



MEMORANDUM

To: Parties Interested in RFP26-004, ROADSIDE TREE TRIMMING SERVICES

From: Sunshine Palmer, City Accountant

Date: July 22, 2026

Re: RFP26-004, ROADSIDE TREE TRIMMING SERVICES

RFP26-004, ROADSIDE TREE TRIMMING SERVICES is attached for your consideration. Anyone accessing this Request for Proposals from the City of Auburn website www.cityofauburn-ga.org is responsible to ensure the latest documents are in their possession including any addenda. All addenda, questions and answers will be posted on this site. ***This site should be visited frequently to ensure awareness of any updates.***

Please ensure Proposals are submitted exactly as specified in the RFP. If you have any questions, please submit them in writing as called for in the RFP.

Thank you.

The City of Auburn
1 Auburn Way, P.O. Box 1059
Auburn, GA 30011
www.cityofauburn-ga.org



**REQUEST FOR PROPOSALS
RFP26-004**

ROADSIDE TREE TRIMMING SERVICES

**CITY OF AUBURN, GEORGIA
JULY 22, 2026**

DATE OF OPENING: AUGUST 20, 2026

REQUEST FOR PROPOSALS
RFP26-004, ROADSIDE TREE TRIMMING SERVICES
CITY OF AUBURN, GEORGIA

Date: July 22, 2026

PURPOSE: The purposes of this request is to provide interested contractors with sufficient information to enable them to submit a uniform proposal for the City's review of Roadside Tree Trimming Services (hereafter called "project") as required by the City of Auburn and to set forth a systematic method that will be fair and impartial to all parties concerned and to generate a response that can be equally evaluated by the City.

GENERAL: The City of Auburn is interested in entering into an agreement with a Contractor to provide Roadside Tree Trimming Services per the attached Scope of Work and Bid Form for the City of Auburn Public Works Department. The Project objective is to select a qualified contractor for roadside tree trimming services. You are invited to submit a proposal to this requirement.

COMPLIANCE WITH THE REQUEST FOR PROPOSAL (RFP): Each prospective Contractor must comply with all requirements of this RFP. Notice is hereby given to all Contractors that if their submittals are defective or irregular, the same may be rejected immediately. To facilitate comparative analysis and evaluation of submittals, it is desired that a uniform format be employed in structuring each. The required format will coincide with specifications given later in this notice. Each Contractor's degree of compliance with the requirements of this notice will be a factor in the subsequent evaluation and possible selection for providing designated services. All instructions are to be considered an integral part of this RFP.

FIRM PRICE: Prices quoted by Contractors shall be firm prices, not subject to increase and shall not include Federal or State Tax. All prices shall be for delivery, our destination, F.O.B. freight prepaid Auburn, Georgia, unless otherwise shown. Firm prices shall include all associated costs as defined in the Scope of Work, Roadway Summaries, Services Agreement and Bid Proposal Form. **The City of Auburn highly recommends that interested Contractors visit and inspect the site locations before submitting a proposal.** Invoices covering required services payable by the City will be paid Net 30 days from date of invoice. Reference the enclosed Services Agreement for the City of Auburn's payment process.

Liquidated Damages: PROJECT COMPLETION WILL BE EIGHT (8) WEEKS FROM DATE OF THE NOTICE TO PROCEED. Liquidated damages of One Hundred Fifty Dollars (\$150.00) per day will be assessed for each day after completion date until project is completed.

Security: Accompany bid with a bid bond security in the amount of five percent (5%) of the bid. The successful bidder will be required to submit to the City of Auburn a performance bond and a payment bond, each in an amount equal to one hundred percent (100%) of the total contract amount. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Georgia. Only the City of Auburn bond forms will be accepted.

RIGHT TO SUBMITTED MATERIALS: All responses, inquires, or correspondence relating or in reference to this schedule, exhibit, and other documentation by the Contractor shall be properly identified as to Contractor and will become the property of the City of Auburn when received. The City of Auburn will not be responsible for any expenses incurred by any Contractor in the development of a response to this Request for Proposal including any onsite (or otherwise) interviews and/or presentations, and/or supplemental information provided, submitted, or given to the City or its representatives. Further, the City shall reserve the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement/purchase order by the recommended Contractor even if the City of Auburn has formally accepted a recommendation.

CLARITY AND THOROUGHNESS: The City of Auburn must determine which *single* Contractor best meets its immediate and long-term objectives. It is each proposing Contractor's responsibility to ensure that all information in the proposal is thorough and easily readable by the City. The City, at its sole discretion, may reject any submittal that is unclear in any way.

INQUIRIES: Proposing Contractors, or their representatives or agents, *shall not* contact any members, or employees, of the City of Auburn or any City of Auburn Elected Official or employee of any City of Auburn Elected Official regarding this RFP, proposal evaluation, or selection process from the time the RFP is issued until the time a notification of intent to award is announced.

Questions relating to this RFP must be submitted in writing to: Sunshine Palmer, City Accountant (email: spalmer@cityofauburn-ga.org). The deadline for questions related to this RFP shall be 5:00 P.M. ("Local Time"), August 17, 2026. All questions submitted in writing, in a timely manner prior to the deadline will be compiled and answered in writing. All questions submitted in writing will be addressed and posted as an Addendum on the City of Auburn website (www.cityofauburn-ga.org).

EVENTS:

The following dates and times apply to this RFP:

1. Issue Request for Proposal ----- July 22, 2026
2. Deadline for Questions ----- August 17, 2026 (5:00 p.m. *local time*)
3. Proposal Due Date ----- August 20, 2026 (3:00 p.m. *local time*)
4. Proposal Opening ----- August 20, 2026 (3:00 p.m. *local time*)
5. Selection Recommendation to the City of Auburn -----TBD
6. Award of Agreement if Approved-----TBD

SEALED PROPOSAL: An original (un-bound) and four copies of the Proposal must be submitted in a sealed envelope/package, addressed to the City. Each sealed envelope/package containing a proposal must be plainly marked on the outside as **“RFP26-004, ROADSIDE TREE TRIMMING SERVICES”**. If the bid is forwarded by mail, the sealed envelope/package containing the bid must be enclosed in another envelope/package to the attention of the Owner at the address previously given and also marked on the outside as **“RFP26-004, ROADSIDE TREE TRIMMING SERVICES”**. The City will not be responsible for late mail deliveries, and no bid will be accepted if received after the time as stipulated by this RFP. No proposal may be withdrawn or modified in any way after the deadline for the RFP opening. **FAILURE TO COMPLY WITH THE ABOVE INSTRUCTIONS WILL RESULT IN DISQUALIFICATION.**

PROPOSALS SHALL BE SUBMITTED TO:

**City of Auburn
Sunshine Palmer, City Accountant
Auburn Municipal Complex
1 Auburn Way
P.O. Box 1059
Auburn, GA 30011**

Sealed Proposals will be accepted no later than 3:00 P.M. (“Local Time”), Thursday, August 20, 2026. Any proposal received after said time and date will not be considered by Owner. Proposals will be opened at the Auburn Municipal Complex, 1 Auburn Way, Auburn, Ga. 30011 at 3:00 p.m. (“Local Time”), August 20, 2026. All proposals will be evaluated, and the project will be awarded, if it is awarded, within 60 days of the proposal opening.

