



REQUEST FOR PROPOSALS NUMBER 17-031
For
On Call Design and Survey Services for Sidewalk Program Projects

PROPOSALS DUE: January 31, 2017 2:00 p.m. in hard copy. Electronic submissions via e-mail or fax will NOT be accepted. Submit Proposal to:

**Brookhaven City Hall
Purchasing Manager
4362 Peachtree Road
Brookhaven, Georgia 30319**

Information concerning this solicitation may be found electronically at: <http://www.brookhavenga.gov/city-departments/purchasing> This website will contain the Request for Proposals (“RFP”), questions and answers, and any clarifications, schedule changes and other important information regarding the solicitation. **PROPOSERS SHOULD CHECK THESE ELECTRONIC PAGES REGULARLY.**

Questions must be directed in writing to:

City of Brookhaven Purchasing Manager
Tyra Little, via e-mail to:
purchasing@brookhavenga.gov. Deadline for
questions is **January 20, 2017 5:00 p.m.**

Questions received after this date and time may not be answered.

Proposals shall be presented in a sealed opaque envelope with the proposal number and name **RFP# 17-031 On Call Design and Survey Services for Sidewalk Program Projects**, clearly marked on the outside of the envelope. The name of the company or firm submitting a proposal (“Proposer”) shall also be clearly marked on the outside of the envelope.

Instructions to Proposers

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

Proposal of:

Company Name: _____

Contact Name: _____

Address: _____

Telephone: _____ Facsimile: _____

E-Mail: _____

PROPOSAL LETTER

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

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

It is understood and agreed that we have read the City's specifications shown or referenced in the RFP and that this proposal is made in accordance with the provisions of such specifications. By our written signature on this proposal, we guarantee and certify that all items included in this proposal meet or exceed any and all such City specifications. We further agree, if awarded a contract, to deliver goods and services which meet or exceed the specifications. The City of Brookhaven reserves the right to reject any or all proposals, waive technicalities, and informalities, and to make an award in the best interest of the city. The City of Brookhaven reserves the right to extend the contract based upon the terms of the Invitation to Bid. The City reserves the right in its sole discretion to determine the method to be considered regarding the evaluation of submitted bids in order to determine the most qualified and responsive bidder

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

PROPOSAL SIGNATURE AND CERTIFICATION

(Bidder to sign and return with proposal)

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

Authorized Signature: _____ Date: _____

Print/Type Name: _____

Print/Type Company Name: _____

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1.1 **INTRODUCTION**

1.2 **Purpose of Procurement**

The City of Brookhaven is soliciting Requests for Proposals from firms with sidewalk survey, design and related experience for the development of plans for an improved sidewalk network in target areas for the Public Works Department. The project focus will be to improve connectivity in target areas throughout the City of Brookhaven. Ultimately, the City desires to construct sidewalk to improve the network in the identified target areas, install Americans with Disabilities Act (ADA) improvements and make other improvements to the existing sidewalk network where none currently exist. **It is Brookhaven's intention to enter into this on-call services agreement with multiple firms and award projects individually on an as-required basis.**

Pursuant to this RFP and any subsequent contract(s) awarded Brookhaven anticipates issuing Request for Quotation (RFQ) for performance of services on specific projects to one of more Consultants. Each RFQ will specify a detailed scope of work and deliverables for a project.

The successful Offeror(s) will have experience with and knowledge of the various technical aspects of the following:

1. Sidewalk design and related concepts to include design for adequate drainage;
2. Use of appropriate City of Brookhaven Development Standards to include applicable Overlay District Development guidelines, Georgia Department of Transportation standards and Plan Presentation Guide, ADA and other applicable design standards to design sidewalk for future construction;
3. Topographic surveying and identifying land ownership;
4. Cost estimating and analysis;
5. Identifying and coordinating with impacted utility agencies to include identification of sub-surface utilities;
6. Lighting design and inspection;
7. Landscape architecture design and specification;
8. On an as needed basis, conducting public involvement meetings or developing other public communications as part of the design phases of the project; and
9. Developing construction plans and specifications to permit the City to secure qualified contractors to perform the work.

The City of Brookhaven will maintain a list of on-call consultants from which it plans to solicit design services for the projects as the required.

1.3 **Basic Guidelines for This Request for Proposals**

Pursuant to the provisions of the city ordinance, the City of Brookhaven has determined that the use of competitive sealed bidding will not be practical or advantageous to the City in completing the acquisition of the services and/or commodities described herein. Competitive sealed proposals shall be submitted in response hereto in the same manner as competitive sealed bids and shall be accepted in the same manner as competitive sealed bids.

The proposals shall be evaluated in accordance with the evaluation criteria set forth in this Request for Proposal (RFP). Subsequent to the opening of the sealed proposals, discussions may be conducted by the City of Brookhaven with responsible Offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals; and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

In conducting any such discussions, there shall be no disclosure of any information derived from proposals submitted by competing Offerors. All such discussions shall be conducted by the City of Brookhaven Purchasing Division named below:

Name: Tyra Little
Title: Purchasing Manager
City of Brookhaven
Purchasing Department
4362 Peachtree Road
Brookhaven, Georgia 30319
E-Mail: purchasing@brookhavenga.gov

Awards shall be made to the responsible Offerors whose proposals are determined in writing to be the most advantageous for the City, taking into account all of the evaluation factors set forth in this RFP. The City of Brookhaven reserves the right to reject any and all proposals submitted in response to this request.

1.4 Schedule of Events

Release of RFP to City Website and Georgia Procurement Registry – December 28, 2016
Deadline for questions – January 20, 2017
Proposals due – January 31, 2017

1.5 Restrictions on Communications with Staff

From the issue date of this RFP until a contractor is selected and the selection is announced, Offerors are not allowed to communicate on issues concerning this Request for Proposal (RFP) with any City Staff except through the purchasing manager named herein, or as provided by existing work agreement(s). For violation of this provision, the City shall reserve the right to reject the proposal of the offending Offeror. All questions concerning this RFP must be submitted in writing (e-mail preferred, or fax may be used) to the Purchasing Manager at purchasing@brookhavenga.gov. No questions other than written will be accepted. No response other than written will be binding upon the City.

1.6 Contract Term

The contract with the successful Offerors will be for an initial period beginning on the date of execution of the agreement and expiring on December 31, 2017. In addition, the City reserves the right to extend the contract for three (3) additional one (1) year terms. Contract award will be by the issuance of a Notice of Award. Award of individual projects will be by Purchase Order in response to individual project Requests for Quotes. Renewals will be accomplished through Contract Amendments.

Contracts awarded pursuant to this RFP are indefinite quantity indefinite amount. Brookhaven anticipates multiple awards. No awarded consultant is guaranteed any amount of work as the result of an award.

1.7 Withdrawal of Proposal

Proposals submitted early may be withdrawn by the Offeror prior to the Proposal Due Date specified. Following the Proposal Due Date, the Proposal constitutes a binding offer and may not be withdrawn by the Offeror prior to the award.

1.8 Costs of Preparation

Offeror shall be solely responsible for any and all costs associated with developing and preparing the Proposal. Under no circumstances will the City of Brookhaven be required to reimburse Offeror for such costs.

1.9 Protests

Any protest in connection with this procurement must be submitted in strict accordance with provisions outlined in the City of Brookhaven Purchasing Policy.

1.10 Materials Submitted as Part of the Proposal

All materials submitted as part of the Proposal to this RFP becomes the property of City of Brookhaven and will not be returned to the Offeror.

1.11 Confidentiality

Offeror shall state with specificity those elements of its response that it considers confidential and/or proprietary. Failure to properly identify and mark confidential or proprietary information as specified in the following paragraph may result in all information received being deemed non-confidential, non-proprietary, and in the public domain. Neither a proposal in its entirety, nor proposed prices shall be considered confidential and proprietary.

