of 44 C.F.R. Part 80, the property conveyance, and the grant award.

4. Enforcement. The Grantee (mitigation grant program subgrantee), the State, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the Property back into compliance if the Property is not maintained according to the terms of 44 C.F.R. Part 80, the property conveyance, and the grant award. The relative rights and responsibilities of FEMA, the State, the Grantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:

a. The State will notify the Grantee and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.

i. If the Grantee or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

ii. FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

a) Withholding FEMA mitigation awards or assistance from the State or Tribe, and Grantee; and current holder of the property interest.

b) Requiring transfer of title. The Grantee or the current holder of the property interest shall bear the costs of bringing the Property back into compliance with the terms of the grant; or

c) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the State, the Tribe, the local community, and their respective successors.

5. Amendment. This agreement may be amended upon signatures of FEMA, the State, and the Grantee only to the extent that such amendment does not affect the fundamental and statutory purposes underlying the agreement.

6. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

*[Signed by Grantor(s) and Grantee, witnesses and notarization in accordance with local law.]*

Grantor's Signature \_\_\_\_\_

Date \_\_\_\_\_

Name (printed or typed) \_\_\_\_\_

Grantee's Signature \_\_\_\_\_

Date \_\_\_\_\_

Grantee's Name \_\_\_\_\_

Grantee's Title \_\_\_\_\_

## Exhibit "L"

### Determining the Fair Market Value of Properties for Hazard Mitigation Assistance Projects

Generally, FEMA funded property acquisition projects consist of a community purchasing flood-damaged homes and either demolishing them or physically moving them to a new site outside of the floodplain. The purchased property is then maintained for open-space purposes.

#### *Basic Requirements*

- The Subrecipient will inform prospective participants in writing that it will not use its Eminent Domain authority to acquire their property should negotiations fail, and property owners will voluntarily elect to participate in the program. The community may include an expiration date for this limitation in the letter.
- The property will be used in perpetuity for open space without future construction and in compliance with conservation requirements; and
- Existing buildings will be removed within 90 days of settlement.

#### *Pre-event or Post-event Fair Market Value*

GEMA/HS's Hazard Mitigation Division will coordinate with the Subrecipient (community) in their determination of whether the valuation should be based on pre- or post-event market value. The community should ensure that all property owners are treated fairly and are offered an equitable package of benefits. All appraisals in a given community (i.e., project area) should be based on the same terms.

#### **Pre-event**

In most cases, communities may offer up to the pre-event market value of the real property. When the pre-event fair market value is used, the Subrecipient must make Duplication of Benefits (DOB) deductions from the established pre-event fair market value before making a purchase offer to the property owner. These deductions are based on benefits the property owner may have received to repair their structure after the disaster. If they can document that the benefits were properly spent, then the deductions will not be made.

#### **Post-event**

Post-event (current) market value may be the most efficient method if no damage has occurred to the properties in more than 12 months and they are currently occupied. This option may also be appropriate in instances where property owners have completed repairs on their property.



### **Methodology for Determining Fair Market Value**

For each property identified for acquisition, the Subrecipient should establish and document the fair market value. The value must be derived from a reasonable methodology that is consistently applied throughout the community. Methods may include:

- Independent appraisals by Georgia licensed/certified appraisers
- Value indicated on the tax assessment (tax card)

For a large number of structures, the community may conduct appraisals to establish a statistical sampling of property values, and develop an adjustment factor to apply to tax-assessed values so they reasonably reflect each property's market value.

### **Appraisals**

The Subrecipient may establish the fair market value for eligible properties based on appraisals by a "State Certified General Appraiser." All appraisals must follow the GEMA/HS's Hazard Mitigation Program Guidelines for use of Appraisals in Real Property Valuation (Exhibit M).

### ***Appeals of Fair Market Value***

The Subrecipient must provide an appeal or reconsideration process for property owners who dispute the fair market value determination. If the Subrecipient has an established appeal process as part of its own procurement procedures, property owners must be informed of this process.

If the Subrecipient does not have an established appeal process as part of its own procurement procedures, the following process must be utilized. The property owner will obtain an appraisal at their own expense using GEMA/HS's Appraisal Guidelines. This appraisal is subject to appraisal review by the Subrecipient and should be conducted using GEMA/HS Appraisal Guidelines. The value assigned by the certified/licensed appraisal reviewer will become the final offer. This process must be applied consistently for all properties to be acquired under this award.

