



CITY OF MILTON REQUEST FOR PROPOSALS

(THIS IS NOT AN ORDER)

RFP Number: 17-PW05	RFP Title: City Engineer Services
Due Date and Time: Local Time: May 2, 2017	Number of Pages: 48

ISSUING DEPARTMENT INFORMATION	
Issue Date: April 13, 2017	
City of Milton Public Works Department 2006 Heritage Walk Milton, Ga. 30004	Phone: 678-242-2500 Fax: 678-242-2499 Website: www.cityofmiltonga.us

INSTRUCTIONS TO CONSULTANTS	
Return Proposal to: <b style="color: red;">NOTE NEW LOCATION OF CITY HALL City of Milton Attn: Honor Motes, Purchasing Office 2006 Heritage Walk Milton, Ga. 30004	Mark Face of Envelope/Package: RFP Number: 17-PW05 Name of Company or Firm Special Instructions: Deadline for Written Questions <b style="color: red;">April 21, 2017 Email questions to Honor Motes at honor.motes@cityofmiltonga.us
IMPORTANT: SEE STANDARD TERMS AND CONDITIONS	

CONSULTANTS MUST COMPLETE THE FOLLOWING	
Consultant Name/Address:	Authorized Consultant Signatory: (Please print name and sign in ink)
Consultant Phone Number:	Consultant FAX Number:
Consultant Federal I.D. Number:	Consultant E-mail Address:
CONSULTANTS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE	

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CONSULTANT'S RFP CHECKLIST

The 10 Most Critical Things to Keep in Mind When Responding to an RFP for the City of Milton

1. _____ Read the entire document. Note critical items such as: mandatory requirements; supplies/services required; submittal dates; number of copies required for submittal; funding amount and source; contract requirements (i.e., contract performance security, insurance requirements, performance and/or reporting requirements, etc.).
2. _____ Note the procurement officer's name, address, phone numbers and e-mail address. This is the only person you are allowed to communicate with regarding the RFP and is an excellent source of information for any questions you may have.
3. _____ Attend the pre-Proposals conference if one is offered. These conferences provide an opportunity to ask clarifying questions, obtain a better understanding of the project, or to notify the City of any ambiguities, inconsistencies, or errors in the RFP.
4. _____ Take advantage of the "question and answer" period. Submit your questions to the procurement officer by the due date listed in the Schedule of Events and view the answers given in the formal "addenda" issued for the RFP. All addenda issued for an RFP are posted on the DOAS website at http://ssl.doas.state.ga.us/PRSapp/PR_index.jsp and on the City's website at <http://www.cityofmiltonga.us> will include all questions asked and answered concerning the RFP.
5. _____ Follow the format required in the RFP when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
6. _____ Provide complete answers/descriptions. Read and answer all questions and requirements. Don't assume the City or evaluation committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the City. The submittals are evaluated based solely on the information and materials provided in your response.
7. _____ Use the forms provided, i.e., cover page, certification forms, etc.
8. _____ Check the website for RFP addenda. Before submitting your response, check the DOAS website at http://ssl.doas.state.ga.us/PRSapp/PR_index.jsp and the City website at <http://www.cityofmiltonga.us> to see whether any addenda were issued for the RFP. If so, you must submit a signed cover sheet for each addendum issued along with your RFP response.
9. _____ Review and read the RFP document again to make sure that you have addressed all requirements. Your original response and the requested copies must be identical and be complete. The copies are provided to the evaluation committee members and will be used to score your response.
10. _____ Submit your response on time. Note all the dates and times listed in the Schedule of Events and within the document, and be sure to submit all required items on time. Late submittal responses are never accepted.

This checklist is provided for assistance only and should not be submitted with Consultant response.



**CITY OF MILTON DISCLOSURE FORM
MUST BE RETURNED WITH PROPOSALS**

This form is for disclosure of campaign contributions and family member relations with City of Milton officials/employees.

Please complete this form and return as part of your RFP package when it is submitted.

Name of Consultant _____

Name and the official position of the Milton Official to whom the campaign contribution was made (Please use a separate form for each official to whom a contribution has been made in the past two (2) years.)

List the dollar amount/value and description of each campaign contribution made over the past two (2) years by the Applicant/Opponent to the named Milton Official.

Amount/Value

Description

Please list any family member that is currently (or has been employed within the last 12 months) by the City of Milton and your relation:



**RFP# 17-PW05
PROPOSAL LETTER
(Bidder to sign and return with proposal)**

We propose to furnish and deliver any and all of the deliverables and services named in the Request for Proposal (RFP) – **City Engineer Services**

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 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 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.

PROPOSAL SIGNATURE AND CERTIFICATION

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 for my company. I further certify that the provisions of the Official Code of Georgia Annotated, Sections 45-10-20 et. seq. have not been violated and will not be violated in any respect.

Authorized Signature_____Date_____

Print/Type Name_____

Print/Type Company Name Here_____

MUST BE RETURNED WITH PROPOSALS**CONTRACTOR AFFIDAVIT AND AGREEMENT****STATE OF GEORGIA****CITY OF MILTON**

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 engaged in the physical performance of services on behalf of the City of Milton has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

eVerify Number

Date of Authorization

Name of Contractor

City Engineer Services

Name of Project

City of Milton

Name of Public Employer

I hereby declare under penalty of perjury
that the foregoing is true and correct.
Executed on _____, __, 201__ in _____(city),
_____(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer
or Agent

SUBSCRIBED AND SWORN BEFORE ME ON
THIS THE _____ DAY OF _____, 201__.

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:

SCHEDULE OF EVENTS

Task	Date
Issue RFP	April 13, 2017
Deadline for Questions	April 21, 2017 by 5:00 p.m. EST
Answers Posted by the City (Addendum)	On or about, April 25, 2017
Proposals Due	By 2:00 p.m. EST on May 2, 2017
Interview Firms (if necessary)	Week of May 8 (proposed)
Award Contract	June 5, 2017 (proposed)

NOTE: PLEASE CHECK THE CITY WEBSITE (<http://www.cityofmiltonga.us>) OR THE DOAS WEBSITE (http://ssl.doas.state.ga.us/PRSapp/PR_index.jsp) FOR ADDENDA AND SCHEDULE UPDATES.

SECTION 1: PROJECT OVERVIEW AND INSTRUCTIONS

1.0 BACKGROUND AND STATEMENT OF INTENT

The City of Milton is requesting proposals from qualified consultants to provide City Engineering and as-needed plan review services as may be determined by the City. The selected firm will work within the Public Works Department to provide the following minimum services:

- a. MS4 program management,
- b. Hydrology and stormwater plan review,
- c. Oversight of land development inspection division,
- d. Preliminary and final plat review,
- e. Flood plain management,
- f. Erosion and sediment control review,
- g. Assistance with technical plan review and permit issuance,
- h. Review and consultation on various engineering related issues throughout the city.

The City is also asking to include proposals for comprehensive plan review services which would include the following plan review services:

- a. Planning and zoning
- b. Transportation
- c. Stormwater
- d. Hydrology
- e. Erosion and sediment control
- f. Tree protection

The plan review, when requested, will be performed in close coordination with the Community Development Department.