Notwithstanding the foregoing, Offeror is hereby notified that any and all materials submitted in response to this RFP are subject to the provisions of Georgia's Open Records Act (O.C.G.A. § 50-18-70 et seq.). City of Brookhaven receipt, review, evaluation or any other act or omission concerning any such information shall not create an acceptance by City of Brookhaven of any obligation or duty to prevent the disclosure of any such information except as required by the Open Records Act. Offerors who submit information they believe should be exempt from disclosure under the Open Records Act shall clearly mark each document as confidential, proprietary or exempt, and state the legal basis for the exemption with supporting citations to the Georgia Code. Pursuant to Georgia Law, if the information is requested under the Open Records Act, City of Brookhaven shall make a final determination if any exemption actually exists for City of Brookhaven to deny the request and prevent disclosure. City of Brookhaven will withhold such information from public disclosure under the Open Records Act only if City of Brookhaven determines, in its sole discretion, that there is a legal basis to do so.

1.12 Reservation of Rights

City of Brookhaven reserves the right to waive irregularities, technicalities, variances, informalities or defects in any proposal; reject any and all proposals, in whole or in part, submitted in response to this RFP; request clarifications from all Offerors; request resubmissions from all Offerors; make partial, progressive multiple awards in the best interest of Brookhaven or make no awards; and take any other action as permitted by law and/or the City of Brookhaven Ordinance. City of Brookhaven reserves the right to withdraw or cancel this RFP without prior notice, at any time, at its sole discretion.

2.1 BACKGROUND

2.2 Project Background

The City of Brookhaven has developed a Fiscal Year 2016 (FY16) Sidewalk Program as well as similar scope Capital Program projects. The City of Brookhaven Sidewalk Program includes the installation of sidewalk, curb and gutter, retaining walls, driveway apron tie-ins, ADA-compliant sidewalk ramps and other elements along the project sites. It is important to note that time is of the essence in the design and completion of these projects; therefore, the project contract template has been provided for review. It should be noted that the template describes the contract performance requirements and is non-negotiable. Offerors that find the terms and conditions of this contract unacceptable should not respond to this Request for Proposals.

3.1 DESCRIPTION OF REQUIREMENTS

3.2 Introduction

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

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

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

3.3 Objective of the Procurement

The overall objective of the sidewalk project is part of the continuing effort of providing a safe and efficient transportation system for the citizens of Brookhaven.

3.4 Project Oversight and Staffing

The successful Offerors' Project Managers will report to Andrew Thompson, Public Works Deputy Director.

3.5 Scope

Candidate projects for this work include, but are not limited to the following:

The City of Brookhaven is seeking proposals for consideration to accomplish the following tasks:

1. Survey services, including right-of-way, individual owner information, utilities (to include all coordination and certification of no conflict or conflict resolution, and SUE services), as well as all deed research as required), specimen trees, drainage analysis and profile of existing road right-of-way for the identified target areas.

2. Design services from initial design development through final detailed design with erosion control to include a complete bidding package including any necessary special provisions for future use by the City to construct the project. Design services shall reflect all Overlay District and ADA compliance design standards. Consultant shall draft NOI (Notice of Intent) and NOT (Notice of Termination) for projects (s).
3. On an as required basis, conduct public involvement meetings and/or prepare displays for use in City project-related public outreach. Displays may include architectural renderings and 3-D video displays, as needed.
4. Every effort shall be made to avoid utility facilities or the purchase of additional easement and additional right-of-way. Right- of-way, construction easement and utility coordination (to include identification and location of sub-surface utilities) support shall be provided as required for future construction of the sidewalk project. The consultant is to provide a complete record of correspondence indicating no conflict or resolution from impacted utilities. Sub-surface utilities will be required to be located to Level A confidence where the potential for conflict with sub-surface utilities exists.
5. Prepare Lighting Design on an as required basis and to the applicable State, City, or Ga Power standard. Perform lighting installation acceptance inspections, as required.
6. Prepare Landscape Architecture Design to include special provisions/specifications as needed.
7. All work will be done in accordance with The Code of the City of Brookhaven Development Regulations and the Georgia Department of Transportation's (GDOT) Standard Drawings. An estimate of probable construction costs with unit prices based on GDOT current estimates and pay items will be required at concept phase and updated as design progresses to bidding.

3.4.1 Project Deliverables

Complete submissions to this Request for Proposals will contain sufficient information to provide the City of Brookhaven with a thorough description of the Offeror's qualifications to accomplish the work described in the Scope of Services. If the Offeror does not possess the in-house capabilities to perform a particular component of the project, the response should demonstrate the Offeror's ability to prepare and administer a subcontract or to work jointly with another firm having the requisite expertise to accomplish that component of the project in a timely manner. Any work performed under a subcontract, joint venture, partnership or other joint undertaking with another firm must comply with the state of Georgia's Procurement Code, and must receive the City's prior written approval concerning the intent to subcontract a component of the Scope of Services. In addition, prime contractors will ensure that for any subcontracted work, all subcontractors will encourage participation from and take steps to select small, minority and women-owned businesses (DBEs) when these firms are the most responsive and responsible bidders for providing goods and services associated with the prime contract. As with the City, prime contractors may accept State of Georgia DBE certification as evidence of a firm's qualification.

Each Offeror's proposal submission shall include the following:

1. Contact information including:
 - a. Name
 - b. Title
 - c. Address
 - d. Telephone, fax and email address of Offeror(s)
2. Date of proposal submission;

3. Brief descriptions providing the following:
 - a. General background on the nature of the Offeror's business;
 - b. Name and qualifications of key personnel to be assigned to the project, including qualifications specifically related to the Project Scope;
 - c. A proposed schedule for completing the Project Scope described above; and
 - d. A list of references, preferably within the last five years indicating the following:
 - i. Name of the public or private entity reference;
 - ii. The project name and location; and
 - iii. A contact person's name and telephone number.
4. Signature of official authorized to obligate the Offeror to the terms and conditions of this Request for Proposals and the Contract Agreement (CA); and

Each Offeror shall provide six (6) copies of the technical proposal, which must be received at the address indicated below in order to receive full consideration. Proposals must be submitted in sealed, opaque envelope clearly labeled with RFP #17-031. Copies shall be submitted as follows:

1. One (1) original;
2. Five (5) hard copies; and
3. One (1) digital copy in pdf format.

The Offeror's submission should not exceed thirty-five (35), single-sided pages. Offerors should provide their submission not later than January 31, 2017 at 2:00 p.m. to the following address:

Purchasing Manager
4362 Peachtree Rd
Brookhaven, GA 30319

Proposals received later than this date and time or at any other location other than the Purchasing Office will not be accepted.

4.1 PROPOSAL SUBMISSION AND EVALUATION

4.2 Economy of Presentation

Each proposal shall be prepared simply and economically, providing straight-forward, concise delineation of Offeror's capabilities to satisfy the requirements of this RFP. Emphasis on each proposal must be on completeness and clarity of content. To expedite the evaluation of proposals, it is essential that Offerors follow the format and instructions contained herein.

4.3 Required Organization of Offeror Proposals

- The content of the Technical Proposal must be organized as follows: Address each paragraph of the proposal by inserting requested information following each RFP paragraph.
 - The simplest method for meeting this requirement is to copy the Table of Contents, and if no information is requested, acknowledge that section of the proposal by stating "Read and understood", "Read and will comply" or other appropriate acknowledgement next to each section outlined in the Table of Contents. This method serves to confirm for the City that Offerors have read all the information included in the proposal.

- Where information is requested, provide a succinct, well written response with complete and thorough answers.
- Number the responses so they are keyed to the paragraph of the RFP that the response addresses.
- If the Offeror cross references or references supplemental materials at enclosures or appendices or annexes to the proposal response, be sure that this information is numbered in the supplemental materials showing exactly what paragraph in the RFP the supplemental material is addressing.
- **The Proposed Professional Services Pricing Schedule to be submitted separately.**
 - Be careful not to qualify the Proposal with “If...Then” statements. A qualified cost proposal response will be rejected and your proposal will not be further considered.

4.4 Submission of Proposals

Proposals must be submitted in two parts: a Technical Proposal and Professional Services Pricing Schedule. The proposal packages should be sealed in separate envelopes and identified as follows:

Technical Proposal/Cost Proposal (as applicable)
RFP Number: 17-031, FY 16 Sidewalk Program On-Call Design and Survey:

Proposal Opening Date and Time: January 31, 2017; 2:00 PM EDT

All proposals are due at the location specified no later than the date and time specified herein.