### ***Purchase Offer and Nationality***

The benefit of payment of pre-event value is only available to owners who owned the property during the event is a National of the United States or qualified alien. If the current property owner purchased the disaster damaged property after the disaster declaration, then the community cannot offer the owner more than the post-event fair market value (i.e., the amount paid by the current owner for the damaged property or the current appraised fair market value, whichever is higher, in order to account for any improvements to the property or other reasonable property value increases).

## Exhibit "M"

### Guidelines for use of Appraisals in Real Property Valuation

#### Introduction

The HMGP program awards grants to state and local governments to pursue a variety of projects that reduce the loss of life and property due to natural disasters. Among the types of projects funded is for the acquisition and then the demolition of structures that have been damaged in disasters. The property is then converted to an "open space" use. Determining the fair market value of the property is an important aspect of the program. This often requires the use of real property appraisals conducted by qualified appraisers. This document provides guidance to appraisers in conducting appraisals and appraisal reviews of real property.

#### Definitions

For the purposes of the HMGP program Guidelines in the use of Appraisals in Real Property Valuation, hereinafter referred to as "the Guidelines," and any other use of the terms relative to the HMGP program, the following definitions shall apply:

**Appraisal**—the act or process of developing an opinion of value; an opinion of value.

**Review Appraisal**— review of an opinion of value determined by another appraiser. This review shall include, but not be limited to, an opinion as to whether the data is adequate and relevant, the appraisal methods used are appropriate, and the analyses, opinions, and conclusions are credible.

**Uniform Standards of Professional Appraisal Practice (USPAP)**—developed by the Appraisal Foundation, the USPAP establishes the current standards of the appraisal profession.

**Georgia Real Estate Appraiser Classification and Regulation Act as amended (O.C.G.A. Chapter 43-39A)**—the state law governing appraisal activities for the State of Georgia, hereinafter referred to as "the Act."

**"Substantive Regulations" and "Standards for Appraisals," as amended (Chapter 539-1 and Chapter 539-3 respectively)**—the implementing rules and regulations of the Act, hereinafter referred to as "the Rules."

**Applicant**—the state agency, local government, or non-profit organization who is eligible for applying for the HMGP PROGRAM projects. Applicants who are awarded grants are interchangeably referred to as "applicants" or "sub-grantees or subapplicants."

**Event**—in most cases, refers to the disaster under which an application was made.

## **“Standards for Appraisals in the HMGP PROGRAM”**

### General Requirements for HMGP program Appraisals and Appraisal Reviews

All appraisal and appraisal reviews must comply with the USPAP. Compliance with the USPAP must be acknowledged.

All appraisals and appraisal reviews must comply with the provisions of the Act as well as the Rules. Compliance with the Act and the Rules must be acknowledged.

Any appraiser conducting appraisals or review appraisal for the purpose of use in the HMGP program must hold, at a minimum, the classification of “State Certified General Appraiser” as defined in section 539-1-.16 of the Rules. The appraiser must also be qualified according to the provisions of section 533-1-.16 of the Rules to perform appraisals in federally related transactions.

### Specific Criteria for HMGP program Appraisal Development and Reporting

In addition to the above-listed general requirements, the following specific criteria must be included in the development and reporting of all appraisals for use in the HMGP PROGRAM:

1. Photographs of the subject property and all comparable properties.
2. Maps that clearly describe the property’s dimensions, street frontages, and location relative to the surrounding area.
3. Reporting of “market value” in strict accordance with the definition of market value found in section 539-3-.01(n) of the Rules.
4. Appraisals used in the HMGP program should follow the guidelines of “federally related transactions” for all purposes described in the Rules.
5. Appraisal valuations may be based on either pre-event or post-event fair market values. This decision is made by the applicant and must be applied fairly and equitably to all participating property owners. The applicant will base its decision on the following considerations:
  - a) Pre-event valuations will be used in most cases where homes have not been repaired and the applicant is buying damaged property.
  - b) Post-event valuations may be used when no damage has occurred to the property in the past 12 months and the structure is currently occupied.
  - c) Post-event valuations must be used for properties where the current owner of the property purchased it after the event (even when other properties are being valued at pre-event valuations).