INSURANCE REQUIREMENTS:

- All Contractors and subcontractors shall provide certificates of insurance to the City for the minimum amounts of insurance prescribed by the City’s Services Agreement and shall comply with all other insurance requirements contained therein.
- No contract will be awarded until the appropriate certificates of insurance are in the possession of the Purchasing Office.
- Indemnification. See Services Agreement (see attached).

PROPOSAL FORMAT: Contractors should submit an original (unbound) and four (4) copies of the requested proposal in the below format. **Please do not bind the original copy.** The proposal shall consist of the following in the order shown:

- Letter of Introduction
- Copy of business license and proof of being in business at least five (5) years.
- Project Personnel: Provide information on personnel to be assigned to this project. Personnel should have experience from similar projects and in fields necessary to complete this proposed work.
 - A: Qualifications, including experience in the proposed project methodology and public sector and/or municipal experience.
 - B: Summary of experience, including the number of years of relevant experience, years with the firm and representative project experience with project name, client and date performed.
 - C: Other supporting documentation which demonstrates the ability to successfully perform the work.
- Similar Experience: List and describe your firm's projects worked on in the past five years that best match the scope and intent of the various projects. Identify unique constraints or challenges associated with those projects and how you addressed those in order to deliver a successful project.
- Verifiable references of similar projects, include a minimum of three (3) references (Use City References Form included with this RFP -- 2 Pages).
- A list of any preferred subcontractors that might be necessary for any work not self-performed. (Use City Subcontractor Request Form included with this RFP – 1 Page).
- Bid Proposal Form (use City Form -- 2 pages)
- Bid Bond (use City Form -- 2 pages)
- **ROADSIDE TREE TRIMMING SERVICES PROJECT AGREEMENT:** *All submitting contractors are required to execute the Roadside Tree Trimming Services Project Agreement included in this package to indicate the willingness to comply with all terms of the project agreement and to submit the executed project agreement with the proposal.* Upon award of the Project to the winning contractor, the City will execute the Project Agreement. Please be advised that the contractor's execution of the Project Agreement prior to the award of the Project does not constitute the acceptance of an offer by the City or otherwise bind the City in any way until such time as the City executes the Project Agreement.

Exhibits C, E.1, E.2 & H to the Roadside Tree Trimming Services Project Agreement MUST be executed and submitted with the project agreement (please leave date and amount of agreement blank). Exhibits B.1 and B.2 will be executed after the Project is awarded. Pursuant to O.C.G.A. § 13-10-91(b)(1), Exhibit E.1 must be fully executed and returned with the proposal. The City is unable to review the proposal without this Exhibit E.1.

Proposals are to be limited to thirty (30) pages single-sided (this does not include References or the Executed Agreement).

PROPOSAL EVALUATIONS AND SELECTION PROCESS AND TIMELINE:

Proposals will be reviewed and one proposal will be selected that, in the opinion of the City, is most advantageous to meeting its needs. Evaluation will include pricing. The City of Auburn reserves the right to reject any and all proposals submitted, or where it may serve the best interest of the City, to request additional information or clarification from those submitting proposals. The City, in its sole discretion, also reserves the right to waive any formalities or technicalities relative to any or all proposals. Where two or more companies are deemed equal, the City reserves the right to make the award to one of the companies. At the City's discretion, presentations may be requested as part of the evaluation process.

Evaluation Criteria: The City's staff will review all proposals submitted. After reviewing the proposals, staff at its discretion, may award the Contract to the responsible and responsive proposer submitting the proposal which is deemed to be the most advantageous to the City, price and other factors being considered. The following are the evaluation criteria the City will consider in determining which proposal is most advantageous to the City:

1: Pricing:

Evaluation based on Pricing as shown on Bid Proposal Form (2 pages) = 50%

2: Experience on similar projects:

Contractor performed satisfactory work on similar projects over the past five years. The ideal contractor should have extensive experience with roadside tree trimming including completing projects in a safe and timely manner, meeting cost and providing good customer satisfaction.
= 25%

3: Project Personnel:

Contractor's ability to effectively manage personnel, provide experienced and qualified personnel and start and complete work in a safe and timely manner. The ideal candidate will propose a project team, project manager with over five (5) years of experience in the tree trimming field. The project manager and key personnel will be evaluated on knowledge, experience, prior collaboration and successful completion of similar projects as proposed in the scope of work. = 15%

4: References and reference projects:

Customer satisfaction with the vendor on prior similar projects. The contractor should provide a minimum of three (3) references. References should include the name, contact names, phone numbers, dates of the project, status or outcome of the project, and brief description of the services performed. = 10%

ASSIGNMENT OF CONTRACTUAL RIGHTS: It is agreed that the Contractor selected will not assign, transfer, convey, or otherwise dispose of a contract that results from this invitation or his right, title, or interest in or to the same, any part thereof, without written consent by the City of Auburn.

DOCUMENTS: The following are included in this “Request for Proposals” :

- Memo (1 Page)
- Request for Proposals (7 Pages)
- Scope of Work (8 Pages)
- Location Map (1 Page)
- Roadway Summaries (4 Pages)
- Bid Proposal Form (2 Pages)
- Bid Bond Form (2 Pages)
- References Form (2 Pages)
- Subcontractor Request Form (1 Page)
- Services Agreement (58 Pages)
- Notice of Award (1 Page)
- Notice to Proceed (1 Page)

Total: 88 Pages

The City of Auburn, Ga.
Project RFP26-004, Roadside Tree Trimming Services
Scope of Work

A. Scope of Work to be Performed

The purpose of this Request for Proposal (RFP) is to select a single qualified contractor for roadside tree trimming/pruning- side trimming services. The Contractor will be required to perform roadside tree trimming/pruning- side trimming, removal/disposal of debris, cleanup and traffic control. Services/work to be in accordance with this Scope of Work, provided Roadway Summaries, Location Map, Bid Proposal Form, Services Agreement and other related documents within this RFP. Work is for a “one time service” per each roadway and not a re-occurring service.