4.3.1 Technical Proposal

The Technical Proposal must include detailed information relative to how you propose to accomplish the tasks described in the Description of Work (Section 3.0) contained in this document. The Technical Proposal **MUST** not include any cost figures. An original and three (3) copies of the Technical Proposal are required. The Proposal Letter, included as page two of this package, must be included in this part and must be signed by a person authorized to legally bind the company. **FAILURE TO INCLUDE THIS SIGNED PROPOSAL LETTER WILL RESULT IN THE REJECTION OF YOUR RESPONSE.**

4.3.2 Professional Services Pricing Schedule Proposal

The Professional Services Pricing Schedule must be packaged **separately** and include information as requested herein relative to the costs proposed to accomplish the proposed project.

4.4 Evaluation Criteria and Process

4.4.1 Review of Proposals

All proposals received will be reviewed by the Purchasing Manager to ensure that all administrative requirements of the RFP package have been met by the Offerors. Each proposal will be reviewed to ensure that the Offeror submitted a separately packaged cost proposal and technical proposal, that only technical information is included in the technical proposal and only cost information is included in the cost proposal, and that all documents requiring a signature have been signed. Failure to meet these requirements may be cause for rejection of a proposal. All technical proposals that meet the administrative requirements will then be turned over to the technical evaluation team members for further evaluation.

4.4.2 Evaluation Committee

Offeror's submissions will be scored and ranked based upon demonstrated knowledge and understanding of the evaluation criteria provided below. The score of the proposal will total a maximum of 100 points. The City will use a proposal evaluation panel to review and rank the responsiveness and reasonableness of each proposal.

Evaluation Criteria		Description	Points
1.	Sidewalk/Streetscape Design	Offeror's understanding of the following: 1. Various aspects of sidewalk design as well as, but not limited to storm water design, roadway pavement design, retaining wall design, traffic signal modification/design and utility adjustments 2. City of Brookhaven Overlay District design standards 3. ADA design standards 4. Development of project cost estimates and project cost management. 5. Developing construction documents for bidding to include preparing special provisions. 6. Assessment of contractor bids to include bid tabulation.	20
2.	Survey Supporting Sidewalk Projects	7. Survey 8. Identifying property ownership and preparing Right of Way Plans 9. Communicating survey information to construction contractors for layout purposes. 10. Comparing as-built conditions to design plans during/post construction.	20

3	Utility Coordination	11. Coordinate with utility agencies to ensure utilities are addressed and any conflicts resolved 12. Conduct utility locates to include Level A SUE	15
4.	Lighting Design and Inspection	13. Provide design and coordination of design with regulatory agencies to provide lighting, as required in sidewalk/streetscape projects. 14. Coordinate with appropriate utilities to ensure adequate power to lighting 15. Provide inspection of lighting systems installed to confirm compliance with National Electric Code, as required.	5
5.	Landscape Architecture support to Sidewalk Design	16. Landscape design as related to development of sidewalks and streetscapes.	5
6.	Work experience	Offeror's previous related work experience	5
7.	Client references	Offeror's previous client references on similar projects	5
8.	Similar project experience of Project Manager	Offeror's key personnel that will directly support this project and their related work experiences designing and developing construction documents for similar projects	20
9.	Project Quality Control (QC)	Describe QC program for projects to ensure accuracy and completeness of submittals	5
Total			100

4.4.3 Technical Factors

1. Responsiveness of the proposal in clearly stating an understanding of the work to be performed, including making all required statements and affirmations. 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 completions
2. Technical experience of staff and overall team
3. Qualifications of staff and overall team, including recent pertinent continuing education
4. Size and structure of firm/joint venture/etc.

5. Prior experience with the firm with emphasis on report and work paper quality and track record of meeting agreed upon delivery dates.
6. References

4.4.4 Cost Factors

Although cost is a significant factor, it will not be the dominant factor. Any proposal which does not include all the required statements and affirmations called for in this RFP may be rejected as not being responsive.

The award will be made to the firm(s) making the most favorable proposal to the City of Brookhaven taking into account all the above criteria.

5.1 TERMS AND CONDITIONS

5.2 RFP Amendments

The City of Brookhaven reserves the right to addend the RFP prior to the date of proposal submission. Addenda will be posted to the Internet,

5.3 Proposal Withdrawal

Prior to the proposal due date, a submitted proposal may be withdrawn by the Offeror by submitting a written request to the Purchasing Manager named herein. All such requests must be signed by a person authorized to sign for the Offeror.

5.4 Contract

A sample consulting services contract is provided as part of this RFP for review by the Offeror. Before a proposal is submitted the Offeror should read and understand the entire sample contract. If an Offeror believes certain contract provisions are out of date, not applicable or places an undue burden or cost on the Offeror or Brookhaven, the Offeror must address these concerns in writing during the question and answer period. If Brookhaven determines a change is warranted; a revised sample contract will be posted in an addendum to this RFP. If a firm is unwilling to execute the sample contract, whether modified by addendum or not, a proposal should not be submitted.

An Offeror's exceptions and/or changes to the sample contract handled in any method other the written question, answer and addendum process described above may result in the rejection of their proposal.

5.5 Payment for Services

The city will make partial payments to the successful Offeror based on approved invoice by project manager and tied to deliverables as specified; or progress payments tied to an approved schedule.

5.6 Conflict of Interest

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

5.7 Confidentiality Requirements

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

5.8 Policy on Drug-Free Workplace

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

6.1 INSURANCE

Prior to beginning work on the Project, Consultant shall furnish certificates to Brookhaven for the following minimum amounts or levels of insurance coverage:

- A. Workers' Compensation Insurance sufficient to insure the Consultant against its liability for payment of compensation to the full extent required by Georgia law, from some corporation, association, or organization licensed by Georgia law to transact the business of workers' compensation insurance in the State of Georgia or from some mutual insurance association formed by a group of employers so licensed.
- B. General Comprehensive Liability Insurance providing coverage for injuries to persons as well as damage to property in an amount not less than One Million Dollars (\$1,000,000.00).
- C. Professional Liability Insurance for engineers/engineering work in an amount not less than One Million Dollars (\$1,000,000.00).
- D. Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the Project and the Agreement.

All insurance shall contain a provision that the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to Brookhaven. All such insurance shall remain in effect until final payment is made and the Project is accepted by Brookhaven. If Consultant receives notice of non-renewal or material adverse change of any of the above coverages, Consultant will promptly advise Brookhaven in writing. Failure of Consultant to promptly notify Brookhaven on non-renewal or material adverse change of any of the above coverages terminates the Agreement as of the date that Consultant should have given notification to Brookhaven.

If Brookhaven has any objections to the coverage afforded by or provisions of the insurance required to be purchased and maintained by Consultant, Brookhaven will notify Consultant thereof within twenty (20) days of the date of delivery of such certificates to Brookhaven.

Consultant shall provide to Brookhaven such additional information in respect of insurance provided by him as Brookhaven may reasonably request. The right of Brookhaven to review and comment on certificates of insurance is not intended to relieve Consultant of his responsibility to provide insurance coverage as specified nor to relieve Consultant of his liability for any claims which might **arise**.

Certificate of Insurance

The Consultant shall provide the City of Brookhaven with a certified copy of each of the policies, or binders indicating the existence of the policies prior to the beginning of the contract term. In the event a binder is delivered, it shall be replaced within ten (10) days by a certified copy of the policy. Each policy shall contain a valid provision or endorsement that the policy may not be canceled without giving thirty (30) days written notice thereof to the official City of Brookhaven representative named in the Consultant Services Agreement. A renewal policy or certificate shall be delivered to the City of Brookhaven at least thirty (30) days prior to the expiration date of each expiring policy. If at any time, any of the policies shall be or become unsatisfactory to the City of Brookhaven as to form or substance, or any of the carriers issuing such policies shall be or become unsatisfactory to the City of Brookhaven, the Consultant shall deliver to the City of Brookhaven representative upon demand a certified copy of any policy required herein for review.