The City intends to select a single consultant team that demonstrates the level of expertise to provide these services. The selected firm will be expected to provide services in accordance with the project schedule established by the City of Milton.

1.1 SINGLE POINT OF CONTACT

From the date this Request for Proposals (RFP) is issued until a consultant is selected, consultants are not allowed to communicate with any City staff or elected officials regarding this procurement, except at the direction of Honor Motes. Any unauthorized contact may disqualify the consultant from further

consideration. Contact information for the single point of contact is as follows:

NOTE THE NEW LOCATION OF CITY HALL

Procurement Office: Honor Motes

Address: 2006 Heritage Walk, Milton, GA 30004

Telephone Number: 678-242-2507

E-mail Address: honor.motes@cityofmiltonga.us

1.2 REQUIRED REVIEW

A. Review RFP.

Consultants should carefully review the instructions; mandatory requirements, specifications, standard terms and conditions, and standard contract set out in this RFP and promptly notify the procurement office identified above via e-mail of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover upon examination of this RFP.

B. Form of Questions.

Consultants with questions or requiring clarification or interpretation of any section within this RFP must submit their questions in writing via email to the procurement office referenced above on or before **5 PM (EST) on April 21, 2017**. Each question must provide clear reference to the section, page, and item in question. Questions received after the deadline may not be considered.

C. City's Answers.

The City will provide an official written answer to all questions on or about **April 25, 2017**. The City's response will be by formal written addendum. Any other form of interpretation, correction, or change to this RFP will not be binding upon the City. Any formal written addendum will be posted alongside the posting of the RFP at **<http://www.cityofmiltonga.us>** or **http://ssl.doas.state.ga.us/PRsapp/PR_index.jsp**. Consultants must sign and return any addendum with their RFP response.

D. Standard Contract.

By submitting a response to this RFP, consultant agrees to acceptance of the City's standard contract. Much of the language included in the standard contract reflects requirements of state law. Requests for exceptions to the standard contract terms, or any added provisions must be submitted to the procurement office referenced above by the date for receipt of written/e-mailed questions or with the

consultant's RFP response and must be accompanied by an explanation of why the exception is being taken and what specific effect it will have on the consultant's ability to respond to the RFP or perform the contract. The City reserves the right to address non-material, minor, insubstantial requests for exceptions with the highest scoring consultant during contract negotiation. Any material, substantive, important exceptions requested and granted to the standard terms and conditions and standard contract language will be addressed in any formal written addendum issued for this RFP and will apply to all consultants submitting a response to this RFP.

E. Mandatory Requirements.

To be eligible for consideration, a consultant must meet the intent of all mandatory requirements. The City will determine whether a consultant's RFP response complies with the intent of the requirements. RFP responses that do not meet the full intent of all requirements listed in this RFP may be subject to point reductions during the evaluation process or may be deemed non-responsive.

1.3 TERM OF THE AGREEMENT

The term of this Agreement shall commence on or about June 6, 2017. It is the intent of the City to hire the City Engineer's position in-house at some point during the term of the contract. However, until that time the terms of the agreement shall automatically renew, in accordance with the contract documents, each year for an initial term of five (5) years. Upon mutual agreement of both parties the Agreement may be extended on an annual basis for an additional five (5) years.

The City may elect to continue the plan review services if the City Engineer's position is filled.

1.4 SUBMITTING PROPOSALS

Consultants must organize their Proposals into sections that follow the following format. For the purposes of the RFP, the term "company" shall refer to the prime respondent of this RFP, or in other words, the company with whom the City will contract.

The term "consultant" shall refer to any and all consultants with whom the prime respondent will be including on the project team. The SOQ shall clearly delineate any experience, background, etc. between the prime "company" and "consultants".

A. Submittal Requirements.

Proposals shall include the following:

1. City of Milton Request for Proposals cover page (information entered and signed: first page of this document)
2. City of Milton Disclosure form (signed)
3. City of Milton Proposal letter (information entered)
4. City of Milton Contractor Affidavit and Agreement (eVerify)
5. Single page cover letter with introductory remarks and Proposals
6. Proposals Shall be:
 - a. No more than ten (10) single sided pages (five pages if double sided); cover, cover letter, table of contents, tabs, appendix, required forms do not count toward the page limit
 - b. Minimum of 11 point font
 - c. Stapled or spiral bound, no binders

Proposals shall contain:

- a. **Company Profile:** Name, brief profile and year established. Include information for any consultants that will be used as well. List address where the work for these services will be performed.
- b. **Project Team:** Information about the makeup of the team, who would be assigned to the project including the plan review team. Include resume of the proposed individual(s) assigned as the City Engineer. If more than one person is identified in the proposal to serve the required functions then a project lead should be indicated.

For the plan review component the consultant shall identify the proposed process by which plans would be received, processed and coordinated with the City as well as a proposed fee structure

- c. **Experience and References:** Provide a summary of at least three (3) projects with services of a similar nature within the last ten (10) years and include any innovative features of projects or delivery methods. Include project references with names, phone numbers and team members involved.

5. Appendix including applicable Addenda Acknowledgement Forms
6. Pricing (See Section 5)

B. Failure to Comply with Instructions.

Consultants failing to comply with these instructions may be subject to point deductions. The City may also choose to not evaluate, may deem non-responsive, and/or may disqualify from further consideration any Proposals that do not follow this RFP format, are

difficult to understand, are difficult to read, or are missing any requested information.

C. Copies Required and Deadline for Receipt of Proposals.

NOTE THE NEW LOCATION OF CITY HALL

One original and five (5) copies of each submittal (plus a CD) should be provided to the City. **Proposals must be received at the receptionist's desk at 2006 Heritage Walk, Milton, GA 30004 prior to 2:00 PM, local time, May 2, 2017. Emailed responses to Requests for Proposals are not acceptable.** Proposals will be opened at approximately 2:05 pm and names of consultants will be announced.

A. Digital copy requirements:

- a. Mark all CD's of Flash Drives with offeror's name and RFP number and title
- b. All digital files must be in either (unless otherwise specified within this document):
 - i. Microsoft Office file format or
 - ii. Portable Document Format (PDF)
- c. Use caution in creating the electronic files. If the City is unable to open files due to data-corruption, password or encryption error, etc, the offeror's proposal may be considered incomplete.
- d. **NOTE:** All digital copies must include exactly the same information as provided in the hard copy "Original".

D. Late Proposals.

Regardless of cause, late Proposals will not be accepted and will automatically be disqualified from further consideration. It shall be the consultant's sole risk to assure delivery to the receptionist's desk at the designated office by the designated time. Late Proposals will not be opened and may be returned to the consultant at the expense of the consultant or destroyed if requested.

1.5 CONSULTANT'S CERTIFICATION

A. Understanding of Specifications and Requirements.

By submitting a response to this RFP, consultant agrees to an understanding of and compliance with the specifications and requirements described in this RFP.

1.6 COST OF PREPARING PROPOSALS

A. City Not Responsible for Preparation Costs.

The costs for developing and delivering responses to this RFP and any subsequent presentations of the qualification as requested by the City are entirely the responsibility of the consultant. The City is not liable for any expense incurred by the consultant in the preparation and presentation of their Proposals.