**Appraisal Reviews and Review of Compliance with Hazard Mitigation Assistance Program  
Appraisal Guidelines**

1. All appraisals may be subject to an appraisal review by an independent appraiser selected by the applicant. All review appraisals will comply with these guidelines.
2. Appraisals are subject to review by the Federal Emergency Management Agency and the Georgia Emergency Management Agency/ Homeland Security for compliance with Section III, "Standards for Appraisals."

**Exhibit "N"**

**Statement of Voluntary Participation for Acquisition of Property for Purpose of  
Open Space FEMA's Hazard Mitigation Assistance Programs**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, between the City of Brookhaven, hereinafter referred to as "Subgrantee," and (property owner) \_\_\_\_\_, hereinafter referred to as "Seller." The parties agree as follows:

1. Seller affirms that I/we own the property located at (legal address) \_\_\_\_\_, hereinafter referred to as "property."
2. Subgrantee has notified the Seller that the Sub-grantee may wish to purchase the referenced property and, if Seller agrees to sell, Seller must permanently relocate from property.
3. Subgrantee has identified that the purchase offer valuation of the property, as of (date)\_\_\_\_\_ is \$\_\_\_\_\_ determined by valuation procedures implemented by Subgrantee and based on FEMA acquisition requirements provided on 44 C.F.R. part 80, and relevant program guidance as documented below (e.g. Pre-Disaster Mitigation, Hazard Mitigation Grant Program, Flood Mitigation Assistance).

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4. Subgrantee has notified Seller that **neither the State nor the Local Government will use its eminent domain authority to acquire the property for open-space purposes if the Seller chooses not to participate, or if negotiations fail.**
5. Subgrantee has notified Seller that if the Seller agrees to sell the property to Subgrantee the transaction is voluntary and Seller is not entitled to relocation benefits provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which are available to property owners who must sell their properties involuntarily.
6. Subgrantee affirms that it has provided the notifications and explained the information described in the preceding paragraphs to the seller, and property identified above is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

This Agreement shall expire on \_\_\_\_\_, unless the Seller has voluntarily sold property to the Subgrantee by that date.

\_\_\_\_\_  
*Property Owner Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Property Owner Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Subgrantee's Authorized Agent Signature*

\_\_\_\_\_  
*Date*

**EXHIBIT "O"**  
**SCOPE OF WORK**

*Acquisition and demolition of eleven (11) residential properties in the City of Brookhaven on South Bamby Lane and Dresden Drive NE. The subapplicant will acquire and demolish the residential structures and convert the land into green space and maintain the land as such in perpetuity as required in 44 CFR Part 80.*

Shown below is the funding level and scope of work for the Hazard Mitigation Grant Program project for the City of Brookhaven. Any changes to this spreadsheet MUST RECEIVE PRIOR APPROVAL FROM GEMA/HS and will be maintained by GEMA/HS and shall supersede all previous versions.