The City of Brookhaven, Georgia, and its subcontractors and affiliated companies, their officers, directors, employees shall be named on the Certificates of Insurance as additional insured and endorsed onto the policies for Comprehensive General Liability, Automobile Liability and Umbrella Liability insurance maintained pursuant to this Contract in connection with liability of the City of Brookhaven and their affiliated companies and their officers, directors and employees arising out of Contractor's operations. Copies of the endorsements shall be furnished to the City prior to execution of the contract. Such insurance is primary insurance and shall contain a Severability of Interest clause as respects each insured. Such policies shall be non-cancelable except on thirty (30) days written notice to the City. Any separate insurance maintained in force by the additional insured named above shall not contribute to the insurance extended by Contractor's insurer(s) under this additional insured provision.

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

7.1 Certification

By my signature below, it is certified that my firm can meet all terms of the specifications and will perform the services specified; and for the privilege of doing so on the City of Brookhaven premises. I understand that, upon proper acceptance of this offer by the City of Brookhaven, a contract will thereby be created.

Given under my hand this _____ day of _____, 20__.

Name of Firm

Signature

Title

Business Address

Email address

Sworn to and subscribed before me
this _____ day of _____, 20__.

Notary Public

My commission expires on the above date.

A. ATTACHMENTS

A City of Brookhaven Contract Agreement template that would be modified to comply with the needs of the Sidewalk Design Project is attached for review by Offeror's prior to submitting proposals.



**SAMPLE
CONTRACT**

FOR

**ON CALL DESIGN AND SURVEY SERVICES FOR SIDEWALK PROGRAM
PROJECTS**

Between

CITY OF BROOKHAVEN, GEORGIA

("Brookhaven")

And

("Consultant")

CONTRACT AGREEMENT

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CONTRACT AGREEMENT

This Contract Agreement (the “Agreement”), made and entered into as of _____ by and between the City of Brookhaven, a political subdivision of the State of Georgia (hereinafter referred to as “Brookhaven”), and _____, a corporation of the State of _____ and authorized to do business in the State of Georgia (hereinafter referred to as CONSULTANT or PRIME CONSULTANT):

WITNESSETH

WHEREAS, Brookhaven through its governing body desires to retain a qualified and experienced consulting firm to perform certain design and engineering services regarding the On Call Design and Survey Services for Sidewalk Program Projects (hereinafter referred to as the “Project”); and

WHEREAS, Consultant has represented to Brookhaven that it is experienced and has qualified and local staff available to commit to the Project and Brookhaven has relied upon such representations;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, Brookhaven and Consultant agree as follows:

ARTICLE 1 CONSULTANT/OWNER AGREEMENT

Brookhaven hereby engages Consultant, and Consultant hereby agrees to perform, the services hereinafter set forth and as set forth in the proposal submitted by the Consultant in response to a Brookhaven’s request for proposal and exhibits thereto (the “Proposal”) as it may have been amended, a copy of which is attached hereto as **EXHIBIT A – CONSULTANT’S PROPOSAL** and incorporated herein by this reference.

ARTICLE 2 DESCRIPTION OF PROJECT

Brookhaven and Consultant agree that the Project is as described in **EXHIBIT B - DESCRIPTION OF PROJECT**. All exhibits referenced in this Agreement are incorporated by reference and constitute an integral part of this Agreement as if they were contained herein.

ARTICLE 3 SCOPE OF SERVICES

Unless modified in writing by both parties in the manner specified in the Agreement, duties of Consultant shall not be construed to exceed those services specifically set forth herein. Consultant agrees to provide all services, products, and data and to perform all tasks described in **EXHIBIT C – SCOPE OF SERVICES**.

ARTICLE 4 DELIVERABLES

Consultant shall provide to Brookhaven all deliverables specified in **EXHIBIT D – DELIVERABLES**. Deliverables shall be furnished to Brookhaven by Consultant in a media form that is acceptable and usable by Brookhaven at no additional cost at the end of the Project.

ARTICLE 5
SERVICES PROVIDED BY BROOKHAVEN

Consultant shall gather from Brookhaven all available non-privileged data and information pertinent to the performance of the services for the Project. Certain services as described in EXHIBIT C – SCOPE OF SERVICES, if required, will be performed and furnished by Brookhaven in a timely manner so as not to unduly delay Consultant in the performance of said obligations. Brookhaven shall have the final decision as to what data and information is pertinent.

Brookhaven will appoint in writing a Brookhaven authorized representative with respect to work to be performed under this Agreement until Brookhaven gives written notice of the appointment of a successor. The Brookhaven authorized representative shall have complete authority to transmit instructions, receive information, and define Brookhaven policies. Consultant may rely upon written consents and approvals signed by the Brookhaven authorized representative.

ARTICLE 6
MODIFICATIONS/CHANGE ORDERS/VERBAL AGREEMENTS

No verbal agreement or conversation with any officer, agent or employee of Brookhaven either before, during, or after the execution of this Agreement shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle Consultant to any additional payment whatsoever under the terms of this Agreement. If, during the course of performing work on the Project, Brookhaven and Consultant agree that it is necessary to make changes in the Project as described herein and in referenced exhibits, such changes will be incorporated by written change order and/or supplemental agreements to this Agreement. Any such change order and/or supplemental agreement shall be subject to the express approval of the City of Brookhaven in its sole discretion and shall further be subject to Brookhaven's purchasing policies and shall conform to all other applicable requirements of Brookhaven.

ARTICLE 7
TIME OF PERFORMANCE OF WORK

Consultant shall not proceed to furnish such services and Brookhaven shall not become obligated to pay for same until a written authorization to proceed ("Notice to Proceed") has been sent to Consultant from Brookhaven. The time of performance of work shall begin upon the date of Notice to Proceed and continue pursuant to the schedule described in EXHIBIT E – SCHEDULE OF TIME AND PERFORMANCE OF WORK. Consultant shall begin work under this Agreement no later than five (5) days after the effective date of Notice to Proceed, and shall dedicate sufficient efforts to each required task to complete same in accordance with EXHIBIT E.

The time of performance of work does not include time for reviews for the Project by Brookhaven, its authorized representative, or any other agency or agencies reviewing the Project. Time charges shall cease when a phase specified in the Proposal has been completed to the satisfaction of the Brookhaven authorized representative.

When a phase specified in the engineering fee proposal has been completed to the satisfaction of the Brookhaven authorized representative, he will notify Consultant that all tasks of such phase are considered accepted and fulfilled as specified in the engineering fee proposal. A Notice to Proceed shall be issued to the Consultant for the next phase of work and shall address the total time of performance of work remaining on the contract.

**ARTICLE 8
TERM OF CONTRACT**

The initial term of this Agreement shall commence on the date of award by Brookhaven and shall expire on December 31, 2017. In addition, the City reserves the right to extend the contract for three (3) additional one (1) year terms.

**ARTICLE 9
COMPENSATION AND PAYMENT FOR CONSULTANT SERVICES**

Compensation for work performed by Consultant on the Project shall be on the basis of rates shown in the Proposal. Direct and miscellaneous costs should be included in the consultant quotes issued for various projects.

All quotes are time and materials based for services actually rendered to and accepted by Brookhaven. No quote shall be construed by either the Consultant or Brookhaven to be a lump sum.

This is an indefinite quantity indefinite amount contract. The Consultant is not guaranteed a particular amount work under this contract.

The Consultant may submit to Brookhaven an invoice, in a form acceptable to Brookhaven and accompanied with all support documentation requested by Brookhaven, for payment and for services that were completed. Brookhaven shall review for approval said invoices. Brookhaven shall have the right not to pay any invoice or part thereof if not properly supported, or if the costs requested or a part thereof, as determined by Brookhaven, are reasonably in excess of the actual stage of completion. Brookhaven shall pay each such invoice or portion thereof as approved, provided that the approval or payment of any such invoice shall not be considered to be evidence of the performance of the Consultant to the point indicated by such invoice, or receipt of acceptance by Brookhaven of the services covered by such invoice. Brookhaven shall promptly pay any undisputed items contained in such invoices. As a minimum, each invoice shall include a narrative describing the total work accomplished for each phase, an accurate update of Exhibit E reflecting current status and noting any deviations from the schedule, and a description of the percentage of total work completed for each phase through the date of the statement.