- B. All Timely Submitted Materials Become City Property.
All materials submitted in response to this RFP become the property of the City of Milton and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the City and consultant resulting from this RFP process.

SECTION 2: RFP STANDARD INFORMATION

2.0 AUTHORITY

This RFP is issued under the authority of the City of Milton. The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. No other evaluation criteria, other than as outlined in the RFP, will be used.

2.1 CONSULTANT COMPETITION

The City encourages free and open competition among consultants. Whenever possible, the City will design specifications, proposal requests, and conditions to accomplish this objective, consistent with the necessity to satisfy the City's need to procure technically sound, cost-effective services and supplies.

2.2 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

A. Public Information.

All information received in response to this RFP, including copyrighted material, is deemed public information and will be made available for public viewing and copying after the time for receipt of Proposals has passed, and the award has been made, with the following four exceptions: (1) bona fide trade secrets meeting confidentiality requirements that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the City of Milton; (3) any company financial information requested by the City of Milton to determine vendor responsibility, unless prior written consent has been given by the consultant; and (4) other constitutional protections.

B. Procurement Officer Review of Proposals.

Upon opening the submittals received in response to this RFP, the procurement office will review the Proposals and separate out any information that meets the referenced exceptions in Section 2.2(A) above, providing the following conditions have been met:

1. Confidential information is clearly marked and separated from the rest of the submittal.
2. An affidavit from a consultant's legal counsel attesting to and explaining the validity of the trade secret claim is attached to each submittal containing trade secrets. Please contact Honor Motes for additional information.

Information separated out under this process will be available for review only by the procurement office, the evaluation committee members, and limited other designees. Consultants must be prepared

to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a “right to know” (open records) request from another party.

2.3 CLASSIFICATION AND EVALUATION OF PROPOSALS

A. Initial Classification of Proposals as Responsive or Nonresponsive.

Proposals may be found nonresponsive at any time during the evaluation process or contract negotiation, if any of the required information is not provided; the submitted price is found to be excessive or inadequate as measured by criteria stated in the RFP; or the qualification is not within the specifications described and required in the RFP. If a qualification is found to be nonresponsive, it will not be considered further.

B. Determination of Responsibility.

The procurement office will determine if a consultant has met the standards of responsibility. Such a determination may be made at any time during the evaluation process and through contract negotiation if information surfaces that would result in a determination of nonresponsive.

C. Evaluation of Proposals.

The evaluation committee will evaluate the remaining Proposals and recommend whether to award the contract to the highest scoring consultant or, if necessary, to seek discussion/negotiation in order to determine the highest scoring consultant. All responsive Proposals will be evaluated based on stated evaluation criteria. In scoring against stated criteria, the City may consider such factors as accepted industry standards and a comparative evaluation of all other qualified RFP responses. These scores will be used to determine the most advantageous offering to the City.

D. Completeness of Proposals.

Selection and award will be based on the consultant's Proposals and other items outlined in this RFP. Submitted responses may not include references to information located elsewhere, such as Internet websites or libraries, unless specifically requested. Information or materials presented by consultants outside the formal response or subsequent discussion/negotiation, if requested, will not be considered, will have no bearing on any award, and may result in the consultant being disqualified from further consideration.

E. Opportunity for Discussion/Negotiation and/or Oral Presentation/Product Demonstration.

After receipt of all Proposals and prior to the determination of the award, the City may initiate discussions with one or more consultants should clarification or negotiation be necessary. Consultants may also be required to make an oral presentation and/or product demonstration to clarify their RFP response or to further define their offer. In either case, consultants should be prepared to send qualified personnel to Milton, Georgia to discuss technical and contractual aspects of the submittal. Oral presentations and product demonstrations, if requested, shall be at the consultant's expense.

F. Best and Final Offer.

The "Best and Final Offer" is an option available to the City under the RFP process which permits the City to request a "best and final offer" from one or more offerors if additional information is required to make a final decision. Offerors may be contacted asking that they submit their "best and final offer," which must include any and all discussed and/or negotiated changes. The City reserves the right to request a "best and final offer" for this RFP, if any, based on price/cost alone.

G. Evaluation Committee Recommendation for Contract Award.

The evaluation committee will provide a written recommendation for contract award.

H. Request for Documents Notice.

Upon concurrence with the evaluation committee's recommendation for contract award, the procurement officer may issue a "Request for Documents Notice" to the highest scoring consultant to obtain the required insurance documents, contract performance security, and any other necessary documents. Receipt of the "Request for Documents Notice" does not constitute a contract and no work may begin until a contract signed by all parties is in place.

I. Contract Negotiation.

The procurement officer and/or city department representatives may begin contract negotiation with the responsive and responsible consultant whose submittal achieves the highest score and is, therefore, the most advantageous to the City. If contract negotiation is unsuccessful or the highest scoring consultant fails to provide necessary documents or information in a timely manner, or fails to negotiate in good faith, the City may terminate negotiations and begin

negotiations with the next highest scoring consultant.

J. Contract Award.

Contract award, if any, will be made to the highest scoring consultant who provides all required documents and successfully completes contract negotiation.

2.4 RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Milton to award and execute a contract. Upon a determination such actions would be in its best interest, the City, in its sole discretion, reserves the right to:

1. Modify, cancel or terminate this RFP,
2. Reject any or all Proposals received in response to this RFP,
3. Select a consultant without holding interviews,
4. Waive any undesirable, inconsequential, or inconsistent provisions of this RFP which would not have significant impact on any submittal,
5. To request further documentation or information, and to discuss a RFP submittal for any purpose in order to answer questions or to provide clarification,
6. Not award if it is in the best interest of the City not to proceed with contract execution; or
7. If awarded, terminate any contract in accordance with the terms and conditions of the contract if the City determines adequate funds are not available.

SECTION 3: SCOPE OF PROJECT

3.0 GENERAL

The City of Milton is requesting proposals from qualified consultants to provide City Engineering and as needed plan review services as may be determined by the City. The selected firm will work within the Public Works Department to provide the services requested herein. This work may require work outside of normal business hours in support of public works operations, Fulton County SWC District meeting every other month, periodic city council meetings and community meetings.

The City Engineer is expected to be onsite full time to answer questions, coordinate with staff, coordinate the activities of the inspection division and coordinate other activities as may be necessary.

The City will provide space, materials, i.e. general office supplies, office computer, copy machines, printers, etc... and general administrative support for city functions.

Consultant shall provide cell phone and data service.

3.1 SCOPE OF SERVICES

The City of Milton is requesting proposals from qualified consultants to provide City Engineering and Plan Review services on an as needed basis as determined by the City. The selected firm will work within the Public Works Department to provide the following minimum services:

- a. MS4 program management,
- b. Hydrology and stormwater plan review,
- c. Oversight of land development inspection division,
- d. Preliminary and final plat review,
- e. Flood plain management,
- f. Erosion and sediment control review,
- g. Review and consultation on various engineering related issues throughout the city.

The City is also asking to include proposals for comprehensive plan review services which would include, in addition to the hydrology and stormwater review, the following plan review services:

- a. Planning and zoning

- b. Transportation
- c. Stormwater
- d. Hydrology
- e. Erosion and sediment control
- f. Tree protection

The plan review, when requested, will be performed in close coordination with the Community Development Department.