**4284 City of Brookhaven Property Acquisition Project**

Street Address	Pre-Award Cost	Acquisition (Appraisal: 3/2/17 or 3/3/17)	Appraisal Review	Closing	Asbestos Abatement	Demo & Debris Removal	Property Clearance	URA	Totals	Fed Share	State Share	Local Share
1756 Dresden Drive, NE	\$1,000	\$340,000	\$454.55	\$3,000	\$3,000	\$17,000	\$5,000		\$369,455	\$277,091	\$36,945	\$55,418
1764 Dresden Drive NE	\$1,000	\$370,000	\$454.55	\$3,000	\$3,000	\$17,000	\$5,000		\$399,455	\$299,591	\$39,945	\$59,918
2652 South Bamby Lane NE	\$1,000	\$385,000	\$454.55	\$3,000	\$3,000	\$17,000	\$5,000	\$7,200	\$421,655	\$316,241	\$42,165	\$63,243
2658 South Bamby Lane NE	\$1,000	\$250,000	\$454.55	\$3,000	\$2,000	\$17,000	\$5,000	\$7,200	\$286,655	\$214,991	\$28,665	\$42,998
2662 South Bamby Lane NE	\$1,000	\$240,000	\$454.55	\$3,000	\$3,000	\$17,000	\$5,000	\$7,200	\$276,655	\$207,491	\$27,665	\$41,498
2668 South Bamby Lane NE	\$1,000	\$255,000	\$454.55	\$3,000	\$3,000	\$17,000	\$5,000		\$284,455	\$213,341	\$28,445	\$42,668
2674 South Bamby Lane NE	\$1,000	\$270,000	\$454.55	\$3,000	\$3,000	\$17,000	\$5,000		\$299,455	\$224,591	\$29,945	\$44,918
2680 South Bamby Lane NE	\$1,000	\$270,000	\$454.55	\$3,000	\$3,000	\$17,000	\$5,000		\$299,455	\$224,591	\$29,945	\$44,918
2686 South Bamby Lane NE	\$1,000	\$200,000	\$454.55	\$3,000	\$3,000	\$17,000	\$5,000		\$229,455	\$172,091	\$22,945	\$34,418
2692 South Bamby Lane NE	\$1,000	\$395,000	\$454.55	\$3,000	\$3,000	\$17,000	\$5,000		\$424,455	\$318,341	\$42,445	\$63,668
2696 South Bamby Lane NE	\$1,000	\$340,000	\$454.55	\$3,000	\$3,000	\$17,000	\$5,000	\$7,200	\$376,655	\$282,491	\$37,665	\$56,498
<b>TOTAL:</b>	<b>\$11,000</b>	<b>\$3,315,000</b>	<b>\$5,000</b>	<b>\$33,000</b>	<b>\$33,000</b>	<b>\$187,000</b>	<b>\$55,000</b>	<b>\$28,800</b>	<b>\$3,667,800</b>	<b>\$2,750,850</b>	<b>\$366,780</b>	<b>\$550,170</b>

**Programmatic Conditions:**

Land acquired for open space purposes will be restricted in perpetuity to open space uses and will be unavailable for the construction of flood damage reduction levees, transportation facilities, and other incompatible uses.

The City of Brookhaven agrees to record Deed Restrictions within 14 days after settlement for each acquired property utilizing the model Deed Restriction shown in Exhibit K of this agreement.

The City of Brookhaven agrees to remove all buildings within 90 days of closing.

The City of Brookhaven agrees to provide a signed copy of the Statement of Voluntary Participation shown in Exhibit N of this agreement for each property acquired through this grant.

The City of Brookhaven agrees to complete FEMA Form AW-501 for each repetitive loss property acquired through this grant.

**Special Environmental Conditions:**

Please be aware that bats may take up residence in abandoned houses and buildings. Before any demolition work is initiated, please survey the structure. If bats are observed to be present, please contact Trina Morris (katrina.morris@dnr.ga.gov) for advice on how to proceed

NHPA: If human remains or intact archaeological deposits are uncovered, work in the vicinity of the discovery will stop immediately and all reasonable measures to avoid or minimize harm to the finds will be taken. The applicant will ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries. The applicant's contractor will provide immediate notice of such discoveries to the applicant. The applicant shall contact the Georgia Department of Natural Resources and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA has completed consultation with SHPO, Tribes, and other consulting parties as necessary. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Georgia Code, Title 31, Section 31-21-6.

NHPA: Any changes to the approved scope of work will require submission to, and evaluation and approval by, the State and FEMA, to initiation of any work, for compliance with Section 106.

RCRA: Unusable equipment, debris and material shall be disposed of in an approved manner and location. In the event significant items (or evidence thereof) are discovered during implementation of the project, applicant shall handle, manage, and dispose of petroleum products, hazardous materials and toxic waste in accordance to the requirements and to the satisfaction of the governing local, state and federal agencies.

RCRA: If any asbestos containing material, lead based paint, and/or other toxic materials are found during construction activities, the applicant must comply with all federal, state and local abatement and disposal requirements. Upon closeout, the applicant must provide Notice of Demolition or Asbestos Renovation forms and confirmation that any ACM were taken to an authorized landfill for such materials.

**Standard Environmental Conditions:**

Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

EO 11988: The subrecipient must obtain floodplain permit or approval from the local floodplain administrator before work begins. A copy of the permit or correspondence must be submitted upon closeout.