The Consultant must certify in writing that all subcontractors and suppliers have been promptly paid for work and materials and previous progress payments received, less any retainage by the CONSULTANT prior to receipt of any further progress payments. In the event the PRIME CONSULTANT is unable to pay subcontractors or suppliers until it has received a progress payment from Brookhaven, the PRIME CONSULTANT shall pay all subcontractors or suppliers funds due from said progress payments within forty-eight (48) hours of receipt of payment from Brookhaven and in no event later than fifteen (15) days as provided for by state law.

CONSULTANT agrees that the compensation provided herein shall be full and final settlement of all claims arising against Brookhaven for work done, materials furnished, costs incurred or otherwise arising out of this Agreement and shall release Brookhaven from any and all further claims related to payment for services and materials furnished in connection with this Agreement.

Brookhaven and CONSULTANT agree that in the event any Agreement provision pertaining to the time of payment, the rate of payment, and any rates of interest differs from any provision of the Prompt Pay Act, such provision of the Prompt Pay Act is hereby waived and said Agreement provision shall control. Brookhaven shall not be responsible for any interest penalty for any late payment.

ARTICLE 10 QUALIFICATION OF CONSULTANT'S PERSONNEL AND ENDORSEMENT OF DOCUMENTS

Consultant shall identify in writing a Project manager who shall have sole authority to represent Consultant on all matters pertaining to this Agreement.

Consultant represents that it has secured or will secure, at its own expense, all equipment and personnel necessary to complete its obligations pursuant to this Agreement. No personnel shall be employees of or have any contractual relationship with Brookhaven. All of the services required hereunder will be performed by Consultant under its supervision and all personnel engaged in the work hereunder shall be fully qualified and shall be authorized or permitted under law to perform such services.

Consultant shall use the design team presented to Brookhaven at the time of negotiations unless changes in the design team are approved in writing by Brookhaven. Written notification shall be immediately provided to Brookhaven upon change or severance of any key personnel or subcontractor performing services on the Project by Consultant. No changes or substitutions shall be permitted in Consultant's key personnel or subcontractors performing services on the Project without the prior written approval of Brookhaven. Changing of key personnel or subcontractors performing services during the course of the Project without the prior written approval of Brookhaven shall constitute a cause for termination under the terms outlined in Article 14 hereof entitled "TERMINATION OF AGREEMENT FOR CAUSE".

Consultant shall employ only persons qualified and duly registered in the appropriate category in responsible charge of supervision and design of the work and further shall employ only qualified and duly registered surveyors in responsible charge of any survey work.

Consultant shall endorse all deliverables including reports, and contract plans. Such endorsements shall be made by a person duly registered for such services by the governing authority authorized by the State of Georgia, being in the full employ of Consultant and responsible for the work prescribed by this Agreement.

ARTICLE 11 SUSPENSION OF WORK

Brookhaven may order Consultant in writing to suspend, delay or interrupt all or any part of the work on the Project for such period of time as he may determine appropriate for the convenience of Brookhaven. The time for completion of the work shall be extended by the number of days the work is suspended. Brookhaven shall not be responsible for any claims, damages or costs stemming from any delay of the Project.

**ARTICLE 12
UTILITIES**

Where privately, publicly or cooperatively owned utility companies will require rearrangements in connection with the proposed construction, Consultant shall furnish prints or sepias to Brookhaven to be sent by Brookhaven or the Consultant to the utility owners as directed by Brookhaven.

Consultant shall make no commitments with the utilities which are binding upon Brookhaven without the approval of Brookhaven. Consultant will conduct all coordination with the utilities and authorities; however, Brookhaven may be asked to participate in such negotiations.

**ARTICLE 13
DISPUTES**

No civil action with respect to any dispute, claim or controversy arising out of or relating to this Contract may be commenced without first giving fourteen (14) calendar days written notice to Brookhaven of the claim and the intent to initiate a civil action.

**ARTICLE 14
TERMINATION OF AGREEMENT FOR CAUSE**

Brookhaven reserves the right to terminate this Agreement at any time for just cause upon thirty (30) days written notice to Consultant, notwithstanding any just claims by Consultant for payment for services rendered prior to the date of termination. Notice of termination shall be delivered by certified mail with receipt for delivery returned to the sender.

Failure of Consultant to comply with all terms of the Agreement, including maintaining required insurance coverage, may be considered just cause for termination. In the event the required insurance coverage is not maintained, any written notice of termination to Consultant shall be effective immediately notwithstanding the thirty (30) days' notice otherwise required herein. **TIME IS OF THE ESSENCE** and if the Consultant refuses or fails to perform the work, maintain the scheduled level of effort as proposed and described in this Agreement, or any separable part thereof, with such diligence as will insure completion of the work within the specified time period, as more thoroughly described in Article 8 herein entitled **TERM OF CONTRACT**, or any extension or tolling thereof, or fails to complete said work within such time, such failure to perform the work shall constitute cause for termination. Brookhaven may, by written notice to Consultant, terminate Consultant's right to proceed with the work or such part of the work as to which there has been delay. In such event, Brookhaven may take over the work and perform the same to completion, by contract or otherwise, and Consultant shall be required to provide all copies of finished or unfinished documents prepared by Consultant under this Agreement to Brookhaven as stated in **EXHIBIT D – DELIVERABLES**. Consultant shall be entitled to receive compensation for any satisfactory work completed on such documents as reasonably determined by Brookhaven. Whether or not the Consultant's right to proceed with the work has been terminated, the Consultant shall be liable for any damage to Brookhaven resulting from the Consultant's refusal or failure to complete the work within the specified time period, and said damages shall include, but not be limited to, any additional costs associated with Brookhaven obtaining the services of another Consultant to complete the Project.

ARTICLE 15
TERMINATION FOR CONVENIENCE OF BROOKHAVEN

Notwithstanding any other provisions of this Agreement, Brookhaven may terminate this Agreement for its convenience at any time by written notice to Consultant. If the Agreement is terminated for convenience of Brookhaven as provided in this Article, Consultant will be paid compensation for those services actually performed. Partially completed tasks will be compensated based on a signed statement of completion to be submitted by Consultant which shall itemize each task element and briefly state what work has been completed and what work remains to be done.

ARTICLE 16
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 be a waiver of any subsequent breach or violation of the same or other provision thereof.

ARTICLE 17
INDEPENDENT CONTRACTOR

Consultant shall perform the services under this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with such relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute Consultant or any of its agents or employees to be the agent, employee or representative of Brookhaven. Inasmuch as Brookhaven and Consultant are contractors independent of one another, neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto. Consultant agrees not to represent itself as the City's agent for any purpose to any party or to allow any employee of Consultant to do so, without specific prior written authorization from Brookhaven, and then only for the limited purpose stated in such authorization. Consultant shall assume full liability for any contracts or agreements that Consultant enters into on behalf of Brookhaven without the express knowledge and prior written authorization of Brookhaven.

ARTICLE 18
RESPONSIBILITY OF CONSULTANT

Consultant is employed to render a professional service only and any payments made to Consultant are compensation solely for such services rendered and for recommendations made in carrying out the work. Consultant shall follow the practice of the engineering profession to make findings, opinions, factual presentations, professional advice and recommendations. Errors due to Consultant's failure to comply with standard engineering procedures shall be corrected in a time frame agreed to by Brookhaven and at Consultant's expense.

ARTICLE 19
COOPERATION WITH OTHERS

Consultant will undertake the Project in cooperation with and in coordination with other studies, projects or related work performed for, with or by Brookhaven employees, appointed committees or other consultants and contractors. Consultant shall fully cooperate with Brookhaven and with other consultants, contractors and Brookhaven employees or appointed committees.

Such cooperation shall include, but not be limited to, attendance at meetings, discussions and hearings, as may be requested by Brookhaven, furnishing plans and other data produced in the course of work on the Project, as may be requested from time to time by Brookhaven to effect such cooperation and compliance with all directives issued by Brookhaven. Consultant shall provide Brookhaven with its schedule of work, time and effort to coordinate with other consultants and contractors under contract with Brookhaven. Consultant shall not commit or permit any of its employees, agents or subcontractors to commit an act which will interfere with the performance of work to be done on the Project by any other consultant or contractor or by Brookhaven employees.