Work under this proposal consists of furnishing all labor, materials, tools, equipment, means of transportation, and incidentals necessary to perform the services. Contractor must furnish equipment in good operating condition and operated by properly trained and qualified personnel. Prior to start of work, Contractor must inspect equipment to ensure the equipment is fully operational for the performance of its intended purpose. The Contractor will also be responsible for any traffic control, licenses, and permits required to satisfy the duties required herein. The Contractor shall ensure a safe work environment for employees, pedestrians and the traveling public within the time schedule specified.

1. Terms and Definitions

- a. ANSI: – American National Standards Institute current edition. <http://ansi.org/>
- b. Approval/Acceptance: Inspected and approved by the City for compliance with the requirements of the Specifications included in this Contract.
- c. MUTCD: The Manual on Uniform Traffic Control Devices (MUTCD), current edition.
- d. Standard Specifications (Specifications): State of Georgia Standard Specifications for Construction of Transportation Systems, 2013 Edition or latest edition, the Project Special Provisions, the Georgia Department of Transportation, Supplemental Specifications, Standard Drawings and Construction Details. [Doing Business with the Georgia Department of Transportation \(ga.gov\)](http://www.dot.ga.gov/DoingBusinesswiththeGeorgiaDepartmentofTransportation).
- e. Right-of-Way (R/W): The entire portion of a highway within the boundaries of access-control fences or access-control lines where no fences exists.
- f. Debris: Material associated with the tree cutting and pruning operation including stems, branches, bark, leaves, wood chips, etc.
- g. Pruning: Cutting of tree limbs or branches.
- h. Side Trimming: this work consists of pruning and/or trimming of the tree branches that are encroaching or are a threat to encroach from the sides of the R/W onto the travel ways.
- i. Removal: Removing of all debris from the City right of way associated with the tree cutting and/or pruning operations.
- j. Travel Way: The actual road lanes in which vehicles travel not including paved shoulders
- k. Tree Cutting: Cutting tree(s) with equipment designed and built for constant heavy use in tough conditions, including roadside conditions.
- l. Vegetation Removal: consists of random clearing, side trimming, herbicide applications and debris removal operations.

2. Equipment

All equipment contemplated for use shall be subject to inspection and acceptance for mechanical worthiness and appropriateness for the work intended by the City of Auburn. City decisions relevant to mechanical worthiness and appropriateness shall be final. Equipment left on the right of way is the responsibility of the Contractor. No equipment or vehicles may be parked or left along the roadway overnight.

3. Side Trimming

This work consists of side trimming of the tree branches that are encroaching or are a threat to encroach from the sides of the R/W onto the travel ways. The work may range from the systematic pruning of every tree along the R/W to the selective pruning of individual trees which encroach.

1. All tree branches encroaching on the travel ways will be removed to the vertical line of the specified limits or as directed by the City. An on-site inspection of the roads to be trimmed is required between the Contractor and the City before work shall commence to discuss safety precautions and potential sensitive areas where trimming may be limited.
2. This work shall consist of all materials, labor, equipment, traffic control, side trimming, vegetation removal, debris removal, and incidentals for the project. The scope includes Side Trimming all overhanging limbs and canopy between the roadway and the face of the established tree line 60 feet vertically from the grade of the edge line of the roadway and 5 feet horizontally outside the edge of the roadway pavement. Side trimming includes all woody vegetation and removal and shall be both horizontal and vertical, clearing away all overhang as well. The City may reduce the horizontal and/or vertical lengths of trimming at his/her discretion. Any tree identified by the City to meet these requirements shall be included in the Side Trimming bid price. All tree debris, mulch, etc. caused by Side Trimming operations shall be removed from all drainage structures daily and this work shall be included in the Side Trimming bid price. All cut tree limbs and debris shall be chipped and/or removed from the right of way daily. Contractor shall coordinate with the City for verification of the right of way limits. Once work begins the Contractor shall not stop work for a period longer than seven (7) days unless approved the City.
3. All side trimming will be performed by equipment designed to make a clean branch cut.
4. Special care should be taken when side trimming is performed adjacent to utility lines, poles and other structures as specified in Section 10 **Utility Conflicts**.
5. Topping of trees is not allowed.
6. The Contractor shall provide for the protection of all pedestrians, sidewalks, curbs, streets, manhole covers, water valves/meters, concrete ditches and flumes, drainage structures and headwalls, sound barriers, utility lines and poles, fences, signs, R/W markers/property corners, other permanent R/W structures and vehicles from the impact of falling wood. Contractor to coordinate with affected utilities as needed. The Contractor shall make arrangements with the utility companies for the removal of limbs/branches in close proximity of power and/or telephone lines.
7. Care shall be taken not to damage other trees, shrubs or lawns during tree trimming operations. Restore original grades for any area that is disturbed by side trimming. Equipment or tire rutting that occurs will need to be repaired by the Contractor. Contractor shall protect the roadway asphalt pavement and use the appropriate protecting pads for truck outriggers.
8. All work will be performed and completed to the complete satisfaction and acceptance of the City. Contractor will abide by any and all applicable professional standards, local codes, federal, state and local laws, ordinances, rules and regulations, manufacturers' recommendations, safe work practices and will secure any or all applicable permits or licenses to complete the described work.

9. The Contractor shall obtain all necessary utility locates, permits, licenses and certificates, or any such approvals of plans or specifications as may be required by Federal, State and local laws, ordinances, rules and regulations, for the proper execution of the work specified herein.
10. During the performance of this Contract, the Contractor shall keep current and, if requested by the City, provide copies of any and all licenses, certificates, registrations or permits required by applicable governing agencies. The Contractor shall keep a copy of any and all licenses, registrations certificates and permits on the job site while performing the Contract work.
11. Contractor shall adhere to Georgia Department of Transportation's Standard Specifications Construction of Transportation Systems, current edition, Georgia Department of Transportation's Construction Standards and Details, current edition; the Manual on Uniform Traffic Control Devices for Street and Highways (MUTCD), current edition; and the Georgia Stormwater Management Manual, current edition.
12. The Contractor shall be familiar with and follow ANSI – A300 (Part 1) and all Pruning Standards and Practices and have an ISA Certified Arborist on call if needed during the work.
13. The Contractor shall perform all of its obligations and functions under the Contract in accordance with the Contract specifications, industry standards and any manufacturers' specifications. The Contractor shall meet the needs and requirements of the City and perform its activities so as not to annoy, disturb, endanger, unreasonably interfere with or delay the operations or activities of the City.

