

REQUEST FOR PROPOSALS

RFP 13-01

PROVISION OF EXTERNAL AUDIT SERVICES

REQUEST FOR PROPOSALS (RFP) 13-01 PROVISION OF EXTERNAL AUDIT SERVICES

Sealed Proposals for Purchasing RFP 13-01 Provision of External Audit Services will be received by the City of Brookhaven, hereinafter called "City." Service providers whose proposals meet the criteria established in the Request for Proposals, at the sole discretion of the City, may be considered for Contract award. The City may, by direct negotiation, finalize terms with the service provider who is selected for award based on proposals. The City reserves the right to reject any or all responses for any reason. Clarification of information may be requested by the City. Work is to commence on or about September 1, 2013.

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

A proposal must be submitted in a sealed envelope which shall be clearly marked Purchasing RFP 13-01. One (1) printed and signed original, seven (7) paper copies, and one (1) electronic copy in searchable PDF of the **proposals shall be submitted no later than 2:00pm, March 28, 2013** at which time all proposals will be publicly opened. Proposals will not be accepted by facsimile or e-mail. Any proposal received after the time and date specified for the opening of the proposals will not be considered, but will be returned unopened.

A Pre-Proposal Conference will be held at 10:00am on March 7, 2013 at the City of Brookhaven, 200 Ashford Center North, First Floor, Atlanta, GA 30338. The conference will include a review of the proposal documents, and a question and answer period. Proposers are expected to be familiar with the proposal documents and to provide the City with any questions regarding the proposal documents at the Pre-Proposal conference or by the deadline for questions to be submitted.

Questions regarding proposals should be directed to purchasing@Brookhavenga.gov no later than 10:00am March 14, 2013. Proposals are legal and binding when submitted.

Proposal must be addressed as follows:

Purchasing Department
City of Brookhaven
200 Ashford Center North, Suite 150
Atlanta, GA 30338

No Proposal may be withdrawn for a period of sixty (60) days after the time and date scheduled (or subsequently rescheduled) for proposal opening. The City's staff will review all proposals submitted. After reviewing the proposals, staff may, at its discretion, request formal presentations from one or more of the proposers (at proposer's expense at the City's site) whose proposals appear to best meet the City's requirements.

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

The City reserves the right to waive any informalities or irregularities of proposals, to request clarification or information submitted in any proposal, to request additional information from any proposer, or to reject any or all proposals, and to re-advertise for proposals. The City also reserves the right to extend the date or time scheduled for the opening of proposals. Award, if made, will be to the responsible and responsive proposer submitting the proposal which is deemed by the City, in the sole discretion, to be the most advantageous to the City, price and other factors being considered.

To ensure the proper and fair evaluation of proposals, the City highly discourages any communication initiated by a proposer or its agent to an employee of the City evaluating or considering the proposal during the period of time following the issuance of the RFP, the opening of proposals and prior to the time a decision has been made with respect to the Contract award. An appropriate Purchasing employee of the City may initiate communication with a proposer in order to obtain information or clarification needed to develop a proper and accurate evaluation of the proposal. Any communication initiated by proposer during evaluation should be submitted in writing and delivered to the City of Brookhaven, Purchasing Office, 200 Ashford Center North, Suite 150, Atlanta, Georgia 30338, or by e-mail to purchasing@Brookhavenga.gov or facsimile to (404) 637-0481. Unauthorized communication by the proposer may disqualify the proposer from consideration.

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I. GENERAL INFORMATION

On December 17, 2012 the City of Brookhaven was officially incorporated as Georgia's newest municipality. The City provides municipal services to its citizens and businesses in a unique manner. The City provides public works, community development, and administrative services, through a partnership with five private firms. For Finance, Brookhaven has partnered with the tax and business consulting firm of UHY.

The FY2013 City of Brookhaven budget for all appropriated funds totals approximately \$16 million in revenues. This budget funds traditional government services such as public safety and infrastructure maintenance including repaving and traffic control systems. Copies of all Brookhaven Budgets are available on the City's website.

A. PURPOSE

The purpose of this Request for Proposals is to establish a contract for the professional services of a Certified Public Accountant (the "auditor") for financial and compliance audits. The contract will be for five consecutive fiscal years beginning with the fiscal year (54 weeks) ended 2013, and ending with the fiscal year ended 2017, subject to annual review and the annual availability of an appropriation for audit services by the government entity. The City intends to issue annually a Comprehensive Annual Financial Report (CAFR) prepared in accordance with generally accepted government accounting principles and all applicable federal and state requirements. It will submit each CAFR to the Government Finance Officers Association Certificate for Achievement for Excellence in Financial Reporting Program, and expects to receive the award each year of the contract.

B. ANTICIPATED SCHEDULE OF EVENTS

The timetable for this RFP is presented below:

<u>Activity</u>	<u>Target Date</u>
Issue Request for Proposals	February 7, 2013
Proposers' Conference	March 7, 2013
Deadline for Questions	March 14, 2013
Request for Proposals due by 2:00 EST	March 28, 2013
Interviews, if conducted	April 11, 2013
Selection Recommendation(s)	April 18, 2013
Approval and Award	April 24, 2013

II. GOVERNMENT ENTITY AND RECORDS INFORMATION

Information regarding government entity records, systems, procedures, expenditure levels,

and other relevant data is included as Attachment A to this Request for Proposals. Additional questions may be answered at the Proposers' Conference noted above.

Note: Copies of prior audit reports, financial statements, budgets and other documents relevant to the audit engagement may be viewed by visiting the City's website at www.Brookhavenga.gov and navigating to the Finance departmental page. Additional reports or information is available upon request by the deadline for questions noted above.

III. STATEMENT OF NEEDS

A. AUDIT REQUIREMENTS

The audit shall be conducted in accordance with auditing standards generally accepted in the United States of America, promulgated by the American Institute of Certified Public Accountants (AICPA) and (If Applicable) in accordance with the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States and (If Applicable) the Official Code of Georgia Annotated. (If Applicable) If a Single Audit is required as a part of the annual audit, the audit shall be performed in accordance with American Institute of Certified Public Accountants (AICPA) Standards (GAAS), Government Auditing Standards, the most recent Single Audit Act Amendments, and the Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

The audit shall be designed to accomplish the following objectives

1. To determine whether the financial statements present fairly the respective financial position of the governmental activities, business-type activities, discretely presented component unit, each major fund, and the aggregate remaining fund information and the respective changes in financial position and cash flows, where applicable, thereof [and the respective budgetary comparison for each governmental funds] in conformity with accounting principles generally accepted in the United States of America.

In addition, to determine whether the financial statements presented supplementary information present fairly the financial position of each of the government's nonmajor governmental, nonmajor enterprise, and fiduciary funds and the respective changes in financial position and cash flows, where applicable, thereof in conformity with accounting principles generally accepted in the United States of America. **The audit shall include all work required to render an opinion including work required related to all current and future component units.** (The City currently anticipates one component unit; Convention and Visitors Bureau.)

2. To obtain an understanding of the components of internal control that is sufficient to assess the risks of material misstatement of the financial statements whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures. Because an audit of a government's financial statements is based on opinion units, the auditor's consideration of internal control in assessing the risks of material misstatement should address each opinion unit. The auditor should obtain a sufficient understanding by performing risk assessment procedures to (a) evaluate the design of controls and (b) determine whether they have been implemented. The auditor should use such knowledge to identify types of potential misstatements;

consider factors that affect the risks of material misstatement; and design tests of controls, when applicable, and subsequent procedures. In acquiring an understanding of and assessing internal control, the auditor should consider computer controls as well as the controls over manual portions of the system.

3. To plan and perform the audit to obtain reasonable assurance about whether the financial statements, including note disclosures, are free of material misstatement, whether caused by error or fraud, and material misstatements arising from illegal acts that have a direct and material effect on the determination of financial statement amounts. Illegal acts are defined in auditing standards as violations of laws or governmental regulations. Although not explicitly stated in auditing standards, the phrase “laws and governmental regulations” generally has been interpreted to implicitly include the provisions of contract and grant agreements. The AICPA Codification of Statements on Auditing Standards, Section AU 317 requires the auditor to consider laws and regulations that are generally recognized by auditors to have a direct and material effect on the determination of financial statement amounts. The auditor’s responsibility to detect and report misstatements resulting from illegal acts having a direct and material effect on the determination of financial statement amounts is the same as that for misstatements caused by error or fraud. In addition, the auditor should be aware of the possibility that illegal acts that may, in particular circumstances, be regarded as having material but indirect effects on financial statements may have occurred. If specific information comes to the auditor’s attention that provides evidence concerning the existence of possible illegal acts that could have a material indirect effect on the financial statements, the auditor should apply audit procedures specifically directed to ascertaining whether an illegal act has occurred.
4. To provide reasonable assurance of detecting material misstatements that result from violations of provisions of contracts or grant agreements that could have a direct and material effect on the determination of financial statement amounts or other financial data significant to the audit objectives. If specific information comes to the auditor’s attention that provides evidence concerning the existence of possible violations of provisions of contracts or grant agreements that could have a material indirect effect on the financial statements, the auditor should apply audit procedures specifically directed to ascertaining whether such violations have occurred. If during the course of the audit, auditors become aware of abuse that could be quantitatively or qualitatively material to the financial statements, the auditor should apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives.
5. To evaluate whether the government entity has taken appropriate corrective action to address findings and recommendations from previous engagements that could have a material effect on the financial statements. Auditors should use this information from previous engagements in assessing risk and determining the nature, timing, and extent of current audit work, including determining the extent to which testing the implementation of the corrective actions is applicable to the current audit objectives.
6. To ensure that audit documentation is prepared in sufficient detail to provide a clear

understanding of the nature, timing, and extent of auditing procedures performed to comply with generally accepted government auditing standards and other applicable standards and requirements; the results of the audit procedures performed and the audit evidence obtained; the conclusions reached on significant matters; and that the accounting records agree or reconcile with the audited financial statements. Auditors should also document, before the audit report is issued, evidence of supervisory review of the work performed that supports findings, conclusions, and recommendations contained in the audit report.

7. To determine whether the government entity complied with laws, regulations, and the provisions of contracts or grant agreements pertaining to federal awards that may have a direct and material effect on each major program. With regard to internal control over compliance, the auditor is required to do the following (in addition to meeting the requirements of Government Auditing Standards): (1) perform procedures to obtain an understanding of internal control over federal programs that is sufficient to plan the audit to support a low assessed level of control risk for major programs, (2) plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program, and (3) perform tests of internal control.
8. If subsequently required (**though not anticipated**), to verify and test expenditures of the government's Special Purpose Local Option Sales Tax proceeds. In accordance with the Official Code of Georgia Annotated, Section 48-8-121, a schedule shall be included in each annual audit which shows for each project in the resolution or ordinance calling for imposition of the Special Purpose Local Option Sales Tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amount expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurance that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.
9. When required, to verify and test expenditures of the government's proceeds from the Governor's emergency fund or a special project appropriation in accordance with the Official Code of Georgia Annotated, Section 36-81-8.1. A properly completed grant certification form shall be filed on each grant with the annual audit report for each year in which such grant funds are expended or remain unexpended. If required under this Code section, the auditor shall certify that the grant funds were used solely for the express purpose or purposes for which the grant was made. The Georgia Department of Audits and Accounts can assist with the identification of grants subject to these reporting requirements and has a Grant Certification package available containing instructions and example formats.
10. To certify that funds were expended in compliance with the expenditure requirements of the Official Code of Georgia Annotated, Section 46-5-134 for governments collecting or expending any 9-1-1 charges or wireless enhanced 9-1-1 charges. This Code section requires that an annual report of collections and expenditures be prepared and certified by the recipient local government as well as the local government auditor.

B. REPORTING AND DELIVERY REQUIREMENTS

The auditor will prepare all required audit reports, and other such reports reflecting audited data, including those required by Government Auditing Standards and Office of Management and Budget Circular A-133 and the Official Code of Georgia Annotated at the completion of the audit.

1. Audit reports within the CAFR

a. Standard report on the financial statements.

Reference should be made that the audit was conducted in accordance with generally accepted government auditing standards. In the same or in separate report(s), the auditor should include a description of the scope of the auditor's testing of internal control over financial reporting and compliance with laws, regulations, and provisions of contracts or grant agreements. Auditor should state in the report whether the tests performed provided sufficient, appropriate evidence to support an opinion on the effectiveness internal control over financial reporting and on compliance with laws, regulations, and provisions of contracts or grant agreements. When auditor reports separately (including separate reports bound in the same document) on internal control over financial reporting and on compliance with laws and regulations and provisions of contracts or grant agreements, they should state in the financial statement audit report that they are issuing those additional reports.

When required, the auditor's report on the financial statements should include an opinion, or disclaimer of opinion, as to whether the Schedule of Projects Constructed with Special Purpose Local Option Sales Tax Proceeds is presented fairly in all material respects in relation to the financial statements taken as a whole. (Note that if the Schedule is issued separately from the audited financial statements, the language above should be modified to refer to the auditor's report on SPLOST prepared in accordance with the American Institute of Certified Public Accountants' Codification of Statements on Auditing Standards, Section AU 623.25.)

b. Report on Internal Controls. A written report on reportable conditions is required and in accordance with the American Institute of Certified Public Accountants' Codification of Statements on Auditing Standards, Section AU 325.

c. Control deficiencies identified during the audit that upon evaluation are considered significant deficiencies or material weaknesses under the American Institute of Certified Public Accountants' Codification of Statements on Auditing Standards, Section AU 325 must be communicated in writing to management and those charged with governance as a part of each audit, including significant deficiencies and material weaknesses that were communicated to management and those charged with governance in previous audits, and have not yet been remediated. Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards. The report should include a description of the scope of the auditor's testing of internal control over financial reporting and compliance with laws,

regulations, and provisions of contracts or grant agreements. The auditor should report, as applicable to the objectives of the audit, and based upon the audit work performed, (1) significant deficiencies in internal control, identifying those considered to be material weaknesses; (2) all instances of fraud and illegal acts unless inconsequential; and (3) violations of provisions of contracts or grant agreements and abuse that could have a material effect on the financial statements.