ARTICLE 20 ACCURACY OF WORK

Consultant shall be responsible for the accuracy of its work and shall promptly correct its errors and omissions without additional compensation. Acceptance of the work by Brookhaven will not relieve Consultant of the responsibility of subsequent corrections of any errors, the clarification of any ambiguities, or the costs associated with any additional work caused by negligent errors in, or negligent omissions from, the plans prepared by Consultant. At any time during construction of the Project provided for by the plans or during any phase of work performed by others based on data secured by Consultant under this Agreement, Consultant shall confer with Brookhaven for the purpose of interpreting the information obtained and to correct any errors or omissions. Consultant shall prepare any plans, reports, field work, or data required by Brookhaven to correct its errors or omissions. The above consultation, clarification or correction shall be made without added compensation to Consultant. Consultant shall give immediate attention to these changes so there will be a minimum of delay to others. Prior notification by Consultant of the acceptance of any item(s) furnished by Brookhaven shall transfer the responsibilities for the accuracy of that item(s) to Consultant.

ARTICLE 21 REVIEW OF WORK

Authorized representatives of Brookhaven may at all reasonable times review and inspect Project activities and data collected under this Agreement and amendments thereto. All reports, drawings, studies, specifications, estimates, maps and computations prepared by or for Consultant, shall be available to authorized representatives of Brookhaven for inspection and review at all reasonable times in the main office of Brookhaven. Consultant shall maintain all required records pertinent to this Agreement for a period of three (3) years after final payment is made and all other pending matters are closed. Brookhaven reserves the right to review and authorize the Project to move forward if affected public agencies, railroads and utilities have not provided timely acceptance. Authorization by Brookhaven for the Project to move forward in such an event shall not relieve Consultant of its professional obligation to correct, at its expense, any of its errors in work; provided, however, that any additional work which becomes reasonably necessary based on such authorization shall be compensated pursuant to change order as provided in Article 6 hereof so long as such additional work is not due to the fault of Consultant. Brookhaven may request at any time and Consultant shall produce progress prints or copies of any work as performed under this Agreement. Refusal by Consultant to submit progress reports and/or plans shall be cause for Brookhaven, without any liability therefore, to withhold payment to Consultant until Consultant complies with Brookhaven's request in this regard. Brookhaven's review recommendations shall be incorporated into the plans by Consultant.

ARTICLE 22 INDEMNIFICATION

- A. **Commercial General Liability Indemnification.** Other than arising out of the performance of professional services, and to the fullest extent permitted by law, Consultant shall indemnify, defend and hold Brookhaven, its officers, agents, employees and successors and assigns, harmless from and against damages, liabilities and costs (including, to the extent allowable by law, reasonable attorneys' fees and defense costs incurred in connection with the defense of third party claims) for claims, suits, or actions of any kind where such liability arises out of or is in connection with the performance (other than the performance of professional services) of this Agreement by Consultant.
- B. **Professional Liability Indemnification.** Consultant agrees, to the fullest extent permitted by law, to indemnify and hold Brookhaven, its officers, agents, and employees, harmless from and against damages, liabilities and costs (including, to the extent allowable by law, reasonable attorneys' fees and defense costs incurred in connection with the defense of third party claims) to the extent caused by the negligent acts, errors or omissions of Consultant in the performance of professional services pursuant to this Agreement.

Consultant further agrees to protect, defend, indemnify and hold harmless Brookhaven, its officers, agents and employees from and against any and all claims or liability for compensation under the Workers' Compensation Act arising out of injuries sustained by any employees of Consultant. These indemnities shall not be limited by reason of the listing of any insurance coverage.

ARTICLE 23 CONFIDENTIALITY

Consultant agrees that its conclusions and any reports are for the confidential information of Brookhaven and that it will not disclose its conclusions in whole or in part to any persons whatsoever, other than to submit its written documentation to Brookhaven, and will only discuss the same with it or its authorized representatives, except as required under this Agreement to provide information to the public. Upon completion of this Agreement term, all documents, reports, maps, data and studies prepared by Consultant pursuant thereto and any equipment paid for by Brookhaven as a result of this Agreement, shall become the property of Brookhaven and be delivered to the authorized representative of Brookhaven.

Articles, papers, bulletins, reports, or other materials reporting the plans, progress, analyses, or results and findings of the work conducted under this Agreement shall not be presented publicly or published without the prior approval in writing of Brookhaven. All releases of information, findings, recommendations, and published reports shall include the disclaimer on the cover and title page in the following form:

“The contents of this publication reflect the views of the author(s), who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of Brookhaven. This publication does not constitute a standard, specification or regulation.”

It is further agreed that if any information concerning the Project, its contents, results, or data gathered or processed should be released by Consultant without prior approval from Brookhaven,

the release of the same shall constitute grounds for termination of this Agreement without indemnity to Consultant, but should any such information be released by Brookhaven or by Consultant with such prior written approval, the same shall be regarded as public information and no longer subject to the restrictions of this Agreement.

Should such information be required to be released under the Georgia Open Records Act, O.C.G.A. § 50-18-70, et seq., the restrictions and penalties set forth herein shall not apply. Any request for information directed to Consultant by the public pursuant to the Georgia Open Records Act shall be redirected to the Brookhaven for further action.

ARTICLE 24 OWNERSHIP OF INTELLECTUAL PROPERTY AND INFORMATION

Consultant agrees that Brookhaven is the sole owner of all information, data, and materials that are developed or prepared subject to this Agreement; provided, however, that Brookhaven acknowledges that such information, data, and materials are Project specific and are not to be used in connection with other projects as a matter of general application. Consultant or any subcontractor is not allowed to use or sell any information subject to this Agreement for educational, publication, profit, research or any other purpose without the written consent of an authorized representative of Brookhaven. All electronic files used on this Project and necessary to view and/or access information, including any custom or commercially available software developed or used by Consultant, shall become the property of Brookhaven to the extent that such electronic files are not maintained by Brookhaven in the ordinary course of business unless the Consultant receives written confirmation from the City that such software shall not be required as part of the Project deliverables. Any required licenses and fees for software or other required materials shall be purchased and/or paid for by Consultant and registered in the name of the authorized representative of Brookhaven. Any work developed for use on this Project may be released as public domain information by the authorized representative of Brookhaven at his/her sole discretion.

ARTICLE 25 COVENANT AGAINST CONTINGENT FEES

Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for any fee, commission, percentage, brokerage or contingent fee, gift or other consideration, excepting bona fide employees maintained by Consultant for the purpose of securing business and that Consultant has not received any non-Brookhaven fee related to this Agreement without the prior written consent of Brookhaven. For breach or violation of this warranty, Brookhaven shall have the right to annul this Agreement without liability or at its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of any such fee, commission, percentage, brokerage or contingent fee, gift or other consideration.

ARTICLE 26 INSURANCE

Prior to beginning work on the Project, Consultant shall furnish certificates to Brookhaven for the following minimum amounts or levels of insurance coverage:

- A. **Workers' Compensation Insurance** sufficient to insure the Consultant against its liability for payment of compensation to the full extent required by Georgia law, from some

corporation, association, or organization licensed by Georgia law to transact the business of workers' compensation insurance in the State of Georgia or from some mutual insurance association formed by a group of employers so licensed.

- B. **General Comprehensive Liability Insurance** providing coverage for injuries to persons as well as damage to property in an amount not less than One Million Dollars (\$1,000,000.00).
- C. **Professional Liability Insurance** for engineers/engineering work in an amount not less than One Million Dollars (\$1,000,000.00).
- D. **Valuable Papers Insurance** in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the Project and the Agreement.

All insurance shall contain a provision that the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to Brookhaven. All such insurance shall remain in effect until final payment is made and the Project is accepted by Brookhaven. If Consultant receives notice of non-renewal or material adverse change of any of the above coverages, Consultant will promptly advise Brookhaven in writing. Failure of Consultant to promptly notify Brookhaven on non-renewal or material adverse change of any of the above coverages terminates the Agreement as of the date that Consultant should have given notification to Brookhaven.