The Contractor shall provide a copy of its business license and proof of being in business at least five (5) years.

4. Debris Removal

Debris removal associated with side trimming is to be removed from the R/W during and by the end of the specified project location. No debris to be left on the road after completed trimming operation.

1. Any debris that reaches the travel ways, sidewalks, waterways, water bodies, driveways, concrete ditches and flumes shall be removed immediately.
2. Tree Trimming operation shall not move up to next location until the area at the subject site is clear from debris and all debris has been removed from the roadway.
3. Removed debris shall be disposed at locations provided by the Contractor. No burning of debris is allowed on the R/W. Disposal shall be in accordance with local and state laws, and any cost incurred for disposal shall be the responsibility of the Contractor. The Contractor is responsible for the appropriate legal disposal of all associated debris and waste material. The Contractor shall include the cost of any permits or fees that are required for disposal of trees and debris.

5. Deliverables

Delivery of Roadside Tree Trimming/Pruning-Side Trimming Services shall be in accordance with the contract terms. The following deliverables are expected for work performed at the locations as shown on the Roadway Summaries and Location Map.

6. Personnel and Sub-Contractors

Personnel:

A. ISA Certified Arborist

The ISA Certified Arborist can be the Contractor, on the Contractor's staff or be outsourced via a subcontractor. If the ISA Certified Arborist requirement is being met by the Contractor's staff or subcontractor, provide the certification for the individual and the individual's name, company representing (if applicable) and contact information including address, phone number(s) and email address. The ISA Certified Arborist will need to be on call when work is being performed.

B. Supervisor

At all times, have on the work site as the Contractor's agent, a competent, English speaking Supervisor, thoroughly experienced in the type of work being performed. The Supervisor's main duties are to supervise the work crew. Supervisor may serve as a Worksite Traffic Control Supervisor (WTCS) if properly certified. The Contractor's Supervisor shall:

1. Have a working cell phone with them during duty hours
2. Must be available at the work site when the work is being performed under this Contract, and as requested;
3. Act as the Contractor's authorized agent in all communications with the City
4. Shall be responsible for inspecting and reporting the need for major or emergency work to the City of Auburn immediately.

C. Crew

Utilize the same crew(s) to perform the work in accordance with the requirements herein, whenever possible, so that the personnel can remain familiar with the Project.

1. Provide staff and staffing levels able to perform the work in accordance with the requirements herein.
2. Use personnel who are competent, experienced, and skilled in all aspects of Tree Trimming/Pruning -Side Trimming Services. The personnel performing these services will be under the sole responsibility of the Contractor.

Subcontractors

The City expects the awarded contractor to be fully able to complete the Work as detailed in this Request for Proposals. The City may consider the use of subcontractors to accomplish the work.

- A. All requests to utilize a subcontractor must be submitted in writing and include the following;
 1. **Subcontractor Request Form** (use City Form)
 2. A notarized copy **Georgia Security and Immigration Compliance Act Affidavit (Subcontractor)** "E-Verify" use City Form -- Exhibit E.2 (included in Services Agreement)
- B. A minimum of ten (10) working days is needed to evaluate a request.
- C. If the City approves the use of a subcontractor, the Contractor will be held wholly responsible for the actions, quality, and timeliness of all work performed by the subcontractor. The City will communicate with the Contractor's Supervisor regarding all work.
- D. Determination of whether a subcontractor is approved is the sole decision of the City.

7. Traffic Control

Note: When there is an occurrence of conflicting requirements between Specifications and the MUTCD, the more stringent requirement shall control.

- All Traffic Control shall conform to the MUTCD, Section 150 of the Georgia Department of Transportation's (GDOT) Standard Specifications, and any applicable details or standards.
- The Worksite Traffic Control Supervisor (WTCS) shall be certified by the American Traffic Safety Services Association (ATSSA) Work Site Traffic Control Supervisor Certification program or the National Safety Council Certification program.
- Traffic control – Contractor (and sub-contractor) shall use portable advance warning signs when working in road around curves and over hill tops. Contractor must be sensitive to area traffic. Any incidents shall be written up by local law enforcement or the GA State Patrol. Portable signs and/or follow vehicles with lights shall be placed in advance of the work zone and in locations that will not block sight distance to other signs, driveways, or side roads. Traffic Control shall comply with GDOT special provision section 150 – Traffic Control and the M.U.T.C.D.

8. Utility Conflicts

If applicable to the services to be performed under this Request for Proposals, the Contractor shall be responsible for requesting and obtaining utility location marking in a manner that does not interfere with the deadlines established in this Request for Proposals. Contractor shall comply with Georgia Law by ensuring buried utilities are properly marked. They may do so by contacting 811 via web site: www.georgia811.com or by submitting a request on-line or by telephone. Contractor shall perform no work until the site is marked, or that the Georgia811 organization indicates that there are no buried utilities at the location. Utility owners should be contacted a minimum of three (3) business days prior to the commencement of operations. Contractor may not commence work until utilities have been marked at the worksite(s).

The Contractor shall promptly notify the City when the marking has been requested and when it has been accomplished. An email from the Contractor's supervisor to the City, or his designee, shall be sufficient notification. Utility owners should be contacted a minimum of 48 hours prior to the commencement of operations. Special care shall be used in working around or near existing utilities; protecting them when necessary to provide uninterrupted service. In the event that any utility service is interrupted, the Contractor shall notify the utility owner immediately and shall cooperate with the owner, or his representative, in the restoration of service in the shortest time possible.

Special care shall be used in working around or near existing utilities; protecting them when necessary to provide uninterrupted service. In the event that any utility service is interrupted, the Contractor shall notify the utility owner immediately and shall cooperate with the owner, or his representative, in the restoration of service in the shortest time possible.

Existing fire hydrants shall be kept accessible to fire departments at all times. The Contractor shall adhere to all applicable regulations and follow accepted safety procedures when working in the vicinity of utilities in order to insure the safety of workers and the public.

9. Scheduling and Limitations

Scheduling:

The Contractor shall schedule all work to ensure the least inconvenience and the utmost in safety to the traveling public, the Contractor's, and the City's forces. The Contractor shall move equipment or materials on or across a traveled way in a manner as not to unduly interfere with traffic. The City shall have the authority to suspend or stop the Work if weather conditions are such that the Work may be compromised or there is a threat to the safety of the traveling public.