When required, Report on Compliance With Requirements Applicable to Each Major Program and on Internal Control Over Compliance in Accordance With OMB Circular A-133. This report should include an opinion (or disclaimer of opinion) on whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program, and where applicable, refer to the separate schedule of findings and questioned costs. The report on internal control related to major programs should describe the scope of testing of internal control and the results of the tests and, where applicable, refer to the separate schedule of findings and questioned costs. In accordance with OMB Circular A-133, the auditor's report(s) may be in the form of either combined or separate reports. The auditor's report(s) shall include an opinion (or disclaimer of opinion) on whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or a disclaimer of opinion) on whether the schedule of expenditures of federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole. Auditors should follow the guidance contained in the American Institute of Certified Public Accountants' Audit Guide: Government Auditing Standards and Circular A-133 Audits. In accordance with OMB Circular A-133, a schedule of findings and questioned costs is required and should include the following three sections: (1) a summary of the auditor's results; (2) findings related to the financial statements that are required to be reported in accordance with generally accepted government auditing standards; and (3) findings and questioned costs for federal awards.

- d. When required of the City, Report on Grants to Municipalities program, as defined in the Official Code of Georgia Annotated, Sections 36-40-40 and 36-40-20. Report on the Schedule of Special Purpose Local Option Sales Tax (if Schedule is issued separately from financial statements). Report on State of Georgia Grant Certification Form(s). Report on Annual Report of 9-1-1 Collections and Expenditures. Report of Local Government Finances as required under state law to be delivered to the Department of Community Affairs (DCA).
2. **Twenty (20) hardcopies** bound and **one (1) CD** of the above reports are required for all reports excluding the CAFR itself. The City will separately engage a creative designer to prepare a CAFR in a manner done in previous years. The auditor may review the document before being released by the City to ensure all schedules and text match the final draft provided by the auditor for creative design work.
 3. A written management letter should be used to communicate violations of provisions of contracts or grant agreements or abuse that have an effect on the financial statements that is less than material but more than inconsequential; the management letter should also communicate information about ways to improve operational efficiency and effectiveness or otherwise improve internal control or

other policies or procedures (other than those for which communication is required by generally accepted auditing standards or Government Auditing Standards). If the management letter contains items required to be communicated to officials by auditing standards, the auditor should refer to the management letter in the Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards. It is important to note that the schedule of findings and questioned costs should include all audit findings required to be reported under OMB Circular A-133; a separate communication (such as a management letter) may not be used to communicate such matters.

The auditor must offer recommendations for appropriate corrective action for each item reported in accordance with AICPA Statement on Auditing Standards No. 112; or included in the Report on Internal Control Over Financial Reporting and On Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards or in the Report on Compliance with Requirements Applicable to Each Major Program and on Internal Control Over Compliance In Accordance with OMB Circular A-133; or contained in the management letter.

4. Any other reports required currently or subsequently under state or Federal law shall be submitted to the City upon request.

A preliminary draft of all reports shall be submitted to the government entity prior to their release. The City will review and approve the release of all draft reports. Draft reports should be submitted to Office of the Finance Director at 200 Ashford Center North, Suite 150, Atlanta, Georgia 30338.

The auditor shall send copies of the reports listed above directly to the Office of the Finance Director.

In addition to the reports noted above, it is anticipated the partner assigned to the audit will meet periodically as requested by the Finance Director, Audit Committee, or City Council for purposes of discussing the audit process or findings as well as presenting audit reports and findings and addressing questions related to the audit or findings.

IV. PROPOSALS PREPARATION AND SUBMISSION REQUIREMENTS

A. GENERAL PROPOSALS PREPARATION REQUIREMENTS

1. Proposals Preparation
 - a. Proposals shall be signed by an authorized representative of the auditor. All information requested must be submitted. The mandatory requirements listed in Part IV, Section B, Paragraph 1b are required by law, regulation or will not be waived and are not subject to negotiation.
 - b. Proposals shall be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of

the RFP. Emphasis should be placed on completeness and clarity of content.

- c. Each copy of the technical proposals shall be bound in a single volume and relate solely to the response of the RFP. Nothing shall be included in the technical proposals which would indicate, in whole or in part, the cost component of the proposals or would be otherwise indicative of the dollar amount associated with the technical proposals. The Cost Proposal must be submitted in a separate sealed envelope which specifies on its face of the envelope the name of the auditing firm and the government entity to be audited. Only Cost Proposal envelopes for shortlisted proposers will be opened. Proposals should be organized in accordance with Attachment C: Model Format of Proposals.
 - d. Ownership of all data, materials and documentation prepared for and submitted to the government entity in response to the RFP shall belong exclusively to the government entity and will be considered a record prepared and maintained or received in the course of operations of a public office or agency and subject to public inspection in accordance with the Georgia Open Records Act, Official Code of Georgia Annotated, Section 50-18-70, et. seq., unless otherwise provided by law.
2. Oral presentation: Auditors who submit proposals in response to the RFP may be required to give an oral presentation of their proposals to the government entity representatives. This provides an opportunity for the auditor to clarify or elaborate on the proposals. This is a fact finding and explanation session only and does not contemplate or authorize negotiation. Oral presentation is an option of the City in its sole discretion at the City's request. The City currently anticipates oral presentations, if required, to be conducted on July 9th beginning at 3pm. This date is subject to change.
 3. Costs incurred to prepare proposals are solely those of the proposer. Nothing contained within this RFP is indicative of intent by the government entity to reimburse the proposer, in whole or in part, for any costs associated with preparation, submission, or presentation of proposals.

B. SPECIFIC PROPOSALS PREPARATION REQUIREMENTS

Proposals shall be as thorough and detailed as possible so that the government entity may properly evaluate the auditor's capabilities to provide the required services. Proposals should be organized in accordance with Attachment C: Model Format of Proposals. Proposers shall submit the following items as complete proposals:

1. COMPLETE, SIGNED COPY OF THE REQUEST FOR PROPOSALS
 - a. The return of this complete RFP, signed and filled out as required.
 - b. The completed Mandatory Pre-Proposal Form, Attachment B. The purpose of the Mandatory Pre-Proposal Form is to determine if the auditor meets the following mandatory criteria:
 - i. The proposer is properly licensed for public practice as a certified public accountant.

- ii. The proposer meets the independence requirements of the Government Auditing Standards issued by the Comptroller General of the United States.
- iii. The auditor's staff working on or associated with the engagement must meet the continuing education requirements of the Government Auditing Standards.
- iv. The auditor does not have a record of substandard audit work.
- v. The proposer agrees to abide by the terms and conditions established in Section VI, General Terms and Conditions and Section VII, Special Terms and Conditions.

Failure to meet the mandatory criteria may result in immediate rejection of the entire proposal and no evaluation of the remainder of the technical component or of the cost proposal will be made.

2. TECHNICAL COMPONENT OF PROPOSALS

- a. Detailed written narrative statements on each of the following:
 - i. A description of the auditor's firm rendering the proposals, including whether the firm is international, national, regional, or local, the number of years in business, and the number of employees in the local office assigned to the City.
 - ii. Experience in providing the services described herein, including relevant knowledge of and experience in applying applicable federal and state regulations. Experience providing audit services to non-governmental entities will not be considered. Experience providing audit services to local governments is preferred.
 - iii. Biographies, including experience of the individuals who will be assigned to the engagement, relevant experience of each in performing financial and compliance audits of entities similar to the government entity and recent (past 24 months) continuing professional education of each individual assigned to the engagement. Specify the number of CPE hours dedicated to governmental A & A during those 24 months.
 - iv. A work plan to accomplish the scope defined in Section III of the RFP, including information on the timing of field work, and any overview and start up work that would be required in the first audit year. Include the approximate date the audit will begin and end for the first year, as well as approximate dates for delivery of the required reports. The work plan must include time estimates for and identification of each significant segment of the work and the staff level to be assigned. The work plan must also include an explanation of the audit methodology to be followed to perform the services required in this Request for Proposals. The planned use of specialists must also be specified. In developing the work plan, reference should be made to such sources as the government entity's budget and related materials, organizational charts, programs, and financial and other management information systems. Proposers will be required to provide the following information on their audit approach:
 - (a) Sampling techniques and the extent to which statistical sampling may be used in the engagement;
 - (b) Extent of the use of EDP software in the engagement; (Include any processes that will enable the City to reduce paper submissions

- of data);
 - (c) Type and extent of analytical procedures that may be used in the engagement;
 - (d) Approach to be taken to gain and document an understanding of the government entity's internal control;
 - (e) Approach to be taken in determining laws and regulations that will be subject to audit test work; and
 - (f) Approach to be taken in drawing audit samples for purposes of tests of compliance.
 - (g) The City's intention is to have all processes completed and presented to Council by the 4th Monday in May of each year.
- v. The proposals should identify and describe anticipated audit problems (if any), the firm's approach to resolving these problems and any special assistance that will be requested from the government entity.
 - vi. For the firm's office that would be assigned responsibility for the audit, list the most significant and relevant audit engagements (maximum of five) performed in the last three (3) years that are similar to the engagement described in this Request for Proposals. These engagements should be ranked on the basis of total staff hours and similarity to requirements of this RFP. Indicate the scope of work, date, engagement partner(s), total hours, and the name and telephone number of the client contact.
 - vii. The Proposer's approach to assist City staff with the implementation of new GASB's and other accounting principle pronouncements. Throughout the contract period the auditor is expected to assist the City on implementation of new accounting standards as promulgated by authoritative bodies. The auditor shall also assist the City on specialized accounting questions that may arise. The City acknowledges its responsibility for the reliability, accuracy, and completeness of all financial preparations. No work related to this section will be required to an extent it would impair independence.
 - viii. The Proposer's requirements related to the release of financial data to third parties including the citizens, financial institutions, investors, or bond rating agencies. *Note: In relation to this item, there should be no additional cost or requirement to the City when the financial statements are presented in their entirety along with other documentation (such as an Official Statement.)*
 - ix. The Proposer's approach for improving the City's accounting procedures, internal accounting controls, and related areas. Recommendations should be developed by the auditor during the course of the examination. Areas in need of improvement should be communicated verbally during the weekly meetings and summarized in writing upon conclusion of the audit process each year.
- b. There should be no dollar units or total costs included in the technical component of the proposals.

3. COST COMPONENT OF REQUEST FOR PROPOSALS

For use following the technical phase of the procurement, the following information must be included in a **separate sealed** envelope marked "For Cost Phase Only" as specified in this RFP, Section VII, Part H:

- Total hours estimated to complete the engagement for each year by personnel levels, i.e. total hours for partner, manager, IT manager,

- supervisor, senior and junior, etc.
- Total fees for audit services for each year separated by fee amount attributable to general audit work, single audit work, and component unit audit work.
- An amount of professional services, in hours, allowed each year without additional cost to the government entity. Such services will not be directly related to the annual audit and may include discussions with the City on new GASB pronouncements, or other accounting issues.

A separate cost proposal is required for each year of the contract period specified in Section VII, Part E of this Request for Proposals. All cost proposals for each year should be included in the same sealed envelope.

Out-of-pocket expenses for firm personnel (e.g. travel, lodging and subsistence) will not be reimbursed by the City. All estimated out-of-pocket expenses to be reimbursed should be included in the firm's "not to exceed" cost for the contract.

V. EVALUATION AND AWARD CRITERIA

The following factors without rank will be considered during the evaluation:

A. TECHNICAL FACTORS (60%)

1. Responsiveness of the proposals in clearly stating an understanding of the work to be performed, including making all required statements and affirmations. Proposals should be organized in accordance with Attachment C: Model Format of Proposals.
 - The following elements will be considered:
 - Appropriateness and adequacy of proposed procedures.
 - Necessity of procedures.
 - Reasonableness of time estimates.
 - Appropriateness of assigned staff levels.
 - Timeliness of projected completion.
2. Technical experience of the firm.
3. Qualifications of staff, including recent pertinent continuing education.
4. Size and structure of the firm.

B. COST FACTORS (40%)

Although cost is a significant factor, it will not be the dominant factor. Cost will be given more importance when all the other evaluation criteria are relatively equal. The general approach is to first identify all qualified, responsive proposers and then to award the audit to the lowest cost proposer in that group.

If there is reason to believe that an unreasonably low proposal has been made, it may be rejected. One method of measuring reasonableness is to divide the proposed cost by a reasonable average hourly rate to show hours of effort that might be expected. Any proposals which do not include all the required statements and affirmations called for in this RFP may be automatically rejected as not being responsive.

VI. GENERAL TERMS AND CONDITIONS

A form of Agreement for Audit Services to be executed between the auditor and the government entity is included herein as Attachment E. Sections VI and VII contain general and special terms and conditions which will be incorporated into the Agreement by reference.

1. SCOPE OF WORK

Company agrees to render services (the “Services”) to the City as set forth in Exhibit “A,” specifically as detailed in the attached Proposal and as scoped in the RFP. Company agrees to perform the Services at the direction of the appropriate department head, or his designee, in the manner and to the extent required by the parties herein, as may be amended hereafter in writing by mutual agreement of the parties.

2. REGULATIONS

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

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

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

3. WORK HOURS

3.1 The Contractor shall normally perform on-site work during Standard Work Hours which are between 8:30 a.m. and 5:00 p.m., Monday through Friday, excluding City’s observed holidays. The City may require the Contractor to perform work on the city’s premises during Non-standard Work Hours which are outside the Standard Work Hours. Non-standard Work Hours may be arranged with prior written approval of the City. The Contractor shall advise the City no less than 48 hours in advance of its projected work schedule. The Contractor shall perform no work during City observed holidays without the prior written permission of the City.