If Brookhaven has any objections to the coverage afforded by or provisions of the insurance required to be purchased and maintained by Consultant, Brookhaven will notify Consultant thereof within twenty (20) days of the date of delivery of such certificates to Brookhaven.

Consultant shall provide to Brookhaven such additional information in respect of insurance provided by him as Brookhaven may reasonably request. The right of Brookhaven to review and comment on certificates of insurance is not intended to relieve Consultant of his responsibility to provide insurance coverage as specified nor to relieve Consultant of his liability for any claims which might arise.

The City of Brookhaven, Georgia, and its subcontractors and affiliated companies, their officers, directors, employees shall be named on the Certificates of Insurance as additional insured and endorsed onto the policies for Comprehensive General Liability, Automobile Liability and Umbrella Liability insurance maintained pursuant to this Contract in connection with liability of the City of Brookhaven and their affiliated companies and their officers, directors and employees arising out of Contractor's operations. Copies of the endorsements shall be furnished to the City prior to execution of the contract. Such insurance is primary insurance and shall contain a Severability of Interest clause as respects each insured. Such policies shall be non-cancelable except on thirty (30) days written notice to the City. Any separate insurance maintained in force by the additional insured named above shall not contribute to the insurance extended by Contractor's insurer(s) under this additional insured provision.

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

**ARTICLE 27
PROHIBITED INTEREST**

- A. **Conflict of Interest.** Consultant agrees that it presently has no interest and shall acquire no interest, direct or indirect, that would conflict in any manner or degree with the performance of its services hereunder. Consultant further agrees that, in the performance of the Agreement, no person having any such interest shall be employed.
- B. **Interest of Public Officials.** No member, officer or employee of Brookhaven during his tenure shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**ARTICLE 28
SUBCONTRACTING**

Unless otherwise provided in this Agreement, Consultant shall not subcontract any part of the work covered by this Agreement or permit subcontracted work to be further subcontracted without prior written approval of Brookhaven.

**ARTICLE 29
ASSIGNABILITY**

It is understood by the parties to this Agreement that the work of Consultant is considered personal by Brookhaven. Consultant shall not assign, sublet or transfer this Agreement or any portion thereof without the prior express written consent of Brookhaven. Any attempted assignment, subletting or transfer by Consultant without the prior express written consent of Brookhaven shall at Brookhaven's sole option terminate this Agreement without any notice to Consultant of such termination. Consultant binds itself, its successors, assigns, and legal representatives of such other party in respect to all covenants, agreements and obligations contained herein.

**ARTICLE 30
ANTI-KICKBACK CLAUSE**

Salaries of engineers, surveyors, draftsmen, clerical and technicians performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law. Consultant hereby promises to comply with all applicable anti-kickback laws, and shall insert appropriate provisions in all subcontracts covering work under this Agreement.

**ARTICLE 31
DRUG-FREE WORKPLACE CERTIFICATION**

Consultant shall execute a certification in the form of EXHIBIT G - CERTIFICATION OF CONSULTANT - DRUG-FREE WORKPLACE, attached hereto and incorporated herein by this reference. Pursuant to the certification, Consultant shall certify that:

- (1) the provisions of O.C.G.A. § 50-24-1 through 50-24-6 relating to the "Drug-Free Workplace Act" have been complied with in full;
- (2) a drug-free workplace will be provided for the consultant's employees during the performance of this Agreement;

- (3) each subcontractor hired by Consultant shall be required to ensure that the subcontractor's employees are provided a drug-free workplace; and
- (4) Consultant will not engage in any unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the contract.

ARTICLE 32
GEORGIA SECURITY AND IMMIGRATION
COMPLIANCE ACT CERTIFICATION

Consultant shall execute a certification in the form of EXHIBIT H - CERTIFICATION OF CONSULTANT – GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT, attached hereto and incorporated herein by this reference. Pursuant to the certification, Consultant agrees to comply with all applicable requirements of the Georgia Security and Immigration Compliance Act of 2006 as codified in O.C.G.A. Sections 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program," accessed at <http://www.dol.state.ga.us>, as further set forth in the certification attached as Exhibit H.

ARTICLE 33
AUDITS AND INSPECTORS

At any time during normal business hours and as often as Brookhaven may deem necessary, Consultant shall make available to Brookhaven and/or representatives of Brookhaven for examination all of its records with respect to all matters covered by this Agreement.

It shall also permit Brookhaven and/or representative of Brookhaven to audit, examine and make copies, excerpts or transcripts from such records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Consultant's records of personnel, conditions of employment, and financial statements (hereinafter "Information") constitute trade secrets and are considered confidential and proprietary by Consultant. To the extent Brookhaven audits or examines such Information related to this Agreement, Brookhaven shall not disclose or otherwise make available to third parties any such Information without Consultant's prior written consent unless required to do so by law. Nothing in this Agreement shall be construed as granting Brookhaven any right to make copies, excerpts or transcripts of such Information outside the area covered by this Agreement without the prior written consent of Consultant. Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project and used in support of its Proposal and shall make such material available at all reasonable times during the period of the Agreement and for three (3) years from the date of final payment under the Agreement, for inspection by Brookhaven or any reviewing agencies and copies thereof shall be furnished upon request and at no additional cost to Brookhaven. Consultant agrees that the provisions of this Article shall be included in any Agreements it may make with any subcontractor, assignee or transferee.

ARTICLE 34
ACCOUNTING SYSTEM

Consultant shall have an accounting system, which is established and maintained in accordance with generally accepted accounting principles. Consultant must account for costs in a manner consistent with generally accepted accounting procedures, as approved by Brookhaven.

ARTICLE 35
ENTIRE AGREEMENT

This Agreement, including the exhibits, constitutes the entire agreement of the parties pertaining to the subject matter hereof and is intended as a complete and exclusive statement of promises, representations, discussions and agreements, oral or otherwise, that have been made in connection therewith. No modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing, signed by the Consultant's and Brookhaven's duly authorized representatives, subject to Brookhaven's purchasing policies.

ARTICLE 36
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, enforceable in accordance with its terms.

ARTICLE 37
HEADINGS

This Agreement shall not be interpreted by reference to any of the titles or headings to the sections or paragraphs of this Agreement, which have been inserted for convenience purposes only and are not deemed a part hereof.

ARTICLE 38
COUNTERPARTS

This Agreement may be executed in one or more counterparts, all of which together shall be deemed to constitute one and the same instrument.

ARTICLE 39
GENDER AND NUMBER

This Agreement shall be construed by the actual gender and/or number of the person, persons, entity and/or entities referenced herein, regardless of the gender and/or number used in such reference.

ARTICLE 40
NOTICES

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

Notice to Brookhaven shall be addressed as follows:

City of Brookhaven
4362 Peachtree Road
Brookhaven, Georgia 30319
ATTN: Christian Sigman, City Manager

With copies to:

City of Brookhaven
4362 Peachtree Road
Brookhaven, Georgia 30319
ATTN: Chris Balch, City Attorney

City of Brookhaven
4362 Peachtree Road
Brookhaven, Georgia 30319
ATTN: _____
Project Manager

Notice to Consultant shall be addressed as follows:

ATTN: _____
Consultant
Project Manager

**ARTICLE 41
JURISDICTION**

This Agreement shall be administered and interpreted under the laws of the State of Georgia. Jurisdiction of litigation arising from this Agreement shall be in Georgia. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

Whenever reference is made in the Agreement to standards or codes in accordance with which work is to be performed, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly stated.

**ARTICLE 42
EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Agreement, Consultant agrees as follows:

- A. Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin.

- B. Consultant will, in all solicitations or advertisements for employees placed by, or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
- C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Agreement so that such provision will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

ARTICLE 43
FORCE MAJEURE

Neither Brookhaven nor Consultant shall be deemed in violation of this Agreement if either is prevented from performing its obligations hereunder for any reason beyond its control, including but not limited to acts of God, civil or military authority, act of public enemy, accidents, fires, explosions, earthquakes, floods or catastrophic failures of public transportation; provided, however, that nothing herein shall relieve or be construed to relieve Consultant from performing its obligations hereunder in the event of riots, rebellions or legal strikes.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized agents, have signed and sealed this Agreement.