The City intends to select a single consultant team that demonstrates the level of expertise to provide these services. The selected firm will be expected to provide services in accordance with the project schedule established by the City of Milton.

SECTION 4: CONSULTANT PROPOSALS

4.0 CITY'S RIGHT TO INVESTIGATE

The City may make such investigations as deemed necessary to determine the ability of the consultant to provide the supplies and/or perform the services specified.

4.1 CONSULTANT INFORMATIONAL REQUIREMENTS

Firms interested in providing the services described in this RFP should be able to demonstrate experience in the areas described in Section 3.

SECTION 5: EVALUATION CRITERIA

5.0 EVALUATION CRITERIA

The evaluation committee will review and evaluate the Proposals according to the following criteria:

- A selection team for the City will initially evaluate and score all submittals received.
- Proposals not meeting the minimum requirements and those who are non-responsive will not be considered.
- The City intends on selecting the firm that provides the best value for the City.

Submittal Evaluation Criteria

Company and Consultant	10 pts
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- Proximity and availability of key personnel
- Technology resources

General engineering and technical experience	30 pts
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Project Team Experience	30 pts
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- Quality and experience of company and consultants
- Ability to meet schedules

Plan Review Capabilities	20 pts
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- Review time
- Previous Experience
- Quality of staff

Cost of Services	10 pts
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Consultants can use their own form for the cost of services include an hourly rate for the city engineering services.

For plan review services include a typical rate structure for plan review services.

SECTION 6: STANDARD CONTRACT INFORMATION

6.0 STANDARD CONTRACT

The City's standard contract is attached to this document as Appendix A. Consultant should notify the City of any terms within the standard contract that preclude them from responding to the RFP. This notification must be made by the deadline for receipt of written/e-mailed questions or with the consultant's RFP response. Any requests for material, substantive, important exceptions to the standard contract will be addressed in any formal written addendum issued by the procurement officer in charge of the solicitation. The City reserves the right to address any non-material, minor, insubstantial exceptions to the standard contract with the highest scoring consultant at the time of contract negotiation.

6.1 ADDITIONAL CONTRACT PROVISIONS AND TERMS

This RFP and any addenda, the consultant's RFP response, including any amendments, a best and final offer, any clarification question responses, and any negotiations shall be included in any resulting contract. The City's standard contract, attached as Appendix A, contains the contract terms and conditions which will form the basis of any contract negotiated between the City and the highest scoring consultant. The contract language contained in Appendix A does not define the total extent of the contract language that may be negotiated. In the event of a dispute as to the duties and responsibilities of the parties under this contract, the contract, along with any attachments prepared by the City, will govern in the same order of precedence as listed in the contract.

6.2 SUBCONSULTANT

The highest scoring consultant will be the prime consultant if a contract is awarded and shall be responsible, in total, for all work of any sub-consultants. All sub-consultants, if any, must be listed in the Proposals. The City reserves the right to approve all sub-consultants. The Consultant shall be responsible to the City for the acts and omissions of all sub-consultants or agents and of persons directly or indirectly employed by such sub-consultants, and for the acts and omissions of persons employed directly by the Consultant. Further, nothing contained within this document or any contract documents created as a result of any contract awards derived from this RFP shall create any contractual relationships between any subcontractor and the City.

6.3 GENERAL INSURANCE REQUIREMENTS

See sample contract.

6.4 COMPLIANCE WITH WORKERS' COMPENSATION ACT

The Consultant is required to supply the City of Milton with proof of compliance with the Workers' Compensation Act while performing work for the City. Neither the Consultant nor its employees are employees of the City. The proof of

insurance/exemption must be received by the City of Milton within 10 working days of the Request for Documents Notice and must be kept current for the entire term of the contract.

CONTRACTS WILL NOT BE ISSUED TO VENDORS WHO FAIL TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME.

6.5 COMPLIANCE WITH LAWS

The Consultant must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or sub-consulting by the Consultant subjects sub-consultants to the same provision. The Consultant agrees that the hiring of persons to perform the contract will be made on the basis of merit and Proposals and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

6.6 CONTRACT TERMINATION

See sample contract.



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20____ (the "Effective Date"), by and between the **CITY OF MILTON, GEORGIA**, a municipal corporation of the State of Georgia, acting by and through its governing authority, the Mayor and City Council (hereinafter referred to as the "City"), and _____, a _____, (herein after referred to as the "Consultant"), collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, City desires to retain Consultant to provide certain services in the completion of a Project (defined below); and

WHEREAS, City finds that specialized knowledge, skills, and training are necessary to perform the Work (defined below) contemplated under this Agreement; and

WHEREAS, Consultant has represented that it is qualified by training and experience to perform the Work; and

WHEREAS, Consultant desires to perform the Work as set forth in this Agreement under the terms and conditions provided in this Agreement; and

WHEREAS, the public interest will be served by this Agreement; and

WHEREAS, Consultant has familiarized itself with the nature and extent of the Agreement, the Project, and the Work, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of Work.

NOW, THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein, and other good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties do mutually agree as follows:

I. SCOPE OF SERVICES AND TERMINATION DATE

A. Agreement. The Agreement shall consist of this Professional Services Agreement and each of the Exhibits hereto, which are incorporated herein by reference, including:

Exhibit "A" – City Solicitation Documents

Exhibit "B" – Consultant Response/Proposal

Exhibit "C" – Scope of Work
Exhibit "D" – Contractor Affidavit
Exhibit "E" – Subcontractor Affidavit
Exhibit "F" – Key Personnel

B. Project Description. The "Project" at issue in this Agreement is generally described as:

C. The Work. The Work to be completed under this Agreement (the "Work") includes, but shall not be limited to, the work described in the Scope of Work provided in **Exhibit "C"**, attached hereto and incorporated herein by reference. Unless otherwise stated in **Exhibit "C"**, the Work includes all material, labor, insurance, tools, equipment, machinery, water, heat, utilities, transportation, facilities, services and any other miscellaneous items and work necessary to complete the Work. Some details necessary for proper execution and completion of the Work may not be specifically described in the Scope of Work, but they are a requirement of the Work if they are a usual and customary component of the contemplated services or are otherwise necessary for proper completion of the Work.

D. Schedule, Completion Date, and Term of Agreement. Consultant understands that time is of the essence of this Agreement and warrants and represents that it will perform the Work in a prompt and timely manner, which shall not impose delays on the progress of the Work. The term of this Agreement ("Term") shall commence as of the Effective Date, and the Work shall be completed, and the Agreement shall terminate, on or before _____ (provided that certain obligations will survive termination/expiration of this Agreement). If the Term of this Agreement is longer than one year, the Parties agree that this Agreement, as required by O.C.G.A. § 36-60-13, shall terminate absolutely and without further obligation on the part of City on December 31 each calendar year of the Term, and further, that this Agreement shall automatically renew on January 1 of each subsequent calendar year absent City's provision of written notice of non-renewal to Consultant at least five (5) days prior to the end of the then current calendar year. Title to any supplies, materials, equipment, or other personal property shall remain in Consultant until fully paid for by City.