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

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

4. CONTRACTOR’S PERSONNEL

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

4.2 The Contractor shall require all prospective employees to show proof of citizenship, or proof from the United States Immigration and Naturalization Service of valid entry permits and/or work permits for legal aliens and proof that

- such legal aliens are eligible to be employed in the United States. This includes any requirement for participation in the DHS e-Verify or SAVE program.
- 4.3 Should the Contractor engage employees who are illiterate in English, it will be the Contractor's responsibility and obligation to train such employees to be able to identify and understand all signs and notices in and/or around the areas that relate to them or the services being performed by them pursuant to this Contract. In addition, the Contractor will have someone in attendance at all times who can communicate instructions to said employee.
- 4.4 The Contractor shall maintain a drug-free workplace within the meaning of the Georgia Drug-free Workplace Act. No employee shall be hired by a Contractor for work on the City's premises prior to such employee having tested negative for drugs. In addition, existing employees of the Contractor must be subject to drug testing by the Contractor upon reasonable suspicion of drug use. Results of all such drug tests are to be retained by the Contractor. Copies shall be provided to the City, if requested.
- 4.5 The Contractor shall transfer promptly from the City any employee or employees that the City advises are not satisfactory, and replace such personnel with employees satisfactory to the City; but in no event shall the City be responsible for monitoring or assessing the suitability of any employee or agent of the Contractor.
- 4.6 The Contractor's employees shall be instructed that no gratuities shall be solicited or accepted for any reason whatsoever from the tenants, customers or other persons at the City. The Contractor shall be responsible for ensuring that all articles found by its employees on the City's premises are turned over to the City or the City's designated agent in charge of such articles.
- 4.7 A valid driver license (Commercial Driver License, if applicable) will be required of all personnel operating motor vehicles or motorized equipment on roadways in or around the City.
- 4.8 While working on city property all Contractors' employees shall wear (when appropriate) neat-appearing business casual attire or uniforms with the company name and/or logo and footwear of a style that complies with all legal and safety requirements, including and without limitation, the requirements of OSHA.
- 4.9 Designation of Project Manager - The Contractor shall designate a Project Manager acceptable to the City for all purposes related to this Specification.
- 4.9.1 The Project Manager shall be fully responsible for the Contractor meeting all of its obligations under this Contract. The Project Manager shall provide the City with an appropriate status report on the progress of the project every week, as well as conduct weekly team status review calls or meeting with the City during the Contract term, the day to be mutually determined as part of the Project Plan. This report may be delivered by facsimile, e-mail, U.S. postal service, or private carrier, provided it is delivered in a timely manner.
- 4.9.2 The Project Manager shall be available, as reasonably required, to be on-site during necessary times. Such times shall be discussed between the Project Manager and the City, but the final required times will be at the City's discretion.
- 4.9.3 In the event that the designated Project Manager terminates employment with the Contractor, or is requested by the City to be removed from the role of Project Manager (as provided in Section 4.5), the position shall be assumed by an individual with equivalent qualifications, experience, and knowledge. Such replacement shall require the City's prior approval.

- 4.9.4 The Contractor shall not replace the approved Project Manager without written approval of the City, which approval will not be unreasonably withheld.
- 4.10 The process by which the implementation partner requests the removal of a team member from the project. If a Contractor replaces a proposed team member, the Contractor shall replace that team member with a new team member of similar experience. The City reserves the right to accept or reject any proposed or replacement team member, with or without cause, at any time during the duration of the project.

5. ITEMS PROVIDED BY THE CITY

- 5.1 Work Location. It shall be the sole responsibility of the Contractor to provide for project team work locations. The Contractor can discuss in advance appropriate space needs for on-site audit fieldwork.
- 5.2 Uninterruptible Power Supply (UPS). It shall be the sole responsibility of the Contractor to provide for project team all necessary UPS.
- 5.3 Printers. It shall be the sole responsibility of the Contractor to provide for project team all necessary printers.
- 5.4 Office Space. It shall be the sole responsibility of the Contractor to provide for project team all necessary office space. The Contractor can discuss in advance appropriate space needs for on-site audit fieldwork.
- 5.5 Utility Services. It shall be the sole responsibility of the Contractor to provide for project team all necessary utility services.
- 5.6 Employee Parking. It shall be the sole responsibility of the Contractor to provide for project team all necessary parking.

6. TOOLS AND EQUIPMENT

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

7. PERFORMANCE REQUIREMENTS

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

8. CONFIDENTIAL INFORMATION

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

- 8.2 The Contractor agrees to hold all City data and information in confidence and to make such information known only to its employees and subcontractors who have a legitimate need to know such information and only after advising such persons of the Contractor's non-disclosure obligations.
- 8.3 The Contractor shall seek the City's prior written consent before using for any purpose other than the fulfillment of the Contractor's obligations hereunder, or before releasing, disclosing, or otherwise making such information available to any other person.
- 8.4 The Contractor shall employ such practices and take such actions to protect the City's information from unauthorized use or disclosure as the Contractor employs and takes to protect its own information, but in no event shall the Contractor use less than reasonable efforts to protect the City's information.
- 8.5 The provisions of this Section shall survive the expiration or earlier termination of the Contract.

9. USE OF PREMISES

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

10. SAFETY AND PROTECTION

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

11. COMPENSATION - INVOICE AND PAYMENT FOR SERVICES

- 11.1 The City shall pay the Contractor, subject to any authorized deductions, the applicable prices set forth for each service authorized by the City, and actually delivered or performed, as the case may be, by the Contractor to the satisfaction and acceptance, as appropriate, of the City. The timing of such payments shall be as set forth below in this Section.
- 11.2 The City shall pay the Contractor the price as set forth within 30 days after completion of the services, or 30 days after the City's receipt of the invoice, whichever is later. The Contractor shall invoice the City for the implementation services that were completed and accepted under the Contract, accompanied by such supporting documentation and other backup material as the City may reasonably require.
- 11.3 The Contractor shall invoice with such supporting documentation and other backup material as the City may reasonably require.
- 11.4 The Contractor shall deliver to the City for approval and acceptance, and before eligible for final payment of any amounts due, all documents and material prepared by the Contractor for the City under this Contract.
- 11.5 The City shall pay the undisputed amount of the Contractor's invoice, as it may be reduced to reflect unsubstantiated or unsatisfactory services. Items in dispute shall be paid upon the resolution of the dispute. No verification or payment of any amounts invoiced shall preclude the City from recovering any money paid in excess of that due under the terms of this Contract.
- 11.6 The Contractor shall be obligated to pay promptly all proper charges and costs incurred by the Contractor for labor and materials used for the work performed

hereunder. The City shall have the right, but not the obligation, to pay directly to third parties (including subcontractors) all past due amounts owed by the Contractor to third parties for labor and materials used for the work hereunder, based on invoices submitted by such third party, and all such amounts paid by the City shall be applied toward, and shall reduce, amounts owed to Contractor hereunder.

- 11.7 The Contractor shall submit all invoices to: City of Brookhaven, GA, Accounts Payable, 200 Ashford Center North, Suite 150, Atlanta, GA 30338.

12. COMPLIANCE WITH LAWS AND REGULATIONS

- 12.1 The Contractor shall perform its obligations and functions hereunder in compliance with the applicable laws of the United States, the State of Georgia, DeKalb County, the City of Brookhaven, any applicable rules, regulations or directives of any agency thereof, and the applicable regulations of the City. OSHA rules and regulations shall be followed at all times. The City shall have the right (but not the obligation) to contest or challenge by any means whatsoever any law, regulation, rule or directive which in any way affects or otherwise impacts upon the Contractor's performance of its obligations and functions hereunder; the Contractor shall cooperate to the fullest extent and take whatever action (including becoming a party in any litigation) the City should reasonably request in connection with any such challenge or contest by the City.
- 12.2 The Contractor shall obtain and keep current all licenses, permits and authorizations, whether municipal, county, state or federal, required for the performance of its obligations and functions hereunder and shall pay promptly when due all fees therefore.
- 12.3 The Contractor shall abide by all applicable state and federal regulations pertaining to wages and hours of an employee; including but not limited to the Contractor's compliance with requirements of the Official Code of Georgia Annotated and relevant State Rules and Regulations.

13. CONTRACTOR'S LIABILITY

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

14. INDEMNIFICATION AND INSURANCE

- 14.1 The Contractor shall indemnify, defend and hold completely harmless the City, and the members (including, without limitation, members of the City's Council, and members of the citizens' advisory committees of each), officers, employees and agents of each, from and against any and all liabilities (including statutory liability and liability under Workers' Compensation Laws), losses, suits, claims, demands, judgments, fines, damages, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, paralegal and expert fees and reasonable attorneys' fees) which may be incurred by, charged to or recovered from any of the foregoing by (i) reason or on account of damage to or destruction or loss of any property of the City, or any property of, injury to or death of any person resulting from or arising out of or in connection with the performance of this Contract, or the acts or omissions of the Contractor's

directors, officers, agents, employees, subcontractors, licensees or invitees, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, fine, damage, cost or expense was proximately caused solely by the City's negligence or by the joint negligence of the City and any person other than the Contractor or the Contractor's directors, officers, agents, employees, subcontractors, licensees, or invitees, or (ii) arising out of or in connection with the failure of the Contractor to keep, observe or perform any of the covenants or agreements in this Contract which are required to be kept, observed or performed by the Contractor, or (iii) arising out of or in connection with any claim, suit, assessment or judgment prohibited by Section 14.4 below by or in favor of any person described in Section 14.5 below, or (iv) arising out of or in connection with any action by Contractor or its directors, officers, agents, employees, subcontractors, licensees or invitees. The City agrees to give the Contractor reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow the Contractor or its insurer to compromise and defend the same to the extent of its interests, and to reasonably cooperate with the defense of any such suit or claim. In carrying out its obligations under this section, the Contractor shall engage counsel reasonably acceptable to the City. In any suit, action, proceeding, claim or demand brought in respect of which the City may pursue indemnity, the City shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the City unless (1) the Contractor and the City shall have mutually agreed to the contrary, (2) the Contractor has failed within a reasonable time to retain counsel reasonably satisfactory to the City, or (3) the City and the Contractor are both named parties in any such proceeding and, in the sole judgment of the City, representation of both the City and the Contractor by the same counsel would be inappropriate due to actual or potential differing interests between them. The indemnification provisions of this Section 14 shall survive the expiration or earlier termination of this Contract with respect to any acts or omissions occurring during the term of the Contract.

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

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

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

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

14.7 Insurance

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

- (1) Commercial general liability insurance with coverage of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence, and with contractual liability coverage for Contractor's covenants to and indemnification of the City under the Contract, and
- (2) Automobile liability insurance with policy limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per accident or occurrence covering each motor vehicle operated on City property.

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

- 14.7.1.2 Additional Insured Endorsement. Contractor agrees and shall cause the City their members (including, without limitation, members of the City's Council and members of the citizens' advisory committees of each), officers, employees, and agents to be named as additional insured's under such policy or policies of commercial general and automobile liability insurance.
- 14.7.2 Workers' Compensation and Employer's Liability. If Contractor has any employee working on City property, Contractor shall procure and maintain in force during the term of the Contract (i) workers' compensation insurance, and (ii) employer's liability insurance. The policy limits of the Contractor's employer's liability insurance shall not be less than \$100,000 for "each accident," \$500,000 for "disease policy limit," and \$100,000 for "disease each employee." If the Contractor is self-insured, the Contractor shall provide proof of self-insurance and authorization to self-insure as required by applicable state laws and regulations.
- 14.7.3 Professional Liability Insurance. The Contractor shall purchase and maintain in force during the term of the Contract, Professional Liability insurance which will pay for damages arising out of errors or omissions in the rendering, or failure to render professional services under the Contract in the amount of at least ONE MILLION DOLLARS (\$1,000,000.00) per claim. Such insurance must contain nose and tail coverage to include work performed by the Contractor from the project's inception date and until such time as the Statue of Limitations has run for the work done on the project.
- 14.7.4 Deductibles. The Contractor's policies of insurance required by this Section 14.7 may require the Contractor's payment of a deductible, provided the Contractor's insurer is required to pay claims from the first dollar at 100% of the claim value without any requirement that the Contractor pay the deductible prior to its insurer's payment of the claim.
- 14.7.5 Other Insurance Requirements. All insurance policies required by this Section 14.7 shall provide that they are primary insurance with respect to any other valid Insurance the City may possess, and that any other insurance the City does possess shall be considered excess insurance only. All such insurance shall be carried with a company or companies which meet the requirements of Section 15.2 of these General Conditions, and said policies shall be in a form satisfactory to the City. A properly completed and executed Certificate of Insurance on a form provided or approved by the City (such as a current ACORD certificate of insurance) evidencing the insurance coverage required by this Section shall be furnished to the City upon the Contractor's execution of the Contract. The Contractor shall provide the City with at least thirty (30) days' prior written notice of any adverse material change in the Contractor's required insurance coverage except that ten (10) days' notice of cancellation for non-payment is required. For purposes of this Section, an "adverse material change" shall mean any reduction in the limits of the insurer's liability, any reduction, non-renewal or cancellation of any insurance coverage, or any increase in the Contractor's self-insured retention. Prior to the expiration of any such policy, the Contractor shall file with the City a certificate of insurance showing that such insurance coverage has been renewed. If the insurance coverage is canceled or reduced, the Contractor shall, within five (5) days after such cancellation or reduction in coverage,

file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies approved by the City. If the Contractor fails to obtain or have such insurance reinstated, the City may, if it so elects, and without waiving any other remedy it may have against the Contractor, immediately terminate this Contract upon written notice to the Contractor. The City Manager shall have the right to alter the monetary limits or coverage herein specified from time to time during the term of this Contract, and the Contractor shall comply with all reasonable requests of the City Manager with respect thereto.

15. SURETY BONDS/LETTERS OF CREDIT/LIABILITY INSURANCE

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

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

16. CONTRACT ADJUSTMENTS

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

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

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

17. SUBCONTRACTORS

17.1 The Contractor shall perform all of its obligations and functions under this Contract by means of its own employees, or by a duly qualified subcontractor which is approved in advance by the City. Such subcontractor which is an affiliate, parent, or subsidiary company; or had principal owners, relatives, management, or employees common to the Contractor; or any other party that has the ability to significantly influence the management or daily business operations of the subcontractor must be disclosed in writing to the City Manager. Goods and

services provided by subcontractors which are reimbursed by the City must be bona fide arm's-lengths transactions. In the event a subcontractor is employed, the Contractor shall continuously monitor the subcontractor's performance, shall remain fully responsible to ensure that the subcontractor performs as required and itself perform or remedy any obligations or functions which the subcontractor fails to perform properly. Nothing contained herein shall be construed to prevent the Contractor from using the services of a common carrier for delivering goods to the City.