CITY OF BROOKHAVEN, GEORGIA

By: _____
Christian Sigman, City Manager

Date of Execution

ATTEST:

By: _____
City Clerk

(SEAL)

Approved as to Form:

By: _____
City Attorney

CONTRACTOR

Date of Execution

By: _____
Name:

(Typed or printed name)

Title

ATTEST:

By: _____
Secretary for Corporation

(SEAL)

Witness

Executed in originals of four (4).

FINAL AFFIDAVIT

TO BROOKHAVEN

I, _____, hereby certify that all suppliers of materials, equipment and services, subcontractors, mechanics, and laborers employed by _____ (“Consultant”) or any of its subcontractors in connection with the design and/or construction of _____ (the “Project”) have been paid and satisfied in full as of _____, 20 , and that there are no outstanding obligations or claims of any kind for the payment of which Brookhaven on the Project might be liable, or subject to, in any lawful proceeding at law or in equity.

Signature

Title

Personally appeared before me this _____ day of _____, 20 , _____ who under oath deposes and says that he is _____ of _____ (“Consultant”), that he has read the above statement and that, to the best of his knowledge and belief, the same is an exact true statement.

Notary Public

My commission expires: _____

EXHIBIT A
CONSULTANT'S PROPOSAL

EXHIBIT B
DESCRIPTION OF PROJECT

The City of Brookhaven has developed a Fiscal Year 2016 (FY16) Sidewalk Program as well as similar scope Capital Program projects. The City of Brookhaven Sidewalk Program includes the installation of sidewalk, curb and gutter, retaining walls, driveway apron tie-ins, ADA-compliant sidewalk ramps and other elements along the project sites. It is important to note that time is of the essence in the design and completion of these projects.

EXHIBIT C SCOPE OF SERVICES

Candidate projects for this work include, but are not limited to the following:

The City of Brookhaven is seeking proposals for consideration to accomplish the following tasks:

1. Survey services, including right-of-way, individual owner information, utilities (to include all coordination and certification of no conflict or conflict resolution, and SUE services as required), specimen trees, drainage analysis and profile of existing road right-of-way for the identified target areas.
2. Design services from initial design development through final detailed design with erosion control to include a complete bidding package for future use by the City to construct the project. Design services shall reflect all Overlay District and ADA compliance design standards. Consultant shall draft NOI (Notice of Intent) and NOT (Notice of Termination) for projects (s).
3. On an as required basis, conduct public involvement meetings and/or prepare displays for use in City project-related public outreach.
4. Every effort shall be made to avoid requiring the purchase of easement and additional right-of-way. The Consultant shall provide right-of-way, construction easement and utility coordination (to include identification and location of sub-surface utilities) support as required for future construction of the sidewalk project. The consultant is to provide record of correspondence indicating no conflict or resolution from impacted utilities. Sub-surface utilities will be required to be located to Level A confidence where the potential for conflict with sub-surface utilities exists.
5. Prepare Lighting Design on an as required basis. Perform lighting installation acceptance inspections, as required.
6. Prepare Landscape Architecture Design to include special provisions/specifications as needed.
7. All work will be done in accordance with The Code of the City of Brookhaven Development Regulations and the Georgia Department of Transportation's (GDOT) Standard Drawings. An estimate of probable construction costs with unit prices based on GDOT current estimates and pay items will be required at concept phase and updated as design progresses to bidding.

**EXHIBIT D
DELIVERABLES**

Deliverables are project specific and will be included in individual RFQ (Request for Quotations) issued pursuant this contract.

EXHIBIT E
SCHEDULE OF TIME AND PERFORMANCE OF WORK

Schedule of time and performance of work are project specific and will be included in individual RFQ (Request for Quotations) issued pursuant this contract.

EXHIBIT F
COMPENSATION AND PAYMENT FOR CONSULTANT SERVICES

Compensation is project specific and will be included in individual RFQ (Request for Quotations) issued pursuant this contract.

EXHIBIT G
CERTIFICATION OF CONSULTANT - DRUG-FREE WORKPLACE

I hereby certify that I am a principle and duly authorized representative of _____, (“Contractor”), whose address is

_____,
_____, and I further certify that:

- (1) The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the “Drug-Free Workplace Act” have been complied with in full; and
- (2) A drug-free workplace will be provided for Contractor’s employees during the performance of the Agreement; and
- (3) Each Subcontractor hired by Contractor shall be required to ensure that the subcontractor’s employees are provided a drug-free workplace. Contractor shall secure from that subcontractor the following written certification: “As part of the subcontracting agreement with Contractor, _____ certifies to Contractor that a drug-free workplace will be provided for the Subcontractor’s employees during the performance of this Agreement pursuant to paragraph (7) of subsection (b) of the Official Code of Georgia Annotated, Section 50-24-3”; and
- (4) The undersigned will not engage in unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Agreement.

CONTRACTOR:

Date: _____ Signature: _____

Title: _____

EXHIBIT H
GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT CERTIFICATION

I hereby certify that I am a principle and duly authorized representative of _____, (“Contractor”), whose address is _____, _____.

Contractor hereby agrees to comply with all applicable provisions and requirements of the Georgia Security and Immigration Compliance Act of 2006 (the “Act”), as codified in O.C.G.A. Sections 13-10-90 and 13-10-91 and regulated in Chapter 300-10-1 of the Rules and Regulations of the State of Georgia, "Public Employers, Their Contractors and Subcontractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program," accessed at <http://www.dol.state.ga.us>, as further set forth below.

Contractor agrees to verify the work eligibility of all of newly hired employees through the U.S. Department of Homeland Security’s *Employment Eligibility Verification (EEV) / Basic Pilot Program*, accessed through the Internet at <https://www.vis-dhs.com/EmployerRegistration>, in accordance with the provisions and timeline found in O.C.G.A. 13-10-91 and Rule 300-10-1-.02 of the Rules and Regulations of the State of Georgia. As of July 1, 2007, the verification requirement applies to contractors and subcontractors with five-hundred (500) or more employees.

Contractor understands that the contractor and subcontractor requirements of the Act apply to contracts for, or in connection with, the physical performance of services within the State of Georgia.

Contractor understands that the following contract compliance dates set forth in the Act apply to the Contract Agreement, pursuant to O.C.G.A. 13-10-91:

On or after July 1, 2007, to public employers, contractors, or subcontractors of 500 or more employees;

On or after July 1, 2008, to public employers, contractors, or subcontractors of 100 or more employees; and

On or after July 1, 2009, to all other public employers, their contractors, and subcontractors.

To document the date on which the Act is applicable to Contractor, and to document Contractor’s compliance with the Act, the undersigned agrees to initial one of the three (3) lines below indicating the employee number category applicable to Contractor, and to submit the indicated affidavit with the Contract Agreement if the Contractor has 500 or more employees.

Contractor has:

- _____ 500 or more employees [Contractor must register with the *Employment/Eligibility Verification/Basic Pilot Program* and begin work eligibility verification on July 1, 2007];
- _____ 100-499 employees [Contractor must register with the *Employment Eligibility Verification/Basic Pilot Program* and begin work eligibility verification by July 1, 2008]; or
- _____ 99 or fewer employees [Contractor must begin work eligibility verification by July 1, 2009].

Contractor further agrees to require O.C.G.A. Sections 13-10-90 and 13-10-91 compliance in all written agreements with any subcontractor employed by Contractor to provide services connected with the Contract Agreement, as required pursuant to O.C.G.A. 13-10-91.

Contractor agrees to obtain from any subcontractor that is employed by Contractor to provide services connected with the Contract Agreement, the subcontractor's indication of the employee number category applicable to the subcontractor.

Contractor agrees to secure from any subcontractor engaged to perform services under this Contract an executed "Subcontractor Affidavit," as required pursuant to O.C.G.A. 13-10-91 and Rule 300-10-1-.08 of the Rules and Regulations of the State of Georgia, which rule can be accessed at <http://www.dol.state.ga.us>.

Contractor agrees to maintain all records of the subcontractor's compliance with O.C.G.A. Sections 13-10-90 and 13-10-91 and Chapter 300-10-1 of the Rules and Regulations of the State of Georgia.

CONTRACTOR:

Date: _____ Signature: _____

Title: _____

STUDY AREA MAP