The City will require the awarded vendor to begin and complete work within the specified time frame. The Contractor may establish interim milestones for the project to assume timely completion of all work. The Contractor is required to schedule, with the City, the start of any work related to this Request for Proposal a minimum of 48 business hours in advance. The Contractor must also confirm the schedule or inform the City of any changes to the schedule each morning work is to be performed. Completion of work includes City Inspections and any work required to correct deficiencies noted by the City.

Limitations:

A. Lane Closures

The Contractor shall complete the required work of installing, maintaining, and removing the traffic control devices for lane closures and restoring traffic to existing traffic pattern. If applicable, The Contractor shall detail any required lane closures in a Traffic Control Plan for the City's approval.

B. HOLIDAY LANE CLOSURE RESTRICTIONS

In addition, the Contractor shall not close or narrow a lane of traffic, detain and/or alter the traffic flow on or during holidays, holiday weekends, special events, or any other time when traffic is unusually heavy.

The completion time for the Work shall be the time the Contractor is required to complete the removal of all traffic control devices for lane closures according to the time restrictions stated above, or in the approved Traffic Control Plan, and place traffic in the existing traffic pattern.

C. Conflict with Holidays/Special Events

Should the Contractor's proposed schedule conflict with a Holiday or special event and, in the opinion of the City, negatively impact traffic flow, the City reserves the right to restrict maintenance operations by notifying the Contractor within forty-eight (48) hours prior to the scheduled maintenance activity. Additionally, the City reserves the right to cancel or suspend activity when, in the sole opinion of the City, there is the possibility of a hazard to the motoring public or maintenance personnel within the confines of the traffic work area established by the Contractor.

B. Special Terms and Conditions

1. Inspections and Non-Compliance

1.1 Inspections

The City of Auburn will perform inspections to:

- A.** Ensure that required Traffic Control measures are taken to keep the traveling public, pedestrians, the Contractor and employees of the City safe.

- B. Ensure that the Contractor adheres to the contract requirements by inspecting during and after Roadside Tree Trimming/Pruning-Side Trimming Services.

Inspections should be during operations and after operations to assess quality and proper completion. The City may record inspections by taking photos of Contractors with date/time stamp application. The photos will be used to document issues with application performance.

The City will complete the City Inspection/Compliance Form after inspecting the work in progress and completed work. Upon inspection, the City will notify the Contractor the City's acceptance or rejection of the Work. All deficiencies in the Work noted by the City shall be corrected by the Contractor within twenty-four (24) hours after notification unless noted otherwise. The Contractor will be expected to sign the complete City Inspection/Compliance Form.

1.2 Non-Compliance:

When the City determines that the Contractor has failed to perform the Work to the terms of the Request for Proposals, the Contractor shall be deemed in Non-Compliance.

- A. The City may withhold all payments if non-compliance as described in section 1.1 occurs until non-compliant actions are corrected.
- B. Work deficiencies not identified during inspection referenced in above in section 1.1 will be reported to the Contractor by electronic mail within seventy-two (72) hours.

2. Measurement & Payment

2.1 Measurement & Payment

The services covered under the scope of work of this proposal will be field measured and accepted by the units in the bid form. Incidentals will be included in the established pay items or if lump sum (job) they will be included in the overall bid. Payment will be based upon actual field measured shoulder miles of work satisfactorily completed. Traffic Control will be a lump sum payment for work completed on each road.

3. Warranty

The Contractor shall provide any available manufactures' warranty for all parts and assemblies furnished with this contract. Warranty must cover all replacement parts and labor.

4. City's Right to Cancel or Suspend Work

The City reserves the right to cancel or suspend repair or maintenance operations of the Contractor when, in its sole judgment, conditions warrant. The following are not all inclusive but are representative of conditions that may be in effect and may cause the City to cancel or suspend Contractor maintenance repair activities and removal from road, all equipment, personnel, material etc. including the lane closures in effect. The City will have the right at any time to require the Contractor to put an immediate stop to any procedure, or the use of any equipment (chemical, material, etc., if applicable) considered by the City to be hazardous (or toxic) to persons, buildings, or surfaces. The Contractor will utilize acceptable substitutes as quickly as possible. The City has the right to require the Contractor to remove any employee from the premises temporarily or permanently when in the City's sole opinion the employee is not suitable. The Contractor will remove this employee immediately and replace as quickly as possible.

5. Construction Projects

The City reserves the right at any time to Contract for and/or perform other or additional work on or near the Work covered by the Contract. If a road/parking lot/facility rehabilitation or improvement project is under construction or will be under construction where maintenance is scheduled, each Contractor shall conduct the Work so as not to interfere with or hinder the progress or completion of the Work being performed by other Contractors. Contractors working on the same Project shall cooperate with each other.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with this Request for proposals and shall protect and save harmless the City from any or all damages or claims that may arise because of inconvenience, delay, or loss experienced by him because of the presence and operations of other Contractors working within the limits of the same Project.

The Contractor shall arrange the Work and shall place and dispose of the materials being used so as not to interfere with the operations of the other Contractors within the limits of the same Project. The Contractor shall join his work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

6. Damages

The Contractor must report any and all incidents or accidents that occur while performing service. All personal injury, vehicle and property damage accidents are to be verbally reported immediately by calling the City followed by a written report to the City, the City staff inspecting the work, or his designee, within two (2) business days of any incident or accident. Contractor shall describe in full detail what occurred, and the extent of injury and damage, and shall provide the names of those individuals involved along with their contact phone numbers.

In the event that any damage to City's infrastructure occurs during progress of the work and is caused by work operations, the Contractor must notify the City immediately and will be required to repair or replace the damaged item with a like item at the Contractor's expense. In the event that damage occurs during progress of the work and is caused by work operations and said damage has to be repaired or replaced utilizing City property, supplies, or personnel, the cost of the repair or replacement shall be calculated and deducted from the Contractor's payment.

7. Bid Substitutions, Alternates, Exceptions, and Extensions

No substitutions or alternates will be accepted for this bid. Any Contractors submitting substitutions or alternates will be considered non-responsive and will not be considered for award.

8. Work Times

Restrictive hours – Work to generally be done Monday through Saturday during daylight hours (9am – 6pm) and no Holidays, no Sundays. Should special conditions arise, The City of Auburn will consider modifications to work hours on a case-by-case basis.