- 17.2 This Contract shall be referred to and incorporated within any contractual arrangement between the Contractor and a subcontractor and, in such contractual arrangement; the subcontractor shall give its express written consent to the provisions of this Section 17. To the extent feasible, the provisions of this Contract shall apply to any such subcontractor in the same manner as they apply to the Contractor. However, such application shall neither make any subcontractor a party to this Contract, nor make such subcontractor a third party beneficiary hereof.
- 17.3 In the event that the Contractor employs a subcontractor, then the City may require that copies of invoices for all work (including invoices submitted to the Contractor for work performed by a subcontractor) shall be submitted to the City by the Contractor and the City shall pay all compensation to the Contractor. It shall be the sole responsibility of the Contractor to deal with a subcontractor with respect to the collecting and submission of invoices and the payment of compensation. In no event shall the City have any obligation or liability hereunder to any subcontractor, including, in particular, any obligations of payment.

18. DEFAULT AND TERMINATION

- 18.1 In the event that:
- 18.1.1 the Contractor shall repeatedly fail (defined for this purpose as at least three (3) failures within any consecutive twelve (12) month period) to keep, perform or observe any of the promises, covenants or agreements set forth in this Contract (provided that notice of the first two (2) failures shall have been given to the Contractor, but whether or not the Contractor shall have remedied any such failure); or
 - 18.1.2 the Contractor shall fail to keep, perform or observe any promise, covenant, or agreement set forth in this Contract, and such failure shall continue for a period of more than five (5) days after delivery to the Contractor of a written notice of such breach or default; or
 - 18.1.3 the Contractor's occupational or business license shall terminate or the Contractor shall fail to provide the City with any bond, letter of credit, or evidence of insurance as required by the Contract Documents, for any reason; or
 - 18.1.4 the Contractor fails for any reason to provide the City with an acceptable renewal or replacement bond or letter of credit within the time period specified by a provision of this Contract; or
 - 18.1.5 the Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws, or under any other law or statute of the United States or any State thereof, or shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

- 18.1.6 the Contractor shall have a petition under any part of the Federal Bankruptcy laws, or an action under any present or future insolvency laws or statute filed against it, which petition is not dismissed within thirty (30) days after the filing thereof; or
- 18.1.7 There is any assignment by the Contractor of this Contract or any of the Contractor's rights and obligations hereunder for which the City has not consented in writing; or
- 18.1.8 The Contractor shall default on any other agreement entered into by and between Contractor and the City, then, in its discretion, the City shall have the right to terminate this Contract for default, which termination shall be effective upon delivery of written notice of such termination to the Contractor. In the event that the City terminates this Contract for default, or the Contractor abandons or wrongfully terminates the Contract, the Contractor shall be paid for compensation earned to the date of termination or abandonment (but the City shall have the right to reduce by off-set any amounts owed to the Contractor hereunder or under any other Contract or obligation by the amount of the City's damages and any amounts owed by the Contractor to the City), but the Contractor shall not be compensated for any profits earned or claimed after the receipt of the City's notice of termination by default or after abandonment or wrongful termination. The City's election to terminate or not to terminate this Contract in part or whole for the Contractor's default shall in no way be construed to limit the City's right to pursue and exercise any other right or remedy available to it pursuant to the terms of the Contract or otherwise provided by law or equity.
- 18.2 Notwithstanding anything else herein contained, the City may terminate this Contract in whole or in part at any time for its convenience by giving the Contractor thirty (30) days written notice. In that event, the Contractor shall proceed to complete any part of the work, as directed by the City, and shall settle all its claims and obligations under the Contract, as directed by the City. The Contractor shall be compensated by the City in accordance with the provisions hereof, including in particular Section 2 of these General Conditions, provided, however, that in no event shall Contractor be entitled to compensation for work not performed or for anticipatory profits. Contractor shall justify its claims, as requested by the City, with accurate records and data.
- 18.3 Bankruptcy and Liquidation - In the event the Contractor (1) makes an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (2) commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction whether now or hereafter in effect; (3) has had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of sixty (60) days or more; (4) takes any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or substantial part of its assets; or (5) permits any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more causing the Contractor or any third party, including, without limitation, a trustee in bankruptcy, to be empowered under state or federal

law to reject this Contract or any agreement supplementary hereto, the City shall have the following rights:

- (i) In the event of a rejection of this Contract or any agreement supplementary hereto, the City shall be permitted to retain and use any back-up or archival copies of the software licensed hereunder under this Agreement for the purpose of enabling it to mitigate damages caused to the City because of the rejection of this Contract. The City shall exert reasonable efforts to mitigate such damages by use of such back-up or archival copies.
- (ii) In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code. The Contractor or such bankruptcy trustee or receiver shall not interfere with the rights of the City as licensee as provided in this Contract or in any agreement supplementary hereto to obtain the Source Material(s) from the bankruptcy trustee and shall, if requested, cause a copy of such Source Material(s) to be available to the City.
- (iii) In the event of rejection of this Contract or any agreement supplementary hereto, the City may elect to retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights of setoff with respect to this Contract under the Bankruptcy Code or applicable non-bankruptcy law; or In the event of a rejection of this Contract or any agreement supplementary hereto, the City may retain its rights under this Contract or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights under section 503(b) of the Bankruptcy Code.

19. CITY'S AUTHORIZED REPRESENTATIVE

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

20. ASSIGNMENT

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

21. NOTICES

21.1 Unless otherwise stated herein, all notices or other writings which the City is required or permitted to give to the Contractor may be hand delivered, mailed via

U.S. Certified Mail or sent next-day delivery by a nationally-recognized overnight delivery service to the Contractor's address set forth in the Proposal. Any such notice shall be deemed to have been delivered upon actual delivery, or one (1) day following submission to a nationally-recognized overnight delivery service for next day delivery to the Contractor, or three (3) days following submission to the Contractor by U.S. Certified Mail.

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

City of Brookhaven, GA
ATTN: City Manager
200 Ashford Center North, Suite 150
Atlanta, GA 30338

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

22. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

23. COPYING DOCUMENTS

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

24. GENERAL PROVISIONS

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

- 24.2 This Contract represents the entire agreement between the parties in relation to the subject matter hereof and supersedes all prior agreements and understandings between such parties relating to such subject matter, and there are no contemporaneous written or oral agreements, terms or representations made by any party other than those contained herein. No verbal or written representations shall be relied upon outside the Contract terms and amendments. Without exception, all deletions or additions to the scope of work will be set forth in a written amendment to this Contract. No amendment, modification, or waiver of this Contract, or any part thereof, shall be valid or effective unless in writing signed by the party or parties sought to be bound or charged therewith; and no waiver of any breach or condition of this Contract shall be deemed to be a waiver of any other subsequent breach or condition, whether of a like or different nature.
- 24.3 The Contractor shall, during the term of this Contract, repair any damage caused to real or personal property of the City and/or its tenants, wherever situated, caused by the intentional, reckless, or negligent acts or omissions of the Contractor's officers, agents, or employees, and any subcontractors and their officers, agents, or employees, or, at the option of the City, the Contractor shall reimburse the City for the cost of repairs thereto and replacement thereof accomplished by or on behalf of the City.
- 24.4 The Contractor warrants to the City that no work performed or materials purchased pursuant to the Contract, whether by, from, or through the Contractor or a subcontractor, shall cause any claim, lien or encumbrance to be made against any property of the City, and the Contractor shall indemnify and save the City harmless from and against any and all losses, damages and costs, including attorneys' fees, with respect thereto. If any such claim, lien or encumbrance shall be filed, the Contractor shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. This provision shall survive the expiration or termination of the Contract.
- 24.5 The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either the City or the Contractor. This Contract shall be deemed to be made, construed and performed according to the laws of the State of Georgia. Any suit or proceeding initiated for the purpose of interpreting or enforcing any provision of this Contract or any matter in connection therewith shall be brought exclusively in a court of competent jurisdiction in DeKalb County, Georgia, and the Contractor waives any venue objection, including, but not limited to, any objection that a suit has been brought in an inconvenient forum. The Contractor agrees to submit to the jurisdiction of the Georgia courts and irrevocably agrees to acknowledge service of process when requested by the City.
- 24.6 The section headings herein are for the convenience of the City and the Contractor, and are not to be used to construe the intent of this Contract or any part hereof, or to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.
- 24.7 The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.
- 24.8 The delay or failure of the City at any time to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of that breach or any subsequent breach or default in the terms, conditions, or covenants of this Contract. The Contractor shall not be relieved of any obligation

hereunder on account of its failure to perform by reason of any strike, lockout, or other labor disturbance.

- 24.9 If the City shall, without any fault, be made a party to any litigation commenced between the Contractor and a third party arising out of the Contractor's operations and activities at the premises, then the Contractor shall pay all costs and reasonable attorney's fees incurred by or imposed upon the City in connection with such litigation for all trial and appellate proceedings. The City shall give prompt notice to the Contractor of any claim or suit instituted against it by such third party. The provisions of this Section supplement and are not intended to be in lieu of the indemnification provisions of Section 5 hereof. The provisions of this Section shall survive the acceptance of the services and payment therefore, and the expiration or earlier termination of this Contract.
- 24.10 The City shall have the right to recover from the Contractor all of the City's costs and expenses incurred in enforcing the provisions of this Contract including, but not limited to, (1) the cost of administrative investigation and enforcement (including, without limitation, audit fees and costs, attorneys' fees) and (2) the cost of any trial, appellate or bankruptcy proceeding (including, without limitation, investigation costs, audit fees and costs, attorneys' fees, court costs, paralegal fees and expert witness fees). This provision shall survive the expiration or termination of the Contract.
- 24.11 The Contractor shall not during the term of the Contract knowingly hire or employ (on either a full-time or part-time basis) any employee of the City.
- 24.12 The Contractor shall be required, during the term of the Contract, at no additional cost to the City, to take such reasonable security precautions with respect to its operations at City Hall as the City in its discretion may from time to time prescribe. The Contractor shall comply with all regulations, rules and policies of any governmental authority, including the City, relating to security issues.
- 24.13 The City may, but shall not be obligated to, cure, at any time, upon five (5) days written notice to the Contractor (provided, however, that in any emergency situation the City shall be required to give only such notice as is reasonable in light of all the circumstances), any default by the Contractor under this Contract; whenever the City so cures a default by the Contractor, all costs and expenses incurred by the City in curing the default, including, but not limited to, reasonable attorneys' fees, shall be paid by the Contractor to the City on demand.
- 24.14 The City shall, in its discretion, be entitled to deduct from the compensation to which the Contractor is otherwise entitled hereunder, an amount equal to any liabilities of the Contractor to the City which are then outstanding. In the event that additional work beyond the scope of this Contract is requested by the City Manager and it results in any extra charges to the City, the Contractor shall so advise the City in writing of the amount of the extra charges. The City is not required to pay any extra charges for additional work unless such work and the charges therefore have been approved in advance and have been confirmed in writing within twenty-four (24) hours by the City Manager, in his or her exclusive discretion.
- 24.15 The Contractor is expressly agreeing to act as an independent contractor and nothing contained herein shall be construed as making the Contractor an employee, agent, partner or legal representative of the City for any purpose whatsoever or deemed to create any relationship other than that of independent contractor between the City and Contractor. The Contractor acknowledges that it does not have any authority to incur any obligations or responsibilities on behalf of the City, and agrees not to hold itself out as having any such authority. This

agreement shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement between the City and Contractor.

Company shall not be eligible for any benefit available to employees of the City including, but not limited to, workers' compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, pension plans, or savings plans.

No income, social security, state disability or other federal or state payroll tax will be deducted from payments made to Contractor under this Agreement. Contractor shall be responsible for all FICA, federal and state withholding taxes and workers' compensation coverage for any individuals assigned to perform the Services for the City.

- 24.16 The Contractor and its subcontractors, if any, shall maintain complete and accurate books and records in accordance with generally accepted accounting principles, consistently applied, and shall be in a form reasonably acceptable to the City Manager or designee. The Contractor and its subcontractors shall account for all expenses of any nature related to transactions in connection with this Contract in a manner which segregates in detail those transactions from other transactions of the Contractor and subcontractors and which support the amounts reported and/or invoiced to the City. At a minimum, the Contractor's and subcontractor's accounting for such expenses and transactions shall include such records in the form of electronic media compatible with or convertible to a format compatible with computers utilized by the City at its offices; a computer run hard copy; or legible microfilm or microfiche, together with access to the applicable reader. All such books and records and computerized accounting systems, shall upon reasonable notice from the City be made available in DeKalb County, Georgia, for inspection, examination, audit and copying by the City through and by its duly authorized representatives at any time for up to five (5) years after the year to which books and records pertain. Such inspection, examination, or audit may include, but is not limited to a review of the general input, processing, and output controls of information systems, using read only access, for all computerized applications used to record financial transactions and information. The Contractor and subcontractor shall freely lend its own assistance in a timely manner in making such inspection, examination, audit, or copying and, if such records are maintained in electronic and other machine readable format, shall provide the City and/or its representative such assistance as may be required to allow complete access to such records. The City Manager may require the Contractor and subcontractors to provide other records the City Manager, in his or her sole discretion, deems necessary to enable the City to perform an accurate inspection, examination or audit of expenses incurred in and transactions related to performance of this Contract. Such records shall be provided within thirty (30) days of request thereof. In the event that expenses incurred or reimbursed are found by such inspection, examination, or audit to have been overpaid, the Contractor and its subcontractors agree that such amounts shall be payable to the City. If, prior to the expiration of the above-stated four (4) year record retention period, any audit or investigation is commenced by the City, or any claim is made or litigation commenced relating to this Contract by the City, the Contractor, or a third party, the Contractor shall continue to maintain all such records, and the City

shall continue to have the right to inspect such records in the manner stated above, until the inspection, examination, audit, claim, or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal). This provision shall survive the expiration or earlier termination of this Contract. In the event of any conflict between any provision of this Contract and generally accepted accounting principles or generally accepted auditing standards, the provisions of this Contract shall control even where this Contract references such provisions or standards. In particular, without limitation, the Contractor and subcontractors shall maintain all records required under this Contract to the full extent required hereunder, even if some or all such records would not be required under such generally accepted accounting principles or auditing standards. If as a result of an inspection, examination or audit, it is established that amounts are due from the Contractor to the City, the Contractor shall forthwith, upon written demand from the City, pay the City such amount, together with interest on the amount due at the rate of eighteen (18%) percent per annum, or if less, the maximum rate of interest allowed by law, from the date such additional amounts were overpaid by the City. Further if such inspection, examination or audit establishes that the Contractor has over billed such amounts for any Contract period by two (2%) percent or more, then the entire expense of such inspection, examination or audit shall be paid by the Contractor.