II. WORK CHANGES

A. Change Order Defined. A "Change Order" means a written modification of the Agreement, signed by representatives of City and Consultant with appropriate authorization.

B. Right to Order Changes. City reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written Change Orders and executed by Consultant and City. Such Change Orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the Parties cannot reach an agreement on the terms for performing the changed work within a reasonable time

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to avoid delay or other unfavorable impacts as determined by City in its sole discretion, City shall have the right to determine reasonable terms, and Consultant shall proceed with the changed work.

B. Change Order Requirement. Any work added to the scope of this Agreement by a Change Order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized, unless contained in a written Change Order duly executed on behalf of City and Consultant.

C. Authority to Execute Change Order. The City Manager has authority to execute, without further action of the Mayor or City Council, any number of Change Orders so long as their total effect does not materially alter the terms of this Agreement or materially increase the Maximum Contract Price, as set forth in Section III(B) below. Any such Change Orders materially altering the terms of this Agreement, or any Change Order affecting the price where the Maximum Contract Price (as amended) is in excess of \$50,000, must be approved by resolution of the Mayor and City Council. Amendments shall not result in a variance in price exceeding ten percent of the original contract amount.

III. COMPENSATION AND METHOD OF PAYMENT

A. Payment Terms. City agrees to pay Consultant for the Work performed and costs incurred by Consultant upon certification by City that the Work was actually performed and costs actually incurred in accordance with the Agreement. Compensation for Work performed and, if applicable, reimbursement for costs incurred shall be paid to Consultant upon City's receipt and approval of invoices, setting forth in detail the services performed and costs incurred, along with all supporting documents requested by City to process the invoice. Invoices shall be submitted on a monthly basis, and such invoices shall reflect costs incurred versus costs budgeted. Any material deviations in tests or inspections performed, or times or locations required to complete such tests or inspections, and like deviations from the Work described in this Agreement shall be clearly communicated to City *before charges are incurred* and shall be handled through Change Orders as described in Section II above. City shall pay Consultant within thirty (30) days after approval of the invoice by City staff.

B. Maximum Contract Price. The total amount paid under this Agreement as compensation for Work performed and reimbursement for costs incurred shall not, in any case, exceed \$_____ (the "Maximum Contract Price"), except as outlined in Section II(C) above, and Consultant represents that this amount is sufficient to perform all of the Work set forth in and contemplated by this Agreement. The compensation for Work performed shall be based upon _____.

C. Reimbursement for Costs. The Maximum Contract Price set forth in Section III(B) above includes all costs, direct and indirect, needed to perform the Work and complete the Project, and reimbursement for costs incurred shall be limited as follows:

- ☐ There shall be no reimbursement for costs.

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□ Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail, and photocopying charges and time shall be billed at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be billed at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service. In no event shall the total reimbursement for costs incurred during a particular month exceed _____ percent of the total amount due for Work for that particular month.

IV. COVENANTS OF CONSULTANT

A. Expertise of Consultant; Licenses, Certification and Permits. Consultant accepts the relationship of trust and confidence established between it and City, recognizing that City's intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and professional skill and judgment to provide the Work in pursuit of the timely and competent completion of the Work undertaken by Consultant under this Agreement. Consultant shall employ only persons duly qualified in the appropriate area of expertise to perform the Work described in this Agreement.

Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Consultant by any and all national, state, regional, county, or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Work contracted for under this Agreement. Further, Consultant agrees that it will perform all Work in accordance with the standard of care and quality ordinarily expected of competent professionals and in compliance with all federal, state, and local laws, regulations, codes, ordinances, or orders applicable to the Project, including, but not limited to, any applicable records retention requirements and Georgia's Open Records Act (O.C.G.A. § 50-18-71, *et seq.*). Any additional work or costs incurred as a result of error and/or omission by Consultant as a result of not meeting the applicable standard of care or quality will be provided by Consultant at no additional cost to City. This provision shall survive termination of this Agreement.

B. Budgetary Limitations. Consultant agrees and acknowledges that budgetary limitations are not a justification for breach of sound principals of Consultant's profession and industry. Consultant shall take no calculated risk in the performance of the Work. Specifically, Consultant agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principles of Consultant's profession and industry, Consultant will give written notice immediately to City.

C. City's Reliance on the Work. Consultant acknowledges and agrees that City does not undertake to approve or pass upon matters of expertise of Consultant and that, therefore, City bears no responsibility for Consultant's Work performed under this Agreement. Consultant acknowledges and agrees that the acceptance of Work by City is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. City will not, and need not, inquire into adequacy, fitness, suitability or correctness of Consultant's performance. Consultant

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further agrees that no approval of designs, plans, specifications or other work product by any person, body or agency shall relieve Consultant of the responsibility for adequacy, fitness, suitability, and correctness of Consultant's Work under professional and industry standards, or for performing services under this Agreement in accordance with sound and accepted professional and industry principles.

D. Consultant's Reliance on Submissions by City. Consultant must have timely information and input from City in order to perform the Work required under this Agreement. Consultant is entitled to rely upon information provided by City, but Consultant shall provide immediate written notice to City if Consultant knows or reasonably should know that any information provided by City is erroneous, inconsistent, or otherwise problematic.

E. Consultant's Representative. _____ shall be authorized to act on Consultant's behalf with respect to the Work as Consultant's designated representative, provided that this designation shall not relieve either Party of any written notice requirements set forth elsewhere in this Agreement.

F. Assignment of Agreement. Consultant covenants and agrees not to assign or transfer any interest in, or delegate any duties of this Agreement, without the prior express written consent of City. As to any approved subcontractors, Consultant shall be solely responsible for reimbursing them, and City shall have no obligation to them.

G. Responsibility of Consultant and Indemnification of City. Consultant covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. Consultant shall bear all losses and damages directly or indirectly resulting to it and/or City on account of the performance or character of the Work rendered pursuant to this Agreement. Consultant shall defend, indemnify and hold harmless City and City's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers (individually an "Indemnified Party" and collectively "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including but not limited to attorney's fees and costs of defense ("Liabilities"), which may arise from or be the result of an alleged willful, negligent or tortious act or omission arising out of the Work, performance of contracted services, or operations by Consultant, any subcontractor, anyone directly or indirectly employed by Consultant or subcontractor or anyone for whose acts or omissions Consultant or subcontractor may be liable, regardless of whether or not the act or omission is caused in part by a party indemnified hereunder; provided that this indemnity obligation shall only apply to the extent Liabilities are caused by or result from the negligence, recklessness, or intentionally wrongful conduct of the Consultant or other persons employed or utilized by the Consultant in the performance of this Agreement. This indemnity obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision.

In any and all claims against an Indemnified Party, by any employee of Consultant, its subcontractor, anyone directly or indirectly employed by Consultant or

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subcontractor or anyone for whose acts Consultant or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the Indemnified Party(ies) shall survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this Agreement.