**EXHIBIT "P"**  
**Progress Payment Request Form**

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

**HMGP Progress Payment Request**

**Instructions:** All requests for progress payments must be supported by documentation supporting actual expenditures. Itemize each expenditure below to the fullest detail possible, including a reference to specific sites or elements of work. Attach documentation that supports this progress payment request, such as copies of bills of sale, invoices, receipts, and checks evidencing payment. Do not send originals. Attach a continuation sheet if necessary.

Agreement Number: HMGP-4284-0051

FEMA Project Number: HMGP-4284-0051

Subrecipient Name: City of Brookhaven

GMS ID. Number: HHM284002

Site Reference or Element of Work	Approved Amount	Previous Payment	Current Request	Description of Documentation Attached in Support of this Payment Request
Pre-Award	\$11,000			
Acquisition	\$3,315,000			
Appraisal Review	\$5,000			
Closing	\$33,000			
Asbestos Abatement	\$33,000			
Demo & Debris Removal	\$187,000			
Property Clearance	\$55,000			
URA	\$28,800			
	(from continuation sheet attached)			
	<b>SUBTOTAL</b>			
	<b>TOTAL</b>			
	<b>Less Subrecipients Share (15%)</b>			
	<b>NET AMOUNT REQUESTED</b>			

**Under penalty of perjury, I certify that to the best of my knowledge the data above is correct and that all outlays were made in accordance with the award conditions, comply with procurement regulations contained within the 2 CFR, Part 200, and that payment is due and has not been previously requested. I am familiar with Section 317 of Public Law 93-288, as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act.**

\_\_\_\_\_  
Signature of Subrecipient's Authorized Representative (and printed name)

**EXHIBIT "Q"**  
**Federal Funding Accountability and Transparency Act Certification**

**In order to remain in compliance with The Federal Funding Accountability and Transparency Act of 2006 (FFATA) reporting, complete Items 1-7 and Items 8-10 if necessary, and certify by an authorized agent.**


Sub-award Number: <b>HHM284002</b>
Federal Agency Name: <b>Federal Emergency Management Agency</b>
CFDA Program Number and Program Title: <b>97.039 Hazard Mitigation Grant Program (HMGP)</b>
Sub-award Project Description: <b>The City of Brookhaven Property Acquisition Project</b>

1. Sub-awardee DUNS Number 048638441
2. Sub-awardee Name City of Brookhaven
3. Sub-awardee DBA Name NA
4. Sub-awardee Address 4362 Peachtree Rd. Brookhaven, GA 30319
5. If DBA, Sub-awardee Parent DUNS Number NA
6. Sub-award Principle Place of Project Performance 4362 Peachtree Rd. Brookhaven, GA 30319
7. In the preceding fiscal year, did the sub-awardee receive 80% of its annual gross revenues from the Federal government?  
Yes \_\_\_\_\_ No   
If **Yes**, continue to question 8. If **No**, questionnaire is complete.
8. In the preceding fiscal year, were the sub-awardee's annual gross revenues from the Federal government more than \$25 million annual?  
Yes \_\_\_\_\_ No \_\_\_\_\_  
If **Yes**, continue to question 9. If **No**, questionnaire is complete.
9. Does the public have access to the names and total compensation of the sub-awardee's five most highly compensated officers through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?  
Yes \_\_\_\_\_ No \_\_\_\_\_  
If **Yes**, continue to question 9. If **No**, questionnaire is complete.

10. Please list the names and compensation of the sub-awardee's five most highly compensated officers.

1. \_\_\_\_\_ \$ \_\_\_\_\_
2. \_\_\_\_\_ \$ \_\_\_\_\_
3. \_\_\_\_\_ \$ \_\_\_\_\_
4. \_\_\_\_\_ \$ \_\_\_\_\_
5. \_\_\_\_\_ \$ \_\_\_\_\_

I certify that to the best of my knowledge all of the information on this form is complete and accurate.

Authorized Signature:  Date: 12/10/2019

**This section is for use by the Georgia Emergency Management and Homeland Security Agency Only.**

Sub-award Obligation/Agency Name: \_\_\_\_\_

In accordance with The Federal Funding Accountability and Transparency Act of 2006 (FFATA), this document has been processed in the FFATA Sub-award Reporting System (FSRS) by the undersigned:

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

Sub-award Obligation/Action Date: \_\_\_\_\_