- 24.17 The Contractor and subcontractors shall prepare and provide the City with all detailed reports as required under the Contract on a timely basis. The City reserves the right to modify the reporting procedures or the form and content of any report as it deems necessary.
- 24.18 There are no third party beneficiaries to this Contract and nothing contained herein shall be construed to create such.
- 24.19 Time is of the essence for the performance of each of the Contractor's obligations under this Contract.
- 24.20 In computing any period of time established under this Contract, except as otherwise specified herein the word "days," when referring to a period of time that is ten (10) days or less means business days, and when referring to a period of time that is more than ten (10) days means calendar days. The day of the event, from which the designated period of time begins to run shall not be included. A business day is any day other than Saturday, Sunday, or Federal, State of Georgia or City holidays.
- 24.21 The Contractor agrees to perform all acts and execute all supplementary instruments or documents which may be reasonably necessary to carry out or complete the transaction(s) contemplated by this Contract.
- 24.22 The City reserves the right to further develop, improve, repair and alter the facilities and all roadways, and parking areas, as it may reasonably see fit, free from any and all liability to the Contractor for loss of business or damages of any nature whatsoever to the Contractor occasioned during the making of such improvements, repairs, alterations and additions, including, but not limited to, any damages resulting from negligence of the City or its employees, agents or contractors.
- 24.23 The Contractor and the City hereby mutually waive any claim against each other and their respective members, officials, officers, agents and employees for damages (including damages for loss of anticipated profits) caused by any suit or proceedings brought by either of them or by any third party directly or indirectly attacking the validity of this Contract or any part thereof, or any addendum or amendment hereto, or the manner in which this Contract was solicited, awarded or

negotiated, or arising out of any judgment or award in any suit or proceeding declaring this Contract, or any addendum or amendment hereto, null, void or voidable or delaying the same, or any part thereof, from being carried out.

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

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

VII. SPECIAL TERMS AND CONDITIONS

A. QUALIFICATIONS OF AUDITORS

The government entity may make such reasonable investigations as deemed proper and necessary to determine the ability of the auditor to perform the work and the auditor shall furnish to the government entity all such information and data for this purpose as may be requested. The government entity further reserves the right to reject any bid if the evidence submitted by, or investigations of, such auditor fails to satisfy the government entity that such auditor is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

B. CANCELLATION OF CONTRACT

The government entity reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, *upon 10 days written notice to the auditor*. Any contract cancellation notice shall not relieve the auditor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation. In the event of termination by mutual agreement, the auditor shall be compensated for all hours worked at the specified contractual rate.

If, through any cause other than acts of God, floods, fires, storms, strikes, lockouts, riot, insurrection, acts of the public enemy, war, or other like restrictions beyond the control of the parties rendering performance under the contract impossible, the auditor fails to fulfill in a timely and proper manner obligations under the contract, the government entity shall have the right to terminate the contract on written notice to the auditor specifying the effective date of termination.

The auditor shall not be relieved of liability to the governmental entity for damages sustained by virtue of any breach of the contract by the auditor. The government entity may withhold or require to be withheld any payment to the auditor for the purpose of setoff until such time as the exact amount of damages is agreed upon or is otherwise determined.

In the event of termination for whatever reason all property and finished or unfinished documents, data, studies, and reports prepared by the auditor shall become the property of the government entity. Nothing contained herein shall prevent the auditor from preparing and maintaining a complete set of work papers relating to the audit.

C. AUDIT

The auditor hereby agrees to retain all books, records, working papers, and other documents relative to this contract for five (5) years after final payment. The government entity, its authorized agents, and federal and state regulatory and grantor agencies, including the Georgia Department of Audits and Accounts, shall have full access to and the right to examine any of said materials during said period at no cost to either the government entity or any other entity authorized to examine said materials.

D. REVIEW AND MONITORING

The government entity reserves the right to conduct any review it may deem advisable to assure services conform to the specifications. An employee of the government entity will be designated as audit monitor to discuss issues that need to be resolved and may require periodic progress reports. The monitor will review the financial statements and may provide limited assistance to the auditor by way of comments and suggestions for enhancements to the report prior to its preparation in final form. The monitor will also be available for technical assistance concerning the interpretation of state laws, regulations and policies.

E. CONTRACT PERIOD

The contract period shall be for a period of five years beginning with the fiscal year (54 weeks)ended December 31, 2013through the fiscal year ended December 1, 2017 subject to annual renewal and the annual availability of an appropriation for audit services by the government entity.

F. CONTRACT LIMITATIONS

During the contract period, the auditor agrees not to submit proposals on or perform any accounting, consulting, compilation and review, or any other services outside the scope of this contract for the government entity without the prior written approval of the government entity.

G. ADDITIONAL AUDIT WORK

In the event during the course of the audit it is determined by any party a change in the scope of the audit work is necessary, the discovering party shall promptly notify the other parties in writing. The parties shall then determine whether the contract shall be amended to provide for an adjustment in the audit work to be performed by the auditor. Any potential for such changes shall be considered by the auditor and factored into the auditor’s initial cost proposal. In no event shall any payment be made for audit work beyond the scope of the original contract until the contract has been amended as provided in Section VII, Item M, Integrated Agreement.

H. IDENTIFICATION OF PROPOSAL ENVELOPE

If a special envelope is not furnished, or if return in the special envelope is not possible, the signed proposals shall be returned in a separate envelope or package, sealed and identified as follows:

From: _____

Name of Auditor	_____	_____
	Due Date	Time
_____	_____	
Street, or Box Number	RFP Number	
_____	_____	
City, State, Zip Code	RFP Title	

Name of Buyer: *City of Brookhaven*

The envelope shall be addressed as directed on the cover page of this solicitation. Contained within the envelope will be (1) a completed, signed copy of this Request for Proposals, (2) all information necessary for the technical proposals, and (3) a separate sealed envelope containing the cost information, specifically labeled "For Cost Phase Only."

Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

I. PROPRIETARY INFORMATION

By submission to the City, Proposers waive any declaration the entire response to the RFP to be proprietary information. The auditor must designate in the smallest increments possible, that part of the proposals which is deemed to be proprietary. Proposals and all related correspondence are subject to the Georgia Open Records Act and may be provided to anyone properly requesting same, after contract award. The City cannot protect proprietary data submitted in vendor proposals unless provided for under the open records law. In the event, the proposer deems certain

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

J. OFFICE HOURS/LOCATION/PARKING

Office space, a telephone and a data port will be provided for the representative of the auditor to perform all field work. The location of this space will be as close as possible to the location of the accounting records and accounting staff. To the extent possible, schedules and other data will be prepared by the government entity's accounting department. It is the government entity's policy to aid in the audit process where deemed feasible and appropriate to help reduce costs. The audit monitor designated by the government entity will be responsible for notifying the contractor of the location of the accounting and financial records, government entity office hours, and the location of parking at the government entity location.

K. INTEGRATED AGREEMENT

Any resulting contract represents the entire and integrated agreement between the auditor and government entity and supersedes all prior negotiations, representation, or agreements, whether written or oral. The contract may only be amended by written agreement of the auditor and the government entity. A subsequent engagement letter required by the auditor shall not replace or supersede the validity of this contract.

L. WORKERS' COMPENSATION

The auditor shall be required at all times during the term of this agreement to subscribe and comply with the Workers' Compensation laws of the State of Georgia and to save harmless the government entity from any and all liability from or under said act.

M. SOCIAL SECURITY/EMPLOYMENT TAXES

The auditor shall be and remain an independent contractor with respect to all services performed hereunder and shall accept full exclusive liability for the payments of any and all contributions or taxes for Social Security, Unemployment Benefits, pensions, and annuities now or hereafter imposed under any State or Federal laws which are measured by the wages, salaries, or other remuneration paid to persons employed by the auditor on work performed under the terms of this agreement.

The auditor further shall obey or satisfy all lawful rules, regulations, and requirements issued or promulgated under said respective laws by any duly authorized State or Federal officials. The auditor shall indemnify and save harmless the government entity from any contributions, taxes, or liability referred to in this article.

N. HIGHER LEVEL AUDIT SERVICES

If the auditor becomes aware that the government entity is subject to audit requirements that may not be encompassed in the terms of the contract, he or she shall communicate this situation immediately to the government entity's audit monitor, that in accordance with the established contract certain relevant legal, regulatory, or contractual requirements may not be met.

O. CHANGES IN AUDITING STANDARDS/FEDERAL REQUIREMENTS

As professional auditing standards or Federal auditing requirements change, the auditor shall adjust his/her auditing techniques and reporting formats and criteria so the new

standards and requirements are met. Any additional hours used by the auditor as a result of such changes that would cause the auditor to exceed the proposed hours as submitted in the Cost Proposals shall be treated as provided by Section VII, Item G, Additional Audit Work and Section VII, Item M, Integrated Agreement. Any Potential for such changes shall be considered by the auditor and factored into the auditor's initial cost proposal.

P. RATES FOR ADDITIONAL PROFESSIONAL SERVICES

If it should become necessary for the government entity to request the auditor to render any additional services to either supplement the services requested in this Request for Proposals or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the government entity and the firm. Any such additional work agreed to between the government entity and the firm shall be performed at the same rates as set forth in the schedule of fees and expenses included in the sealed dollar cost bid.

Q. EXCEPTIONS TO AGREEMENT

Exceptions to any of the terms of the agreement to which a proposer will not or does not agree must be presented by the proposer in writing as provided in this section and directed to: purchasing@Brookhavenga.gov. Such exceptions must be specific, and the proposer must state a reason for each exception and propose alternative language, if appropriate. The purpose of the exception process is to permit the City to correct, prior to the opening of the proposals, any technical or contractual requirement, provision, ambiguity or conflict in the RFP and related documents, which may be unlawful, improvident, unduly restrictive of competition or otherwise inappropriate. Any corrections will be made via an addendum issued prior to the submission deadline. Unless timely submitted as an exception and amended with an addendum, any such ambiguity, conflict or problem shall be resolved in favor of the City of Brookhaven.

ATTACHMENT A: GOVERNMENT ENTITY AND RECORDS INFORMATION

Brookhaven is a city located in metro Atlanta, in northern DeKalb County, Georgia, United States. Formerly a census-designated place (CDP) “North Atlanta”, it became an incorporated as a city in late 2012, at midnight on the morning of December 17, 2012. In 2012, the bill of incorporation (HB 636) was passed. Georgia Governor Nathan Deal signed the bill allowing the residents to vote for a city of Brookhaven via a referendum set for the 2012 general primary. As of the 2010 Census, the CDP had a total population of 40,456 with total city population closer to 50,000. Brookhaven lies at the northern section of DeKalb County, bounded by the Fulton County line on the west, Interstate 285 on the north, Interstate 85 on the south, and various roads including Clairmont and Chamblee Brookhaven, forming the eastern boundary.

The number and type of funds used are as follows:

Fund #	Title	Major/NonMajor	Fund Type
100	General Fund	Major	General
250	Multiple Grant Fund	Nonmajor	Special Revenue
275	Hotel/Motel Fund	Nonmajor	Special Revenue
280	Motor Vehicle Excise	Nonmajor	Special Revenue
350	Capital Projects Fund	Major	Capital Projects
405	Debt Service Fund	Nonmajor	Debt Service
560	Stormwater Utility	Nonmajor	Enterprise
745	Municipal Court Fund	Nonmajor	Agency
950	Convention Bureau		Component Unit

Other funds and/or component units to be audited may be added throughout the term of the contract.

Revenue and Expenditure Budgets for each fund and department are maintained in the accounting system based on the appropriations approved by City Council. The City does not currently maintain a physical inventory (e.g. asphalt, storm drains). Revenues, expenditures and encumbrances are recorded in the accounting records. Brookhaven has not identified its permanent software for accounting and court management.

The annual General Fund Revenue budget is \$16 million. Accounts Payable expects to process an average of 250 invoices and check requests per month. Payroll is expected to consist of around 70 salaried and hourly employees including the Mayor and City Council. Payroll is processed biweekly using ADP.

The City of Brookhaven currently has multiple bank accounts at JPMorgan Chase Bank and other cash and investment accounts with other secondary banking service providers. The City currently capital leasing agreements with the Georgia Municipal Association through BB&T as well as a TAN through JPMorgan Chase Bank.

Description of systems, records, and procedures:

- a. Staff developed (for Council’s approval when required) manuals, written policies, and procedures covering such items as cash, receivables, fixed assets, and liabilities.

- b. All major segments of the accounting records are computerized and system documentation will be made available. The City of Brookhaven operates a Microsoft Windows server environment.
- c. The Finance Department is responsible for maintaining records and preparing reports.
- d. Staff has not identified any known problems related to the accounting system, internal control, or other problems. It is not aware of any known exceptions to generally accepted accounting principles or any other accounting problems.

There are no anticipated sub-recipient entities and related records to be audited.

The finance department is under the direction of Christopher Pike, who is a CPA serving as interim finance director. Staff includes other noncertified accountants.

- a. The accounting staff can prepare schedules, reproduce documents, pull documents, etc. necessary for the auditor to prepare the CAFR. Preparation of the CAFR will also include working with Finance department staff in setting up the document, including the Statistical Section, for the printer. Finance Department staff is responsible for compiling the Statistical Section of the report, except for certain tax-related items to be provided by the auditor after his examination of DeKalb County records.
- b. Internal audit reports are available upon request. The City is required to have an internal auditor contracted by the City to perform limited roles.
- c. The data processing staff, equipment, and generalized user software are available for auditing purposes. The City's software operates on a Windows platform.
- d. Legal counsel is available.

The following dates are firm unless waived in writing by the authorized audit monitor.