H. Independent Contractor. Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as the agent or employee of City. Nothing in this Agreement shall be construed to make Consultant or any of its employees, servants, or subcontractors, an employee, servant or agent of City for any purpose. Consultant agrees to be solely responsible for its own matters relating to the time and place the Work is performed and the method used to perform such Work; the instrumentalities, tools, supplies and/or materials necessary to complete the Work; hiring of consultants, agents or employees to complete the Work; and the payment of employees, including benefits and compliance with Social Security, withholding and all other regulations governing such matters. Consultant agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement. There shall be no contractual relationship between any subcontractor or supplier and City by virtue of this Agreement with Consultant. Any provisions of this Agreement that may appear to give City the right to direct Consultant as to the details of the services to be performed by Consultant or to exercise a measure of control over such services will be deemed to mean that Consultant shall follow the directions of City with regard to the results of such services only. It is further understood that this Agreement is not exclusive, and City may hire additional entities to perform the Work related to this Agreement.

Inasmuch as City and Consultant are independent of each other, 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 City's agent for any purpose to any party or to allow any employee of Consultant to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. Consultant shall assume full liability for any contracts or agreements Consultant enters into on behalf of City without the express knowledge and prior written consent of City.

I. Insurance.

- (1) **Requirements:** Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise

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from or in connection with the performance of the Work by Consultant, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.

- (2) Minimum Limits of Insurance: Consultant shall maintain the following insurance policies with coverage and limits no less than:
- (a) Commercial General Liability coverage of at least \$1,000,000 (one million dollars) combined single limit per occurrence and \$2,000,000 (two million dollars) aggregate for comprehensive coverage including for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
 - (b) Commercial Automobile Liability (owned, non-owned, hired) coverage of at least \$1,000,000 (one million dollars) combined single limit per occurrence for comprehensive coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
 - (c) Professional Liability of at least \$1,000,000 (one million dollars) limit for claims arising out of professional services and caused by Consultant's errors, omissions, or negligent acts.
 - (d) Workers' Compensation limits as required by the State of Georgia and Employers' Liability limits of \$1,000,000 (one million dollars) per occurrence or disease. (If Consultant is a sole proprietor, who is otherwise not entitled to coverage under Georgia's Workers' Compensation Act, Consultant must secure Workers' Compensation coverage approved by both the State Board of Workers' Compensation and the Commissioner of Insurance. The amount of such coverage shall be the same as what is otherwise required of employers entitled to coverage under the Georgia Workers' Compensation Act. Further, Consultant shall provide a certificate of insurance indicating that such coverage has been secured and that no individual has been excluded from coverage.)
 - (e) Commercial Umbrella Liability Coverage: \$ _____ (_____) per occurrence shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and Professional Liability.

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- (3) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by City in writing so that City may ensure the financial solvency of Consultant; self-insured retentions should be included on the certificate of insurance.
- (4) Other Insurance Provisions: Each policy shall contain, or be endorsed to contain, the following provisions respectively:
- (a) General Liability, Automobile Liability and (if applicable) Umbrella Liability Coverage.
- (i) Additional Insured Requirement. City and City's elected and appointed officials, officers, boards, commissioners, employees, representatives, consultants, servants, agents and volunteers (individually "Insured Party" and collectively "Insured Parties") shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, leased, or used by Consultant; automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require the Consultant to provide liability insurance coverage to any Insured Party for claims asserted against such Insured Party for its sole negligence.
- (ii) Primary Insurance Requirement. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of Consultant's insurance and shall not contribute with it.
- (iii) Reporting Requirement. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.
- (iv) Separate Coverage. Coverage shall state that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to limits of insurance provided.

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- (v) Defense Costs/Cross Liability. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
 - (vi) Subrogation. The insurer shall agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by Consultant for City.
- (b) Workers' Compensation Coverage. The insurer providing Workers' Compensation Coverage will agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by Consultant for City.
- (c) All Coverages.
 - (i) Notice Requirement. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, or canceled except after thirty (30) calendar days prior written notice (or 10 calendar days if due to non-payment) has been given to City. City reserves the right to accept alternate notice terms and provisions, provided they meet the minimum requirements under Georgia law.
 - (ii) Starting and Ending Dates. Policies shall have concurrent starting and ending dates.
 - (iii) Incorporation of Indemnification Obligations. Policies shall include an endorsement incorporating the indemnification obligations assumed by Consultant under the terms of this Agreement, including but not limited to Section IV(G) of this Agreement.
- (5) Acceptability of Insurers: The insurance to be maintained by Consultant must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance policies shall be placed with insurer(s) with an A.M. Best Policyholder's rate of no less than "A-" and with a financial rating of Class VII or greater. The Consultant shall be responsible for any delay resulting from the failure of its insurer to provide proof of coverage in the proscribed form.
- (6) Verification of Coverage: Consultant shall furnish to City for City approval certificates of insurance and endorsements to the policies

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evidencing all coverage required by this Agreement prior to the start of work. Without limiting the general scope of this requirement, Consultant is specifically required to provide an endorsement naming City as an additional insured when required. The certificates of insurance and endorsements for each insurance policy are to be on a form utilized by Consultant's insurer in its normal course of business and are to be signed by a person authorized by that insurer to bind coverage on its behalf, unless alternate sufficient evidence of their validity and incorporation into the policy is provided. City reserves the right to require complete, certified copies of all required insurance policies at any time. Consultant shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

- (7) Subcontractors: Consultant shall either (1) ensure that its insurance policies (as described herein) cover all subcontractors and the Work performed by such subcontractors or (2) ensure that any subcontractor secures separate policies covering that subcontractor and its Work. All coverage for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the Insured Parties as additional insureds.
- (8) Claims-Made Policies: Consultant shall extend any claims-made insurance policy for at least six (6) years after termination or final payment under the Agreement, whichever is later, and have an effective date which is on or prior to the Effective Date.
- (9) City as Additional Insured and Loss Payee: City shall be named as an additional insured and loss payee on all policies required by this Agreement, except City need not be named as an additional insured and loss payee on any Professional Liability policy or Workers' Compensation policy.
- (10) Progress Payments: The making of progress payments to Consultant shall not be construed as relieving Consultant or its subcontractors or insurance carriers from providing the coverage required in this Agreement.

J. Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit. Pursuant to O.C.G.A. § 13-10-91, City shall not enter into a contract for the physical performance of services unless:

- (1) Consultant shall provide evidence on City-provided forms, attached hereto as **Exhibits "D" and "E"** (affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71), that it and Consultant's subcontractors have registered with, are authorized to use and use the federal work authorization program commonly

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known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91, and that they will continue to use the federal work authorization program throughout the contract period, **or**

- (2) Consultant provides evidence that it is not required to provide an affidavit because it is an *individual* (not a company) licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing.

Consultant hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in **Exhibit "D"**, and submitted such affidavit to City or provided City with evidence that it is an individual not required to provide such an affidavit because it is licensed and in good standing as noted in sub-subsection (2) above. Further, Consultant hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

In the event Consultant employs or contracts with any subcontractor(s) in connection with the covered contract, Consultant agrees to 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, the form of which is attached hereto as **Exhibit "E"**, which subcontractor affidavit shall become part of the Consultant/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is an *individual* licensed and in good standing as noted in sub-subsection (2) above. If a subcontractor affidavit is obtained, Consultant agrees to provide a completed copy to City within five (5) business days of receipt from any subcontractor.