Work times may be altered by the City due to temperatures, traffic volumes, holidays, school times, etc.

**RFP26-004
ROADWAY SUMMARY
(PAGE 1 OF 1)**

SIXTH STREET

FY2026 Roadside Tree Trimming Services
City of Auburn

From: Atlanta Highway
To: Browns Bridge Road

4,963 Centerline Linear Feet 0.94 Centerline Mile

- Southbound Lane = Estimated 0.26 Shoulder Mile of Tree Trimming Required
- Northbound Lane = Estimated 0.34 Shoulder Mile of Tree Trimming Required
- Total for Both Lanes = Estimated 0.60 Shoulder Mile of Tree Trimming Required

<u>ITEM</u>	<u>UNIT OF MEASURE</u>	<u>APPROX. QUANTITY</u>
Roadside Tree Trimming/Pruning-Side Trimming, Removal & Disposal of Debris, Cleanup & Mobilization	Shoulder Mile	0.60
Traffic Control	LUMP	100%

**RFP26-004
ROADWAY SUMMARY
(PAGE 1 OF 1)**

KILCREASE ROAD

FY2026 Roadside Tree Trimming Services
City of Auburn

From: Browns Bridge Road
To: 140' feet north of Stonebrooke Drive

4,435 Centerline Linear Feet 0.84 Centerline Mile

- Southbound Lane = Estimated 0.13 Shoulder Mile of Tree Trimming Required
- Northbound Lane = Estimated 0.27 Shoulder Mile of Tree Trimming Required
- Total for Both Lanes = Estimated 0.40 Shoulder Mile of Tree Trimming Required

<u>ITEM</u>	<u>UNIT OF MEASURE</u>	<u>APPROX. QUANTITY</u>
Roadside Tree Trimming/Pruning-Side Trimming, Removal & Disposal of Debris, Cleanup & Mobilization	Shoulder Mile	0.40
Traffic Control	LUMP	100%

RFP26-004
ROADWAY SUMMARY
(PAGE 1 OF 1)

BROWNS BRIDGE ROAD

FY2026 Roadside Tree Trimming Services
City of Auburn

From: Kilcrease Road
To: 260' feet west of Clover Drive
3,980 Centerline Linear Feet 0.75 Centerline Mile

From: 800' feet east of Apalachee Church Road
To: Gwinnett County Line

1,109 Centerline Linear Feet 0.21 Centerline Mile

- Southbound Lane = Estimated 0.22 Shoulder Mile of Tree Trimming Required
- Northbound Lane = Estimated 0.21 Shoulder Mile of Tree Trimming Required
- Total for Both Lanes = Estimated 0.43 Shoulder Mile of Tree Trimming Required

<u>ITEM</u>	<u>UNIT OF MEASURE</u>	<u>APPROX. QUANTITY</u>
Roadside Tree Trimming/Pruning-Side Trimming, Removal & Disposal of Debris, Cleanup & Mobilization	Shoulder Mile	0.43
Traffic Control	LUMP	100%

RFP26-004
ROADWAY SUMMARY
(PAGE 1 OF 1)

PARKS MILL ROAD

FY2026 Roadside Tree Trimming Services
City of Auburn

From: 340' feet south of Second Avenue (Auburn City Limits)
To: 405' feet north of Sunbelt Way (Auburn City Limits)

8,450 Centerline Linear Feet 1.60 Centerline Mile

- Southbound Lane = Estimated 0.14 Shoulder Mile of Tree Trimming Required
- Northbound Lane = Estimated 0.30 Shoulder Mile of Tree Trimming Required
- Total for Both Lanes = Estimated 0.44 Shoulder Mile of Tree Trimming Required

<u>ITEM</u>	<u>UNIT OF MEASURE</u>	<u>APPROX. QUANTITY</u>
Roadside Tree Trimming/Pruning-Side Trimming, Removal & Disposal of Debris, Cleanup & Mobilization	Shoulder Mile	0.44
Traffic Control	LUMP	100%

Title: _____

RFP26-004, ROADSIDE TREE TRIMMING SERVICES
BID PROPOSAL FORM
 (Submit an Original and Four Copies)

Line # & Pay Item #	Item Description	Unit of Measure	Approx. Qty	Unit Price (Dollars/ Cents)	Bid Amount (Dollars/Cents)
1	Roadside Tree Trimming/Pruning - Side Trimming, Removal & Disposal of Debris, Cleanup & Mobilization	SHOULDER MILE	1.87		
2 150-1000	Traffic Control	Lump	100 %		
	TOTAL BID				

BID BOND

CITY OF AUBURN, GEORGIA

BIDDER (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (hereinafter referred to as the "City" (Name and Address): The

City of Auburn
1 Auburn Way
Auburn, Georgia 30011

BID

BID DUE DATE:

PROJECT (Brief Description Including Location):

BOND

BOND NUMBER:

DATE (Not later than Bid due date):

PENAL SUM: _____
(Words) (Figures)

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby to the City, subject to the terms printed below or on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent or representative.

BIDDER

SURETY

_____(Seal)
Bidder's Name and Corporate Seal

_____(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title:

By: _____
Signature and Title:
(Attach Power of Attorney)

Attest: _____
Signature and Title:

Attest: _____
Signature and Title:

Note: (1) Above addresses are to be used for giving any notice required by the terms of this Bid Bond.
(2) Any singular reference to Bidder, Surety, the City or any other party shall be considered plural where applicable.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to the City upon Default of Bidder the penal sum set forth on the face of this Bond.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension of that time agreed to in writing by the City) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents.

3. This obligation shall be null and void if:

3.1 The City accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension of that time agreed to in writing by the City) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents; or

3.2 All Bids are rejected by the City; or

3.3 The City fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension of that time agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon Default by Bidder within 30 calendar days after receipt by Bidder and Surety of a written Notice of Default from the City, which Notice will be given with reasonable promptness and will identify this Bond and the Project and include a statement of the amount due.

5. Surety waives notice of, as well as any and all defenses based on or arising out of, any time extension to issue a Notice of Award agreed to in writing by the City and Bidder, provided that the total time, including extensions, for issuing a Notice of Award shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.

6. No suit or action shall be commenced under

this Bond either prior to 30 calendar days after the Notice of Default required in paragraph 4 above is received by Bidder and Surety or later than one year after Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the State of Georgia.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer or proposal, as applicable under the particular circumstances.

12. The terms of this Bid Bond shall be governed by the laws of the State of Georgia.

REFERENCES FORM – PAGE 1 OF 2

RFP26-004, ROADSIDE TREE TRIMMING SERVICES, AUBURN, GA.