- e. Dates audit work can be commenced:
 - 1. Preliminary work prior to closing accounts can commence after Thanksgiving during the initial audit year after November 1st thereafter.
 - 2. Post closing work. Inventory observation will occur as close to year-end as reasonable possible. Field work can begin by February 1st of each year.
 - 3. Weekly progress reporting conferences with the Finance Director will be held. The location, which may include conference calls, will be determined at the City's option. At a minimum, the assigned Senior Manager (or equivalent position) will be present on behalf of the auditor. Other staff of the auditor and City will be present as needed.
- f. A draft of the CAFR shall be prepared by March 15th with the final completed and printed for Council presentation by the fourth Tuesday's Council meeting in May of each year. The auditor and City audit monitor will schedule the exit conference to take place no later than the 2nd Tuesday in May of each year.
- g. The Single audit reporting package (and the data collection form) must be submitted by the auditee within the earlier of 30 days after the receipt of the auditor's reports or five months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit and the City. Local government audit reports are due within six months after the end of the local government's fiscal year unless an extension is granted by the Georgia Department of Audits and Accounts. The Report of Local Government Finances (RLGF) is due to the Department of Community Affairs (DCA) within six months after the end of the local government's fiscal year.

ATTACHMENT B: PRE-PROPOSAL FORM

To be answered by Contractor

Section A - General Information

- 1. Firm Name: _____
 Contact Person: _____ Telephone Number: _____
- 2. Address: _____

- 3. Firm FEI Number: _____
- 4. Firm's Georgia CPA State License Registration Number: _____
- 5. Type of Accounting Practice (place an "X" next to the appropriate response)
 - a. _____ Individual
 - b. _____ Partnership
 - c. _____ Corporation - Give name of the State where incorporated:
 - d. _____ Other (specify) _____

Section B - Contractor Firm's Quality Program For Audits

Please answer each of the following questions by placing an "X" in the proper column at the right.

CHECK ONE

YES NO

- 1. Quality Control: Does the Contractor Firm have internal procedures to ensure proper quality control for its governmental audit assignments?(If yes, ATTACH A BRIEF DESCRIPTION OF THE PROCESS) _____
- 2. Quality Review: Does Contractor Firm participate in an External Quality review program every 3 years? (If yes, ATTACH A COPY OF LAST PEER REVIEW OR QUALITY REVIEW REPORT AND LETTERS OF COMMENT. PLEASE ENTER ENDING DATE OF LAST PERIOD COVERED BY REVIEW _____)
 If no, explain the reason and your plan to participate. _____
- 3. Professional Membership: Do the partners of the Contractor Firm belong to either the AICPA or the GSCPA? _____
- 4. Proper License: Is Contractor Firm properly licensed to practice public accounting in Georgia? _____
- 5. Special Governmental Audit Requirements: Is Contractor Firm familiar with the AICPA's ethical ruling called Interpretation 501-3, "Failure to Follow Standards and/or Procedures or other Requirements in Governmental Audits"? (According to this

CHECK ONE

YES NO

ruling, if a CPA agrees to follow specified standards, guides, rules and procedures in addition to GAAS, then the CPA is OBLIGATED to follow all such requirements. Also, the auditor must report any deviations from the agreed-upon engagement procedures.)

6. Subcontracts: Does Contractor Firm agree not to subcontract any work required without the prior express written consent of the auditee?

7. Federal Audit Laws and Rules: If federal audit work is required, does Contractor Firm agree to perform the audit work in accordance with the Single Audit Act Amendments of 1996, the provisions of OMB Circular A-133 and AICPA Statement of Position 98-3, as necessary?

8. Confidentiality: Does Contractor Firm agree not to publish or distribute any information concerning work done for auditee, except as provided by law or rule?

9. Access to Records and Workpapers: Does Contractor Firm agree to keep workpapers and reasonable records to support work claims for at least **5 years** and make them available for audit or review by any authorized parties?

10. Other Federal and State Laws and Rules: Does Contractor Firm agree to comply with all other Federal and State laws, rules and regulations which pertain to this engagement?

11. Independence: Does Contractor Firm meet the independence standards of the current "Government Auditing Standards", issued by the Comptroller General of the United States.

12. Continuing Education: Does Contractor Firm have sufficient staff who meets continuing professional education requirements for government audits as set forth in "Government Auditing Standards"?

13. Conflict of Interest: Does Contractor Firm declare that there is no public or private interest which would conflict in any manner with performance of an audit for the auditee or would violate any laws of the State of Georgia?

14. No Substandard Work: Do Contractor Firm and all proposed Audit Team Members have a record of an acceptable standard of audit work? (Contractor Firm must answer this question

CHECK ONE

YES NO

"No" if the Firm or any Audit Team Member has received an enforcement action for substandard audit work during the past three years or has a related investigation pending by a professional or regulatory group. Attach a brief summary of any enforcement actions.)

- 15. Ethics: Does Contractor Firm certify that its proposals are made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other auditor, supplier, manufacturer or subcontractor in connection with their proposals, and that it has not conferred on any government entity employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged; that it is not in violation of the Official Code of Georgia Annotated, Sections 16-10-2 and 16-10-22, for acts of bribery and/or conspiracy in restraint of free and open competition in transactions with state or political subdivisions?

- 16. Provisions of RFP: Does Contractor Firm agree to abide by all General Terms and Conditions and Special Terms and Conditions specified in the RFP?

CONTRACTOR FIRM CERTIFICATION STATEMENT

I (we) certify that the information contained herein is true and correct to the best of my (our) knowledge, and that the person submitting the RFP on behalf of the proposer has the authority to submit this RFP and make all representations contained herein. I (we) understand that the inclusion of false information may result in rejection of the proposals submitted in response to this RFP.

Contractor Firm Name

Date

Signature of Preparer

ATTACHMENT C: MODEL FORMAT OF PROPOSALS

To simplify the review process and obtain the maximum degree of comparability, proposals should be organized in the manner specified by the RFP. The following outline includes all the information called for in the RFP.

COMPLETE COPY OF THE REQUEST FOR PROPOSALS

1. Provide a complete copy of the Request for Proposals, including all Attachments.
2. Sign the Request for Proposals in ALL places requiring signature.
3. Complete and sign the Mandatory Pre-Proposal Form.

TECHNICAL COMPONENT OF PROPOSALS

Title Page

Show the RFP subject, the name of the proposer's firm, local address, telephone number, name of the contact person, and the date.

Table of Contents

Include a clear identification of the material by section and by page number.

Letter of Transmittal

Limit to one or two pages.

1. Briefly state the proposer's understanding of the work to be done. Make a positive statement that deadlines specified in the RFP will be met.
2. State the names of the persons who will be authorized to make representations for the proposer, their titles, addresses, and telephone numbers.
3. State that the person signing the letter will be authorized to bind the proposer.
4. State the name of the partner assigned to this engagement and the name of the partner assigned the responsibility for the quality of the report and working papers.

Profile of the Proposer

1. State whether the firm is local, regional, national or international.
2. State the location of the office from which the work is to be done and the number of partners, managers, supervisors, seniors, and other professional staff employed at that office.
3. Describe the range of activities performed by the local office such as auditing, accounting, tax service, or management services.

Summary of the Proposer's Qualifications

1. State the identity of the partners and managers who will work on the audit, including staff from other than the local office. Resumes including relevant experience and continuing education for each supervisory person to be assigned to the audit should be included. (The resumes may be included as an appendix.)

Specify governmental CPE attended in the past 24 months by the partner(s) and each person to be assigned to this engagement.

2. Describe the recent local office auditing experience similar to the type of audit requested. Rank these audit engagements according to total staff hours. Indicate the scope of work, dates when work was performed, engagement partner(s), total hours, and the name and telephone number of the client contact. A maximum of 5 (five) of the most significant audit engagements performed in the last three (3) years similar to the engagement described in

this Request for Proposals should be provided.

Proposer's Approach to the Audit

Submit a work plan to accomplish the scope defined in Section III and Section IV of this RFP. The work plan must include time estimates for and identify each significant segment of the work and the staff level to be assigned. The planned use of specialists must also be specified. In developing the work plan, reference should be made to such sources as the government entity's budget and related materials, organizational charts, programs, and financial and other management information systems. Proposers will be required to provide the following information on their audit approach:

- a. Sampling techniques and the extent to which statistical sampling may be used in the engagement;
- b. Extent of the use of EDP software in the engagement;
- c. Type and extent of analytical procedures that may be used in the engagement;
- d. Approach to be taken to gain and document an understanding of the government entity's internal control;
- e. Approach to be taken in determining laws and regulations that will be subject to audit test work; and
- f. Approach to be taken in drawing audit samples for purposes of tests of compliance.

The proposals should identify and describe anticipated audit problems (if any), the firm's approach to resolving these problems and any special assistance that will be requested from the government entity.

Sample Work

Please provide (as an additional document if necessary) a copy of a CAFR from another entity that best mirrors the expected product to be produced for the City. An electronic copy is acceptable and should be included with the PDF of the technical proposal.

References

Submittals should provide the names and telephone numbers of previous and/or current governmental clients whom the City may contact for a candid appraisal of the firm's services. The most effective references will come from entities, comparable in size to Brookhaven, for which your firm has provided services very similar to those the City is requesting. Indicate those governmental clients for whom you have prepared CAFRs and which of those CAFRs have received the GFOA Certificate of Achievement. **Please ensure proper permission and contact information (who may be someone other than the contract contact) is provided for each reference to avoid nonresponsive references.**

Additional Data

Since the preceding sections are to contain only data that is specifically requested, any additional information considered essential to the proposals should be separately bound. The proposer's general information publications, such as directories or client lists, should not be included. If there is no additional information to present, include a statement as the last section of the technical component of the proposals that "there is no additional information we wish to present".

COST COMPONENT OF PROPOSALS

(To be included in a SEPARATE SEALED envelope)

State the total hours and hourly rate required by staff classification and the resulting all-inclusive maximum fee, including out of pocket costs for which the requested work will be done. State the

amount of professional services, in hours, allowed each year without additional cost to the auditee. A separate all-inclusive fee must be stated for each audit for each year. The recommended format of the cost component is shown on the following page.

**SCHEDULE OF PROFESSIONAL FEES AND EXPENSES
FOR THE AUDIT OF THE _____ FINANCIAL STATEMENTS**
Enter Year

(Complete one Schedule for each year covered by the proposals)

	HOURS	HOURLY RATES	TOTAL
PARTNERS	_____	_____	_____
MANAGERS	_____	_____	_____
SUPERVISORY STAFF	_____	_____	_____
OTHER (SPECIFY)	_____	_____	_____
ADD ADDITIONAL LINES AS NEEDED			
TOTAL ALL-INCLUSIVE PRICE FOR _____ AUDIT			_____
Price above includes \$ _____ (general audit), \$ _____ (single audit if needed), and \$ _____ (CVBD)			
Proposal shall include an all-inclusive price for the audit as if a Single Audit is required each year and such amount will be deducted if not required.			
AMOUNT OF PROFESSIONAL SERVICES, IN HOURS, ALLOWED FOR EACH YEAR WITHOUT ADDITIONAL COST			_____

ATTACHMENT D: SAMPLE FORMAT FOR NOTIFICATION OF INTEREST LETTER

Mr. Brad Middlebrook
Purchasing Manager
City of Brookhaven
200 Ashford Center North, Suite 150
Atlanta, GA 30346

Mr. Middlebrook:

Our (my) firm is interested in submitting a Request for Proposals to audit the City of Brookhaven, Georgia financial statements for the period ended December 31, 2013 and the four (4) subsequent fiscal years as set forth in the Request for Proposals issued.

SELECT ONE OF THE FOLLOWING PARAGRAPHS

We will have [#] representative(s) attend the proposers' conference for firms interested in submitting proposals. The proposers' conference will be held at The City of Brookhaven City Hall located at 200 Ashford Center North Suite 103, Atlanta, Georgia 30346.

OR

We will be unable to send representatives to the proposers' conference, but are interested in receiving further correspondence concerning inquiries made or other items discussed at that conference. Additional correspondence should be emailed to purchasing@Brookhavenga.gov.

Sincerely,

[Audit Firm]

ATTACHMENT E: CONSULTANT CONTRACT

AGREEMENT FOR AUDIT SERVICES

THIS AGREEMENT FOR AUDIT SERVICES, hereinafter referred to as "Agreement", is made and entered into as of the _____ day of _____, 200____, (the "Date Hereof"), by the City of Brookhaven, Georgia and _____ a **(sole proprietorship, general or limited partnership, professional corporation or business corporation)** whose agent and address for purposes of this agreement is _____

_____, hereinafter referred to as "the Auditor" and _____, a **(describe governmental or nonprofit entity)**, whose address for the purposes of this Agreement is _____, herein referred to as "the Auditee".

WITNESSETH THAT:

WHEREAS, the Auditee is a governmental entity created thereby, pursuant to SB 82; and

WHEREAS, the Auditee is required by Georgia law to be audited on a regular basis in accordance with certain specified audit standards; and

WHEREAS, the Auditor is a _____ **(describe private entity)** organized under the laws of the State of Georgia engaged in the practice of accountancy and business of performing professional audit services; and

WHEREAS, the Auditee desires to utilize the professional services of the Auditor, in accordance with the needs, requirements, terms and conditions contained in a Request for Proposals, Number _____ (the "RFP"), and the proposals (the "Auditor's Proposals") submitted by the Auditor in response to the RFP, which RFP and Auditor's Proposals are attached hereto and by this reference incorporated herein; and

WHEREAS, the Auditee awarded the contract for audit services to the Auditor in accordance with the RFP and in reliance upon the representations and certifications contained in the Auditor's Proposals; and

WHEREAS, the Auditor and Auditee desire to document the terms and conditions of their Agreement.

NOW, THEREFORE, for and consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

BASIC AGREEMENT

AGREEMENT BETWEEN THE CITY OF BROOKHAVEN AND _____ FOR EXTERNAL AUDITING SERVICES

This Agreement (the "Agreement") is made this ___ day of _____, 2013, by and between _____ (hereinafter referred to as "Contractor"), and the City of Brookhaven, Georgia ("Brookhaven").

WITNESSETH:

WHEREAS, Contractor is engaged in the business of providing auditing services to local governments and desires to provide said system to the City of Brookhaven; and

WHEREAS, Contractor is willing and able to render said services;

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth herein, the parties hereto agree as follows:

1. Services.

Contractor agrees to render services (the "Services") to the City of Brookhaven as set forth in Exhibit "A," specifically as detailed in the Scope of Services of the attached Proposal and RFP. Contractor agrees to perform the Services at the direction of the appropriate department head, or his designee, in the manner and to the extent required by the parties herein, as may be amended hereafter in writing by mutual agreement of the parties.