Where Consultant is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the City Manager or his/her designee shall be authorized to conduct an inspection of Consultant's and Consultant's subcontractors' verification process at any time to determine that the verification was correct and complete. Consultant and Consultant's subcontractors shall retain all documents and records of their respective verification process for a period of five (5) years following completion of the contract. Further, where Consultant is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the City Manager or his/her designee shall further be authorized to conduct periodic inspections to ensure that no City Consultant or Consultant's subcontractors employ unauthorized aliens on City contracts. By entering into a contract with City, Consultant and Consultant's subcontractors agree to cooperate with any such investigation by making their records and personnel available upon reasonable notice for inspection and questioning. Where Consultant or Consultant's subcontractors are found to have employed an unauthorized alien, the City Manager or his/her designee may report same to the Department of Homeland Security. Consultant's failure to cooperate with the investigation may be sanctioned by termination of the Agreement, and Consultant shall be liable for all damages and delays occasioned by City thereby.

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Consultant agrees that the employee-number category designated below is applicable to Consultant. [Information only required if a contractor affidavit is required pursuant to O.C.G.A. § 13-10-91.]

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

Consultant hereby agrees that, in the event Consultant employs or contracts with any subcontractor(s) in connection with this Agreement and where the subcontractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, Consultant will secure from the subcontractor(s) such subcontractor(s)' indication of the above employee-number category that is applicable to the subcontractor.

The above requirements shall be in addition to the requirements of state and federal law, and shall be construed to be in conformity with those laws.

K. Records, Reports and Audits.

(1) Records:

- (a) Books, records, documents, account ledgers, data bases, and similar materials relating to the Work performed for City under this Agreement ("Records") shall be established and maintained by Consultant in accordance with applicable law and requirements prescribed by City with respect to all matters covered by this Agreement. Except as otherwise authorized or required, such Records shall be maintained for at least three (3) years from the date that final payment is made to Consultant by City under this Agreement. Furthermore, Records that are the subject of audit findings shall be retained for three (3) years or until such audit findings have been resolved, whichever is later.
- (b) All costs claimed or anticipated to be incurred in the performance of this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

- (2) Reports and Information: Upon request, Consultant shall furnish to City any and all Records in the form requested by City. All Records provided electronically must be in a format compatible with City's

computer systems and software.

- (3) Audits and Inspections: At any time during normal business hours and as often as City may deem necessary, Consultant shall make available to City or City's representative(s) for examination all Records. Consultant will permit City or City's representative(s) to audit, examine, and make excerpts or transcripts from such Records. Consultant shall provide proper facilities for City or City's representative(s) to access and inspect the Records, or, at the request of City, shall make the Records available for inspection at City's office. Further, Consultant shall permit City or City's representative(s) to observe and inspect any or all of Consultant's facilities and activities during normal hours of business for the purpose of evaluating Consultant's compliance with the terms of this Agreement. In such instances, City or City's representative(s) shall not interfere with or disrupt such activities.

L. Ethics Code; Conflict of Interest. Consultant agrees that it shall not engage in any activity or conduct that would result in a violation of the City of Milton Code of Ethics or any other similar law or regulation. Consultant certifies that to the best of its knowledge no circumstances exist which will cause a conflict of interest in performing the Work. Should Consultant become aware of any circumstances that may cause a conflict of interest during the Term of this Agreement, Consultant shall immediately notify City. If City determines that a conflict of interest exists, City may require that Consultant take action to remedy the conflict of interest or terminate the Agreement without liability. City shall have the right to recover any fees paid for services rendered by Consultant when such services were performed while a conflict of interest existed if Consultant had knowledge of the conflict of interest and did not notify City within five (5) business days of becoming aware of the existence of the conflict of interest.

Consultant and City acknowledge that it is prohibited for any person to offer, give, or agree to give any City employee or official, or for any City employee or official to solicit, demand, accept, or agree to accept from another person, a gratuity of more than nominal value or rebate or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor. Consultant and City further acknowledge that it is prohibited for any payment, gratuity, or offer of employment to be made by or on behalf of a sub-consultant under a contract to the prime Consultant or higher tier sub-consultant, or any person associated

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therewith, as an inducement for the award of a subcontract or order.

M. Confidentiality. Consultant acknowledges that it may receive confidential information of City and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, consultants, and/or staff to likewise protect such confidential information. Consultant agrees that confidential information it learns or receives or such reports, information, opinions or conclusions that Consultant creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of City. Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether specifically deemed confidential or not.

Consultant acknowledges that City's disclosure of documentation is governed by Georgia's Open Records Act, and Consultant further acknowledges that if Consultant submits records containing trade secret information, and if Consultant wishes to keep such records confidential, Consultant must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

N. Key Personnel. All of the individuals identified in **Exhibit "F"**, attached hereto, are necessary for the successful completion of the Work due to their unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the Project team, as listed in **Exhibit "F"**, without written approval of City. Consultant recognizes that the composition of this team was instrumental in City's decision to award the Work to Consultant and that compelling reasons for substituting these individuals must be demonstrated for City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this paragraph shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.

O. Meetings. Consultant is required to meet with City's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the Term of this Agreement at no additional cost to City. Meetings will occur as problems arise and will be coordinated by City. City shall inform Consultant's Representative of the need for a meeting and of the date, time and location of the meeting at least three (3) full business days prior to the date of the meeting. Face-to-face meetings are desired. However, at Consultant's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of this Agreement for cause.

P. Authority to Contract. The individual executing this Agreement on behalf of Consultant covenants and declares that it has obtained all necessary approvals of Consultant's board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement,

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if applicable.

Q. Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, work product and other materials, including, but not limited to, those in electronic form, prepared or in the process of being prepared for the Work to be performed by Consultant ("Materials") shall be the property of City, and City shall be entitled to full access and copies of all Materials in the form prescribed by City. Any Materials remaining in the hands of Consultant or subcontractor upon completion or termination of the Work shall be delivered immediately to City whether or not the Project or Work is commenced or completed; provided, however, that Consultant may retain a copy of any deliverables for its records. Consultant assumes all risk of loss, damage or destruction of or to Materials. If any Materials are lost, damaged or destroyed before final delivery to City, Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to City, and Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

R. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, Consultant agrees that, during performance of this Agreement, Consultant, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Consultant agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

V. COVENANTS OF CITY

A. Right of Entry. City shall provide for right of entry for Consultant and all necessary equipment as required for Consultant to complete the Work; provided that Consultant shall not unreasonably encumber the Project site(s) with materials or equipment.

B. City's Representative. _____ shall be authorized to act on City's behalf with respect to the Work as City's designated representative on this Project; provided that any changes to the Work or the terms of this Agreement must be approved as provided in Section II above.

VI. TERMINATION

A. For Convenience. City may terminate this Agreement for convenience at any time upon providing written notice thereof at least seven (7) calendar days in advance of the termination date.