Project: _____ Value: _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

Project: _____ Value: _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

Project: _____ Value: _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

REFERENCES FORM – PAGE 2 OF 2

RFP26-004, ROADSIDE TREE TRIMMING SERVICES, AUBURN, GA.

Project: _____ Value: _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

Project: _____ Value: _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

Project: _____ Value: _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

Subcontractor Request Form

Date of Request:	
Prime Contractors Name:	
RFP #:	
RFP Name:	
Proposed Sub Contractor:	
Name:	
Address:	
Phone Number:	
Location of Work :	
Justification For Needing a Subcontractor:	

The following documentation must be submitted at the time of request to be considered for evaluation:

1. Subcontractor Request Form
2. Completed and Notarized GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT "E-Verify" (Subcontractor), use City Form, Exhibit E.2 (included in Services Agreement)
3. Current Business License for Subcontractor
4. Certify that the contractor is qualified and able to do the needed work

For City of Auburn Use Only:

☐ Approved☐ Rejected

City Signature

City Signature

SERVICES AGREEMENT
FOR RFP26-004, ROADSIDE TREE TRIMMING SERVICES

This SERVICES AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2026 (the "Effective Date"), by and between **THE CITY OF AUBURN, GEORGIA**, a political subdivision of the State of Georgia, acting by and through its governing authority, the Auburn City Council ("City") and _____, a _____ (hereinafter referred to as the "Contractor"), collectively referred to herein as the "Parties".

W I T N E S S E T H:

WHEREAS, under authority granted to it by the Georgia General Assembly as codified in the Official Code of Georgia Annotated ("O.C.G.A.") § 32-4-42, the City desires to retain a contractor to perform services for a Project regarding the construction, maintenance, administration, or operation of one or more City roads or activities incident thereto, as defined below; and

WHEREAS, the City solicited bids for the Project pursuant to the Request for Proposals, dated **July 22, 2026**, maintained on file in the Purchasing Division of the Finance Department.

WHEREAS, the Contractor submitted a complete and timely bid, attached hereto as "**Exhibit A**" and incorporated herein by reference, and met all bid requirements such that the City awarded the **RFP26-004, ROADSIDE TREE TRIMMING SERVICES** to the Contractor; and

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

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

WHEREAS, based upon Contractor's bid, the City has selected Contractor as the successful bidder, and

WHEREAS, Contractor 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, Contractor has familiarized itself with the nature and extent of the Contract Documents, 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 the Work, and Contractor is aware that it must be licensed to do business in the State of Georgia.

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 hereto do mutually agree as follows:

Section 1. Contract Documents

This Agreement along with the following documents, attached hereto (except as expressly noted otherwise below) and incorporated herein by reference, constitute the “Contract Documents”:

- A. Request for Proposals, (a true and correct copy of which has been provided to Contractor with original maintained on file with the City Purchasing Department);
- B. Bid Documents from Contractor, dated _____, _____, attached hereto as **“Exhibit A”**;
- C. Scope of Work, (a true and correct copy of which has been provided to Contractor with original maintained on file with the City Purchasing Department);
- D. The required Performance Bond and Payment Bond, attached hereto collectively as **“Exhibits B.1 and B.2”**;
- E. Non-Collusion Affidavit of Prime Bidder, attached hereto as **“Exhibit C”**;
- F. Final Affidavit, attached hereto as **“Exhibit D”**;

- G. Alien Employment affidavits, attached hereto as “**Exhibits E.1 and E.2**”;
- H. Plans, drawings, roadway summaries, location maps and specifications (included in the RFP referenced in 1.A. above), with any modifications (if issued), attached hereto as “**Exhibit F**”;
- I. Additional Payment/Retainage Requirements, attached hereto as “**Exhibit G**”;
- J. Key Personnel, attached hereto as “**Exhibit H**”;
- K. Contract Administration provisions (if issued), attached hereto as “**Exhibit I**”;
- L. General Conditions (if issued), attached hereto as “**Exhibit J**”;
- M. Supplementary Conditions (if issued), attached hereto as “**Exhibit K**”;
- N. Notice of Award, attached hereto as “**Exhibit L**”;
- O. City of Auburn Code of Ethics (codified in the official Code of The City of Auburn);
- P. The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Change Orders (defined in Section 6 below), other written amendments, and other documents amending, modifying, or supplementing the Contract Documents if properly adopted in writing and executed by the Parties.

Section 2. Project Description

- A. Project. A general description of the Project is as follows: RFP26-004, ROADSIDE TREE TRIMMING SERVICES which is described generally as providing roadside tree trimming/pruning-side trimming services along various roadways throughout the City of Auburn (the “Project”).

Section 3. The Work

- A. 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, Bid Form, Roadway Summaries, Location Maps, and elsewhere in the Contract Documents for the Project, a true and correct copy of which has been provided to Contractor with original maintained on file in the City Purchasing Department. The Work includes all material, labor, insurance, tools, equipment, machinery, water, heat, utilities, transportation, facilities, services and any other miscellaneous items and work reasonably inferable from the Contract Documents. The term “reasonably inferable” takes into consideration the understanding of the Parties that some details necessary for proper execution and completion of the Work may not be shown on the drawings or included in the Specifications or Scope of Work, but they are a requirement of the Work if they are a usual and customary component of the Work or are otherwise necessary for proper and complete installation and operation of the Work. Contractor shall complete the Work in strict accordance with the Contract Documents. In the event of any discrepancy among the terms of the various Contract Documents, the provision most beneficial to the City, as determined by the City in its sole discretion, shall govern.
- B. Notice to Proceed. The City will issue a Notice to Proceed, which Notice to Proceed shall state the dates for beginning Work (“Commencement Date”) and the Expected Date of Final Completion (defined in Section 4(A) below). Unless otherwise approved, the Contractor shall perform its obligations under this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.
- C. Plans; Drawings and Specifications. The plans, drawings and specifications (if any), a true and correct copy of which has been provided to Contractor with original maintained on file in the City Purchasing Department, are hereby acknowledged by the Parties and incorporated herein by reference.
- D. Shop Drawings, Product Data, and Samples. Shop Drawings, Product Data,

Samples and similar submittals are not Contract Documents, but must be in conformity therewith. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

- (i) “Shop Drawings” are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or a subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- (ii) “Product Data” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (iii) “Samples” are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

The Contractor shall review for compliance with the Contract Documents and shall approve and submit to the Contract Administrator Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Contract Administrator without action. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved in writing by the Contract Administrator, provided that submittals that are not required by the Contract Documents may be returned without action.