2. Compensation.

a. Fee. In consideration for Services, Brookhaven shall pay to Contractor a fee not to exceed the cost described in the Proposal, Exhibit "A,". The full cost of said services, as presented in the proposal, shall not exceed \$_____ for all the services detailed in the Proposal.

b. Manner of Payment. The City of Brookhaven shall pay Contractor pursuant to an invoice by the Contractor in accordance with the proposal. The City agrees to pay said invoices within thirty (30) days of receiving same. As the City is a local government entity and thus exempt from sales taxation, notwithstanding the terms of the proposal, Contractor acknowledges that the City shall not be responsible for payment of any sales taxes on any invoices submitted for the services provided under this Agreement.

3. Relationship of Parties.

a. Independent Contractors. Nothing contained herein shall be deemed to create any relationship other than that of independent contractor between Brookhaven and Contractor. This Agreement shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement between Brookhaven and Contractor. It is expressly agreed that Contractor is acting as an independent contractor and not as an employee in providing the Services under this Agreement.

b. Employee Benefits. Contractor shall not be eligible for any benefit available to employees of Brookhaven including, but not limited to, workers' compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, pension plans, or savings plans.

c. Payroll Taxes. No income, social security, state disability or other federal or state payroll tax will be deducted from payments made to Contractor under this Agreement. Contractor shall be responsible for all FICA, federal and state withholding taxes and workers' compensation coverage for any individuals assigned to perform the Services for Brookhaven.

4. Term

This Agreement shall be effective upon its execution (the "Effective Date") shall terminate at the time of the completion of the project as described in the Proposal, but in any event no later than December 31, 2018. If the Project has not been completed by December 31, 2018, this Agreement shall automatically renew for an additional one-year or part of the year necessary to conclude the project unless the City of Brookhaven chooses to terminate this Agreement pursuant to the provisions of this Agreement by giving written notice to Contractor no later than November 30, 2018.

5. Termination For Cause and For Convenience.

Either party shall have the right to terminate this Agreement if the other party is in default of any obligation hereunder and such default is not cured within ten (10) days of receipt of a notice from the other party specifying such default. "Default" shall mean:

- a. If Brookhaven fails to make payments when due or fails to perform or observe any of its duties or obligations under the terms of this Agreement;
- b. If Contractor fails to perform or observe any of its duties or obligations under the terms of this Agreement;
- c. If either Brookhaven or Contractor shall have made any warranty or representation in connection with this Agreement which is found to have been false at the time such warranty or representation was made and is materially harmful to the other party.

This Agreement may also be terminated by Brookhaven for convenience by giving Contractor written notice sixty (60) days prior to the effective date of termination.

6. Compensation in Event of Termination.

If this Agreement is terminated by Brookhaven for convenience, Contractor shall be exclusively limited to receiving only compensation for the pro-rata work performed and appropriately documented to and including the effective date identified in the written termination notice, but in no event shall Contractor receive less than a prorated amount of the service fees hereunder. Any amount over the amount otherwise due by Brookhaven for the services provided prior to the termination date shall be refunded by the Contractor within ten (10) days of the date of termination, with the exception of any costs incurred by the Contractor in removal of equipment and shutting down the project, which costs shall be borne by Brookhaven in the event of termination for convenience.

7. Termination of Services and Return of Property.

Upon the expiration or earlier termination of this Agreement, Contractor shall immediately terminate the Services hereunder and shall deliver promptly to Brookhaven all property relating to the Services that is owned by Brookhaven.

8. Standard of Performance and Compliance with Applicable Laws.

Contractor warrants and represents that it possesses the special skill and professional competence, expertise and experience to undertake the obligations imposed by this Agreement. Contractor agrees to perform in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the profession, and to otherwise perform as is necessary to undertake the Services required by this

Agreement, including the requirements set forth in the Certification of Sponsor Drug Free Workplace Exhibit "B".

Contractor warrants and represents that it will, at all times, observe and comply with all federal, state, local and municipal ordinances, rules, regulations, relating to the provision of the Services to be provided by Contractor hereunder or which in any manner affect this Agreement.

9. Conflicts of Interest.

Contractor warrants and represents that:

a. the Services to be performed hereunder will not create an actual or apparent conflict of interest with any other work it is currently performing; and

b. Contractor is not presently subject to any agreement with a competitor or with any other party that will prevent Contractor from performing in full accord with this Agreement; and

c. Contractor is not subject to any statute, regulation, ordinance or rule that will limit its ability to perform its obligations under this Agreement. The parties agree that Contractor shall be free to accept other work during the term hereof; provided, however, that such other work shall not interfere with the provision of Services hereunder.

10. Proprietary Information

Contractor acknowledges that it may have access to and become acquainted with confidential and other information proprietary to Brookhaven including, but not limited to, information concerning Brookhaven, its operations, customers, citizens, business and financial condition, as well as information with respect to which Brookhaven has an obligation to maintain confidentiality (collectively referred to herein as "Proprietary Information"). Contractor agrees not to disclose, directly or indirectly, to anyone or to use or to allow others to use, for any purpose whatsoever, any Proprietary Information of any type, whether or not designated confidential or proprietary, acquired in the course of performing under this Agreement. The obligations of Contractor under this section shall survive the termination of this Agreement.

11. Insurance.

Contractor agrees to defend, indemnify and hold harmless the City of Brookhaven, its officers, employees and agents, to the extent allowed by applicable law, from and against any and all third party claims, losses, liabilities or expenses (including, without limitation, attorneys' fees) which may arise, in whole or in part, out of a breach by the Indemnitor of its obligations under this Agreement. Insurance requirements are listed within the RFP.

12. Assignment.

Contractor shall not assign this Agreement without the prior express written consent of Brookhaven. Any attempted assignment by Contractor without the prior express written approval of Brookhaven shall at Brookhaven's sole option terminate this Agreement without any notice to Contractor of such termination.

13. Notices.

All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally in hand, or when mailed by certified or registered mail, return receipt requested with proper postage prepaid, addressed to the appropriate party at the following address or such other address as may be given in writing to the parties:

If to the City:

City Manager
Brookhaven City Hall
200 Ashford Center North
Suite 150
Atlanta, Georgia 30338

With copies to:

City Clerk
Brookhaven City Hall
200 Ashford Center North
Suite 150
Atlanta, Georgia 30338

If to the Contractor:

14. Governing Law and Consent to Jurisdiction.

This Agreement is made and entered into in the State of Georgia and this Agreement and the rights and obligations of the parties hereto shall be governed by and construed according to the laws of the State of Georgia without giving effect to the principles of conflicts of laws. The jurisdiction for resolution of any disputes arising from this Agreement shall be in the State Courts of DeKalb County, Georgia.

15. Waiver of Breach.

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate or be construed to constitute a waiver of any subsequent breach or violation of the same or other provision thereof.

16. Severability.

If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect, and enforceable in accordance with its terms.

17. Entire Agreement. This Agreement which includes the exhibits hereto contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, representations and understandings, whether oral or written. This Agreement incorporates the Contractor's Proposal in full and is referenced in Exhibit A. In case of conflict between any term of the Contractor's Proposal and this Agreement, the terms of this Agreement shall control unless otherwise stated herein.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives.

CITY OF BROOKHAVEN, GEORGIA

By: _____

Title: City Manager

Approved as to form:

City Attorney

City Clerk: _____

Attest:

CONSULTANT: _____

BY: _____
Signature

Print Name

Title

ATTEST:

Signature

Print Name
Corporate Secretary
(Seal)

CITY OF BROOKHAVEN

DEPARTMENT OF FINANCE AND ADMINISTRATION – PURCHASING DIVISION

GENERAL INSTRUCTIONS FOR PROPOSERS

These Instructions will apply unless a particular item is specifically addressed in the solicitation document.

1. INTENT

It is the intent of these Instructions to establish guidelines for the proper completion of the Proposal Forms. These Instructions to Proposers provide guidance and explanation for subsequent Proposal Forms and Contract Documents. Please read all Instruction paragraphs.

2. GENERAL

2.1 The City’s goal is that all the terms and conditions stated in the Proposal Documents will constitute the terms of the final Contract between the City and the successful Proposer, without significant or material change to such terms or conditions. Exceptions to any of the terms of the agreement to which a Proposer will not or does not agree must be presented by the proposer in writing as provided in this section and directed to purchasing@Brookhavenga.gov prior to the deadline for questions regarding proposals indicated in the RFP. Such exceptions must be specific, and the Proposer must state a reason for each exception and propose alternative language, if appropriate. The purpose of the exception process is to permit the City to correct, prior to the opening of the proposals, any technical or contractual requirement, provision, ambiguity or conflict in the solicitation and related documents, which may be unlawful, improvident, unduly restrictive of competition or otherwise inappropriate. Any corrections will be made via an addendum issued prior to the submission deadline. Unless timely submitted as an exception and amended with an addendum, any such ambiguity, conflict or problem shall be resolved in favor of the City of Brookhaven. Proposers shall not substitute entire agreements or sets of terms and conditions but discuss separately each term or condition that they take exception to or desire to change.

2.2 A Proposer's Proposal prices shall remain firm for 60 days from the submission deadline. Any anticipated increases in Proposer's costs during the initial term of the Contract must be reflected in its prices set forth in its Proposal. The City shall not be obligated to renegotiate or increase any price for any work during the initial term of the Contract based on a Proposer's mistake or miscalculation of prices, underestimation of costs, or for any other reason. All of the Proposer's overhead costs, including, but not limited to, costs of travel and the required bonds and insurance coverage, shall be included in such Proposer's prices listed in its Proposal.

2.3 The Contract, if awarded, shall not be construed to create unto the Contractor any exclusive rights with respect to any of the City’s requirements. The City may in its sole discretion award any additional or similar services to any third party, or if the Contract is for the provision of services, the City may elect to perform all or a portion of the services by its own employees.

2.4 There shall be no reimbursable or travel expenses associated with this project regarding any category or term. Without limiting the generality of the foregoing, all of the Proposer’s overhead costs related to travel shall be included in such Proposer’s prices in its Proposal.

3. ENVIRONMENTAL SUSTAINABILITY

The City of Brookhaven is committed to environmental sustainability. The City believes we have a unique opportunity to further expand our leadership in the area of environmentally preferable purchasing, and through our actions, elicit changes in the marketplace. By further incorporating environmental considerations into public purchasing, the City of Brookhaven will positively impact human health and the environment, remove unnecessary hazards from its operations, reduce costs and liabilities, and improve the environmental quality of the region. As such the City encourages the incorporation of environmental sustainability into proposals.

4. EXAMINATION OF PROPOSAL/CONTRACT DOCUMENTS

All prospective Proposers shall thoroughly examine and become familiar with the Proposal package and carefully note the items which must be submitted with the Proposal. (These Instructions to Proposers, the Request for Proposal, the Proposal Forms, the Contract, the General Conditions, and the Specifications are referred to herein as the "Proposal Documents" or the "Contract Documents.") Submission of a Proposal shall constitute an acknowledgment that the Proposer has read and understands the Proposal Documents. The failure or neglect of a Proposer to receive or examine any Proposal Document shall in no way relieve it from any obligations under its Proposal or the Contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge or understanding of any of the Contract Documents or the scope of work. *Examples of the City's Standard Contracts and General Conditions are available on the City website.*

5. ADDENDUM(S)-CHANGES WHILE PROPOSING

Other than during the Pre-Proposal Conference, the City shall not be required to provide to any Proposer verbal interpretations as to the meaning of any portion of the Proposal Documents. Requests for interpretation, clarification or correction of Proposal Documents, forms or other material in this Proposal Package should be made in writing and delivered to the City, Purchasing Office, 200 Ashford Center North, Suite 150, Atlanta, Georgia 30338, or by e-mail to purchasing@Brookhavenga.gov or facsimile to (404) 637-0481 by the date and time listed in the proposal documents (if applicable). Any response by City to a request by a Proposer for clarification or correction will be made in the form of a written Addendum. All parties to whom the Proposal packages have been issued will be sent a notification of the issuance of an Addendum either by e-mail and/or by facsimile. The Addendum may be electronically downloaded by visiting the City web site at <http://www.Brookhavenga.gov>. However, prior to submitting its response, it shall be the responsibility of each Proposer to visit the City website to determine if addendum(s) were issued and, if so, to obtain such addendum(s).

6. PREPARATION OF PROPOSALS

6.1 Proposals shall be submitted on reproduced copies of the attached Proposal Forms including any revised or additional Proposal Forms supplied by Addendum(s). If an award is made, the completed Proposal Forms shall constitute a part of the Contract Documents and will be incorporated in the final Contract between the City and the successful Proposer. All blank spaces in the Proposal Forms should be filled in legibly and correctly in ink or type.

6.2 All Proposals shall contain the name and business address of the individual, firm, corporation, or other business entity submitting the Proposal and shall be subscribed by either the individual, a general partner, a member of a member-managed LLC, a manager of a manager-managed LLC, or an authorized officer or agent of a Corporation or business entity. If any officer or agent other than the signatories described in the preceding sentence shall sign any Contract Document on behalf of the Proposer, the City should be furnished with satisfactory evidence of such officer's or agent's authority to bind the Proposer with respect to the contents of the subject Proposal Documents so signed by him or her.

6.3 If the Proposer is a partnership, joint venture, or sole proprietorship, the City, reserves the right to require the Proposer to submit to the City at any time the name and business address of each owner, principal, partner, or member of the Proposer having an ownership or management position with the Proposer.

6.4 If the Proposer is a corporation or other state-chartered business entity, the City reserves the right to require the Proposer to submit to the City at any time, the name and business address of each officer, director and holder of 10% or more of the stock or other ownership interests of such corporation or other business entity. If the Proposer is a foreign corporation or other state-chartered business entity and is the successful Proposer, the Proposer will be required to submit evidence prior to the execution of the Contract, if awarded, that the corporation or other state-chartered business entity is authorized to do business in the State of Georgia and the City. If the Proposer elects to use a fictitious name in its Proposal, a copy of the Proposer's fictitious name registration should be provided to City.