B. For Cause. Consultant shall have no right to terminate this Agreement prior to completion of the Work, except in the event of City's failure to pay Consultant within

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thirty (30) calendar days of Consultant providing City with notice of a delinquent payment and an opportunity to cure. In the event of Consultant's breach or default under this Agreement, City may terminate this Agreement for cause. City shall give Consultant at least seven (7) calendar days' written notice of its intent to terminate the Agreement for cause and the reasons therefor. If Consultant fails to cure the breach or default within that seven (7) day period, or otherwise remedy the breach or default to the reasonable satisfaction of City, then City may, at its election: (a) in writing terminate the Agreement in whole or in part; (b) cure such default itself and charge Consultant for the costs of curing the default against any sums due or which become due to Consultant under this Agreement; and/or (c) pursue any other remedy then available, at law or in equity, to City for such default.

C. Statutory Termination. In compliance with O.C.G.A. § 36-60-13, this Agreement shall be deemed terminated as provided in I(D) of this Agreement. Further, this Agreement shall terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of City.

D. Payment Upon Termination. Upon termination, City shall provide for payment to Consultant for services rendered and, where authorized, expenses incurred prior to the termination date; provided that, where this Agreement is terminated for cause, City may deduct from such payment any portion of the cost for City to complete (or hire someone to complete) the Work, as determined at the time of termination, not otherwise covered by the remaining unpaid Maximum Contract Price.

E. Conversion to Termination for Convenience. If City terminates this Agreement for cause and it is later determined that City did not have grounds to do so, the termination will be converted to and treated as a termination for convenience under the terms of Section VI(A) above.

F. Requirements Upon Termination. Upon termination, Consultant shall: (1) promptly discontinue all services, cancel as many outstanding obligations as possible, and not incur any new obligations, unless the City directs otherwise; and (2) promptly deliver to City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by Consultant in performing this Agreement, whether completed or in process, in the form specified by City.

G. Reservation of Rights and Remedies. The rights and remedies of City and Consultant provided in this Article are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

VII. MISCELLANEOUS

A. Entire Agreement. This Agreement, including any exhibits hereto, constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written Change Order

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(as provided in Section II above) or other document signed by representatives of both Parties with appropriate authorization.

B. Successors and Assigns. Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to choice of law principles. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of Fulton County, Georgia, or the U.S. District Court for the Northern District of Georgia – Atlanta Division, and Consultant submits to the jurisdiction and venue of such court.

D. Captions and Severability. All headings herein are intended for convenience and ease of reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement, or in any way affect this Agreement. Should any article(s) or section(s) of this Agreement, or any part thereof, later be deemed illegal, invalid or unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions that may for any reason be hereafter declared in valid.

E. Business License. Prior to commencement of the Work to be provided hereunder, Consultant shall apply to City for a business license, pay the applicable business license fee, and maintain said business license during the Term of this Agreement, unless Consultant provides evidence that no such license is required.

F. Notices.

(1) **Communications Relating to Day-to-Day Activities.** All communications relating to the day-to-day activities of the Work shall be exchanged between City's Representative (named above) for City and Consultant's Representative (named above) for Consultant.

(2) **Official Notices.** All other notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the Party at the address given below, or at a substitute address previously furnished to the other

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Party by written notice in accordance herewith.

NOTICE TO CITY shall be sent to:

City Manager
City of Milton, Georgia
2006 Heritage Walk
Milton, Georgia 30004

NOTICE TO CONSULTANT shall be sent to:

G. Waiver of Agreement. No failure by City to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Consultant with this Agreement, and no custom or practice of City at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect City's right to demand exact and strict compliance by Consultant with the terms and conditions of this Agreement. Further, no express waiver shall affect any Term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.

H. Survival. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, confidentiality obligations and insurance maintenance requirements.

I. No Third Party Rights. This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.

J. Sovereign Immunity; Ratification. Nothing contained in this Agreement shall be construed to be a waiver of City's sovereign immunity or any individual's qualified, good faith or official immunities. Ratification of this Agreement by a majority of the Mayor and City Council shall authorize the Mayor to execute this Agreement on behalf of City.

K. No Personal Liability. Nothing herein shall be construed as creating any individual or personal liability on the part of any of City's elected or appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys or volunteers. No such individual shall be personally liable to Consultant or any successor in interest in the event of any default or breach by City or for any amount which may become due to Consultant or successor or on any obligation under the terms of this Agreement. Likewise, Consultant's performance of services under this Agreement shall not subject Consultant's individual employees, officers, or directors to any personal contractual liability, except where Consultant is a sole proprietor. The Parties agree that, except where Consultant is a sole proprietor, their sole and exclusive remedy, claim, demand or suit for contractual liability shall be directed and/or asserted only against Consultant or City, respectively, and not against any elected or appointed official,

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officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers.

L. Counterparts; Agreement Construction and Interpretation. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Consultant represents that it has reviewed and become familiar with this Agreement and has notified City of any discrepancies, conflicts or errors herein. In the event of a conflict in the terms of this Agreement and/or the exhibits attached hereto, the terms most beneficial to City shall govern. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement. In the interest of brevity, the Agreement may omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Words or terms used as nouns in the Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires contrary meaning.

M. Force Majeure. Neither City nor Consultant shall be liable for its respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of its respective duties or obligations under this Agreement or for any delay in such performance due to: (i) any cause beyond its respective reasonable control; (ii) any act of God; (iii) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (iv) earthquake, fire, explosion or flood; (v) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of CONSULTANT; (vi) delay or failure to act by any governmental or military authority; or (vii) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.

N. Material Condition. Each term of this Agreement is material, and Consultant's breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other remedies available to City at law or in equity.

IN WITNESS WHEREOF City and Consultant have executed this Agreement, effective as of the Effective Date first above written.

[SIGNATURES ON FOLLOWING PAGE]

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CONSULTANT: _____

Signature: _____

Print Name: _____

Title:

President/Vice President (Corporation)
General Partner (Partnership/Limited
Partnership)
Member/Manager (LLC)
Owner (Sole Proprietorship/Individual)

[CORPORATE SEAL]
(required if corporation)

Attest/Witness:

Signature: _____

Print Name: _____

Title: _____

(Assistant) Corporate Secretary (required if corporation)

CITY OF MILTON, GEORGIA

By: Joe Lockwood, Mayor

[CITY SEAL]

Attest:

Signature: _____

Print Name: _____

Title: City Clerk

Approved as to form:

City Attorney

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EXHIBIT "A"

EXHIBIT "B"

EXHIBIT "C"

SAMPLE

EXHIBIT "D"

STATE OF _____
COUNTY OF _____

CONTRACTOR 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 engaged in the physical performance of services on behalf of the City of Milton, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User
Identification Number

Date of Authorization

Name of Contractor

Name of Project

City of Milton, Georgia
Name of Public Employer

I hereby declare under penalty of
perjury that the foregoing is true and
correct.

Executed on _____, 20__ in
_____ (city), _____
(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized
Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 20__.

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:

EXHIBIT "E"

STATE OF _____
COUNTY OF _____

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with _____ (name of contractor) on behalf of the City of Milton, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User
Identification Number

Date of Authorization

Name of Contractor

Name of Project

City of Milton, Georgia
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in
_____ (city), _____
(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized
Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 20__.

NOTARY PUBLIC

My Commission Expires:

[NOTARY SEAL]

SAMPLE

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EXHIBIT “F”

The following individuals are designated as Key Personnel under this Agreement and, as such, are necessary for the successful prosecution of the Work:

[illegible]