7. PROPOSAL GUARANTY

A Proposal Guaranty shall not be required for this Contract.

8. DELIVERY OF PROPOSALS

8.1 All Proposals shall be submitted in sealed envelopes bearing on the outside the name of the Proposer, address, and the RFP #. Each Proposal shall consist of (i) an executed copy of the Proposal Form, along with all other documents or information required to be submitted pursuant to the terms of the Proposal Documents (together, the "Proposal"). The documents comprising the Proposal must be completed and signed on the forms provided herein, or on exact reproductions thereof.

8.2 All Proposals shall be submitted pursuant to the terms outlined in these Instructions to Proposers. Any Proposals received after the time and date specified in the solicitation document for the opening of the Proposals will not be considered, but will be returned unopened.

8.3 Each Proposer's response shall be at the sole cost and expense of the Proposer and such Proposer shall have no right or claim against the City for costs, damages, loss of profits, or to recover such costs, damages, or expenses in the event the City exercises its right to reject any or all Proposals or to cancel an award pursuant to a provision hereof for any reason.

8.4 Submission of a Proposal shall constitute authorization for the City and its representatives and agents to make such copies of the Proposal or portions thereof and to distribute such copies as may be necessary or desirable to carry out the City's objectives or requirements.

9. COMMUNICATIONS REGARDING EVALUATION OF PROPOSALS

To ensure the proper and fair evaluation of Proposals, the City highly discourages any oral communication initiated by a Proposer or its agent to an employee of the City evaluating or considering the Proposal during the period of time following the issuance of the solicitation document, the opening of Proposals and prior to the time a decision has been made with respect to the Contract award. An appropriate Purchasing employee of the City may initiate communication with a Proposer in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Proposal. Any communication initiated by Proposer during evaluation should be submitted in writing and delivered to the City of Brookhaven, Purchasing Office, 200 Ashford Center North, Suite 150, Atlanta, Georgia 30338, or by e-mail to purchasing@Brookhavenga.gov or facsimile to (678)533-0712. Unauthorized communication by the Proposer may disqualify the Proposer from consideration.

10. WITHDRAWAL OF PROPOSALS

No Proposal may be withdrawn after it is submitted unless the Proposer makes a request in writing and such request is confirmed as received prior to the time set for opening of Proposals. No Proposal may be withdrawn after the scheduled Proposal opening time for a period of sixty (60) days. Any Proposer withdrawing or attempting to withdraw its Proposal prior to the expiration of the sixty (60) day period shall be obligated to reimburse the City for all its costs incurred in connection with such withdrawal or attempted withdrawal including, without limitation, any increased costs for procuring the goods or services from another Proposer or all costs of advertising and re-procuring the goods or services, and all attorneys' fees, in addition to payment of City's other damages. A Proposer's submission of a Proposal shall be deemed the Proposer's acknowledgment of and agreement to the provisions of this Section.

11. DISQUALIFICATION OF PROPOSERS

11.1 Any of the following causes may be considered as sufficient for the disqualification of a Proposer and the rejection of its Proposal:

11.1.1 Submission of more than one Proposal for the same work, or participation in more than one Proposal for the same work as a partner or principal of the Proposer, by an individual, firm, partnership or corporation, under the same or different names, or by Proposers which are affiliates, either at the time of submittal, or at the time of award. For purposes of this section, the term "affiliates" means firms, partnerships, corporations or other entities under common control;

11.1.2 Evidence of collusion between or among Proposers;

11.1.3 Evidence, in the opinion of the City, of Proposer(s) attempting to manipulate the

Proposal pricing for its own benefit (e.g. pricing resulting in a failure of the City's ability to enforce the Contract or impose the remedies intended following breach by Contractor);

- 11.1.4 Being in arrears on any of its existing contracts with the City or in litigation with the City or having defaulted on a previous contract with the City;
 - 11.1.5 Poor, defective or otherwise unsatisfactory performance of work for the City or any other party on prior projects which, in the City's judgment and sole discretion, raises doubts as to Proposer's ability to properly perform the work; or
 - 11.1.6 Any other cause which, in the City's judgment and sole discretion, is sufficient to justify disqualification of Proposer or the rejection of its Proposal.
- 11.2 The City has adopted a policy which addresses, among other things, the obligations of the City's employees with respect to interest in business entities, unauthorized compensation and acceptance of gifts. Please be aware that any act by a Proposer that could cause a City employee to violate the policy is sufficient cause for the denial of the right of the Proposer to propose on any contract or sell any materials, supplies, equipment, or services to the City for a period of time that is determined by the City Manager.

12. REJECTION OF IRREGULAR PROPOSALS

A Proposal may be considered irregular and may be rejected if it is improperly executed, shows omissions, alterations of form, additions not called for, unauthorized conditions, or limitations, or unauthorized alternate Proposals, fails to include the proper Proposal Guaranty, Contract references, other certificates, affidavits, statements, or information required to be included with Proposals, including, but not limited to, the Proposer's prices, or contains other irregularities of any kind.

13. NOTICE OF INTENT TO AWARD CONTRACT

Unless all Proposals are rejected, a Notice of Intent to Award is anticipated to be provided within ninety (90) days from the opening of Proposals to the responsible and responsive Proposer submitting the Proposal deemed to be most advantageous to the City, price and other factors being considered. For all procurements, the City reserves the right to reject any or all Proposals and to cancel the procurement or to solicit new Proposals.

14. RESPONSIBILITY OF PROPOSERS

- 14.1 City reserves the right, to aid it in determining a Proposer's responsibility, to require a Proposer to submit such evidence of Proposer's qualifications as the City may deem necessary, and may consider any evidence available to the City of the financial, technical, and other qualifications and abilities of a Proposer, including past performance (experience) with the City and others. The City shall be the final authority in the award of any and all Proposals.
- 14.2 All Proposers shall furnish the City with the company name, address, contact person, and telephone number of at least three (3) entities (preferably a firm other than the City) for which they have supplied similar services as requested in this Proposal during the past three (3) years, unless otherwise noted in the Proposal Document. The information should be submitted with the knowledge that the City will use the data for reference purposes. The City does check all references and requires the Proposer to notify the reference, verify contract information, and obtain permission from the reference before completing the form.
- 14.3 For a Proposer to meet the minimum responsibility criteria for this Contract, the Proposer must provide verifiable evidence, through references or otherwise, that the Proposer is an individual, a firm, a corporation, or other entity that is currently employed or otherwise engaged in providing similar services and, taking into account the activities of a related predecessor, affiliate, or principal of Proposer, has been actively engaged in such activity for at least three (3) years immediately preceding the date of the Proposer's response to this request.

15. AFFIDAVIT AND AGREEMENT FOR PHYSICAL PERFORMANCE OF SERVICES AS DEFINED BY O.C.G.A. 13-10-90

- 15.1 When applicable, awarded vendor will be required to submit a City supplied Affidavit and Agreement (sample on City website) in accordance with O.C.G.A. 13-10-90 as part of the contract execution process.

16. AFFIDAVIT VERIFYING STATUS FOR CITY PUBLIC BENEFIT APPLICATION

16.1 Vendors will be required to submit an Affidavit Verifying Status for City Public Benefit Application (sample on City website) in accordance with O.C.G.A. 50-36-1 as part of the contract execution process.

17. EXECUTION OF CONTRACT

17.1 The Proposer to whom the Notice of Intent to Award is given shall, within ten (10) business days of the date of the Notice of Intent to Award, execute and/or deliver the following to the City: the Contract, a copy of the Proposer's valid business or occupational license, and all other documents and information required by the Contract Documents. All of the above documents and information must be furnished and the Contract Documents executed by Proposer, and delivered to the City, before the Contract will be executed by the City.

17.2 A Proposer's failure to timely fulfill its obligations under this section shall be just cause for withdrawal of such Notice of Intent to Award. In such case, a Notice of Intent to Award may then be issued to the next ranked Proposer or all Proposals may be rejected and the Contract re-advertised. In such event, the City shall be entitled to receive its damages and costs, including, but not limited to, its attorneys' fees caused by or in connection with a Proposer's failure to fulfill its obligations under this paragraph. A Proposer's liability for failing to timely fulfill the obligations stated in this paragraph shall be the same as for withdrawing its Proposal (see Section 10).

17.3 The Contract shall not be binding upon the City until it has been executed by the City and a copy of such fully executed Contract is delivered to the Contractor. The City reserves the right to cancel the award without liability to any Proposer at any time before the Contract has been fully executed by the City and delivered to the Contractor. Accordingly, the Contractor is hereby warned that it should not commence performance or incur costs or expenses in connection with the Contract obligations until it has been delivered a final, fully executed copy of the Contract.

18. GEORGIA SALES TAX

The City is a governmental agency and a political subdivision under Georgia law. Purchases by the City under this Contract are exempt from sales tax: A City tax exempt number is not required for a municipality. No purchase made by any entity is qualified to be exempt other than those made directly by the City. The City's sales tax exemption does not apply to goods or services purchased or consumed by a Contractor for which the Contractor is deemed to be the ultimate consumer in connection with the fulfillment of its Contract obligations, and the City shall have no liability for such taxes.

19. SUBCONTRACTS

19.1 The Contractor's right to subcontract shall be governed by the provisions of Section 17 of the General Conditions.

19.2 Nothing contained in these Contract Documents shall be construed as creating any contractual relationship between any subcontractor and the City.

19.3 The Contractor shall be fully responsible to the City for the acts and omissions of a subcontractor and of persons employed by said subcontractor to the same extent that the Contractor is liable to the City for acts and omissions of persons directly employed by it.

20. FAMILIARITY WITH LAWS

All Proposers and the Contractor are presumed to be familiar with and shall observe all Federal, State and local laws, ordinances, codes, rules and regulations, including, without limitation, the City's rules and regulations, that may in any way affect work herein specified. Ignorance on the part of the Contractor shall in no way relieve Contractor from any such responsibility or liability. Contractor's compliance with requirements of O.C.G.A. 13-10-91 and Rule 300-10-1-.02, if applicable, will be attested.

21. SECURITY

The successful Proposer will be required to comply with all applicable standards of the City relating to security which may be in effect or changed from time to time.

22. MINORITY AND WOMEN BUSINESS ENTERPRISE ("MWBE") PARTICIPATION

An MWBE participation goal has not been established for this Contract. Such participation is encouraged, but will not be considered during the evaluation process for award of this Contract.

23. LOCAL DEVELOPING BUSINESS ("LDB") PARTICIPATION

An LDB participation goal has not been established for this Contract. Such participation is encouraged, but will not be considered during the evaluation process for award of this Contract.

24. INSURANCE

The Proposer to whom the Notice of Intent to Award is given shall provide a signed Certificate of Insurance. The Certificate of Insurance shall evidence the insurance coverage required by the City pursuant to Section 14.7 of the General Conditions and shall be filed with the City within ten (10) business days of the date of the Notice of Intent to Award. The Certificate of Insurance must contain a provision that the coverage provided under the policies will not be cancelled or modified or the limits thereunder decreased unless at least thirty (30) days prior written notice has been given to the City.

25. PROPOSAL ERRORS

In the case of a Proposer's error in the extension or addition of Proposal prices, the unit prices will govern. Proposals having erasures or corrections should be initialed in ink.

26. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT

The Proposer certifies that all materials, equipment, chemicals, etc. contained in its Proposal or otherwise to be provided or used by the Proposer in its performance of the Contract work, and including any replacements or substitutions therefore, shall meet all EPA and OSHA requirements.

27. PERFORMANCE STANDARD

The standards by which the Contractor's performance will be evaluated are set forth in the General Conditions and Specifications. The successful Proposer's failure to meet these standards, after receipt of written notice to correct such deficiencies, may in addition to the City's other remedies, in the City's sole discretion, result in a termination of the Contract for cause pursuant to the termination provisions of the General Conditions.

28. NO PROPOSALS

In the event a potential Proposer elects not to submit a Proposal, such potential Proposer is nonetheless requested to respond by advising the City of the reason for not submitting a Proposal.

29. PUBLIC RECORDS/PUBLIC MEETINGS

Bidders hereby acknowledge that meetings of the City's Council are duly noticed public meetings and all documents submitted to the City as a part of or in connection with a Proposal shall constitute public records under Georgia law regardless of any person's claim that proprietary or trade secret information is contained therein. By submission to the City, Bidders waive any declaration that any portion of its response to be proprietary information. Proposals and all related correspondence are governed by the Georgia Open Records Act and will be provided to anyone properly requesting same, after contract award. The City cannot protect proprietary data submitted in vendor proposals unless provided for under the open records law and clearly marked as proprietary by the bidder. In the event, the Bidder deems certain information to be exempt from the disclosure requirements, the proposal must specify what content is considered exempt and cite the applicable provision of the law to support that assessment. In the event such information is requested under the open records law, the Bidder's assessment will be examined by the City Attorney who will make a determination. The decision to withhold or release the information will be at the City's sole discretion.

***** END OF INSTRUCTIONS TO PROPOSERS *****

**Contractor's Compliance with Requirements of
O.C.G.A. 13-10-91 and Rule 300-10-1-.02**

Compliance with the requirements of O.C.G.A. 13-10-91 and Rule 300-10-1-.02 are conditions of this Contract. Contractor has the number of statutory employees checked below:

- 500 or more employees
- 100 or more employees
- Fewer than 100 employees

Contractor's compliance with O.C.G.A. 13-10-91 and Rule 300-10-1-.02 shall be attested by the execution of the affidavit below, which is hereby incorporated as part of the Contract. In the event the contractor employs or contracts with any subcontractor in connection with this Contract, the contractor will secure from the subcontractor such subcontractor's indication of the employee-number category applicable to the subcontractor and will secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit shown in Rule 300-10-1-.08 or a substantially similar subcontractor affidavit, and maintain records of such attestation for inspection by the public employer at any time. Such subcontractor affidavit shall become a part of the contractor/subcontractor agreement.

CONTRACTOR'S AFFIDAVIT AND AGREEMENT

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

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

Contractor's EEV/Basic Program User Identification Number _____

BY: _____ Date

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE ___ DAY OF _____, 2012.

Notary Public

My Commission Expires: _____