The Work shall be completed in accordance with approved submittals, provided that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Contract Administrator’s approval of Shop Drawings, Product Data, Samples or similar submittals, unless the Contractor has specifically informed the Contract Administrator in writing of such deviation at the time of submittal and (1) the Contract Administrator has given written approval to the specific deviation as a minor change in the Work, or (2) a written Change Order has been issued and approved to authorize the deviation. The Contract Administrator’s approval of the Shop Drawings, Product Data, Samples

or similar submittals shall not relieve the Contractor of responsibility for errors or omissions therein.

The Contractor shall, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, direct the Contract Administrator's attention to any additional revisions included other than those requested by the Contract Administrator on previous submittals. In the absence of such written notice drawing the Contract Administrator's attention to such additional revisions, the Contract Administrator's approval of a resubmission shall not apply to such additional revisions.

The Contractor shall maintain at the Project site(s) one record copy of the Contract Documents in good order and marked currently to record field changes and selections made during construction and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the City and Contract Administrator and shall be delivered to the Contract Administrator or City upon completion of the Work.

Section 4. Contract Term; Liquidated Damages; Expedited Completion; Partial Occupancy or Use

- A. Contract Term. The term of this Agreement ("Term") shall commence on the Effective Date and continue until the earlier of the Expected Date of Final Completion or the proper termination and non-renewal of this Agreement (provided that certain obligations, including but not limited to Warranty obligations, will survive termination/expiration of this Agreement). Contractor warrants and represents that it will perform its Work in a prompt and timely manner, which shall not impose delays on the progress of the Work. The Contractor shall commence Work pursuant to this Agreement within five (5) business days of the Commencement Date provided by the City and the Parties intend that all Work shall be completed on or before **eight (8) weeks following the commencement date specified in the Notice to Proceed**. Every effort will be made by Contractor to shorten this period. If the Term of this Agreement continues beyond the fiscal year in which this Agreement is executed, 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 the City on June 30 of each year of the Term, and further, that this Agreement shall automatically renew on July 1 of each subsequent year absent the City's provision of written notice of non-renewal to Contractor at least five (5) calendar days prior to the end of the then current fiscal year. Title to any supplies, materials, equipment, or other personal property shall remain in Contractor until fully paid for by the City.
- B. Time is of the Essence; Liquidated Damages. Contractor specifically acknowledges that TIME IS OF THE ESSENCE of this Agreement and that City will suffer financial loss if the Work is not completed in accordance with the deadlines specified in Section 4(A) above and within the Contract Documents. The

City and Contractor also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the City if the Work is not completed within the specified times. Accordingly, instead of requiring any such proof, the City and Contractor agree that, as liquidated damages for delay (but not as a penalty), the Contractor shall pay to the City **One hundred fifty dollars and 00/100 Dollars (\$150.00)** for each and every calendar day that expires after a deadline provided in the Contract Documents.

- C. Expediting Completion. The Contractor is accountable for completing the Work within the time period provided in the Contract Documents. If, in the judgment of the City, the Work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to ensure timely completion of the entire Work or a separable portion thereof, the Contractor, when so informed by the City, shall immediately take action to increase the rate of work placement by:

- (1) An increase in working forces;
- (2) An increase in equipment or tools;
- (3) An increase in hours of work or number of shifts;
- (4) Expediting delivery of materials; and/or
- (5) Other action proposed if acceptable to City.

Within five (5) calendar days after such notice from City that the Work is behind schedule, the Contractor shall notify the City in writing of the specific measures taken and/or planned to increase the rate of progress. The Contractor shall include an estimate as to the date of scheduled progress recovery. Should the City deem the plan of action inadequate, the Contractor shall take additional steps to make adjustments as necessary to its plan of action until it meets with the City's approval and such approval is provided in writing by the City.

- D. Partial Occupancy or Use. The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement between the City and Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the City, Contractor and Contract Administrator shall jointly inspect the area to be occupied, or portion of the Work to be used, in order to determine and record the condition of the Work. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

Section 5. Contractor's Compensation; Time and Method of Payment

- A. 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 6 below. The compensation for Work performed shall be based upon the amount specified in Exhibit A, and Contractor represents that the Maximum Contract Price is sufficient to perform all of the Work set forth in and contemplated by this Agreement.
- B. Additional Payment Requirements. Additional payment requirements are included as "**Exhibit G**", attached hereto and incorporated herein by reference.
- C. Material Deviations. 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 the City *before* charges are incurred and shall be handled through written Change Orders, as described in Section 6 below. Whenever the Contract Administrator considers it necessary or advisable, it shall have authority to require inspection or testing of the Work. However, neither this authority of the Contract Administrator nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Contract Administrator to the Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- D. Taxes. The City is a governmental tax-exempt entity and shall not be responsible for paying any taxes on any materials or services provided for herein. At Contractor's request, City shall provide evidence of its tax-exempt status. To the extent, if any, that the City furnishes tangible personal property to Contractor for incorporation into the Project, Contractor shall be responsible for paying the amount of tax owed for such tangible personal property.

Section 6. Change Orders

- A. Change Order Defined. A "Change Order" means a written modification of the Contract Documents, signed by representatives of the City and the Contractor with appropriate authorization.
- B. Right to Order Changes. The 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 the Contractor and the 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 to avoid delay or other unfavorable impacts

as determined by the City in its sole discretion, the City shall have the right to determine reasonable terms, and the Contractor shall proceed with the changed work.

- C. 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 the City and the Contractor.
- D. Authority to Execute Change Order. The City Manager has authority to execute, without further action of the Auburn 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 5(A) above. Any such Change Orders materially altering the terms of this Agreement, or any Change Order increasing the price by more than Five Thousand Dollars (\$5,000.00), must be approved by resolution of the Auburn City Council.
- E. Minor Changes in the Work. The Contract Administrator will have the authority to order minor changes in the Work not involving adjustment in the Maximum Contract Price or extension of the Term and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order signed by the Contract Administrator. The Contractor shall carry out such written orders promptly. If the minor changes subsequently may affect adjustments in the Maximum Contract Price or the Term, the changes shall then be converted to a written Change Order by the requesting Party.

Section 7. Covenants of Contractor

- A. Ethics Code; Conflict of Interest. Contractor agrees that it shall not engage in any activity or conduct that would result in a violation of the City of Auburn Code of Ethics or any other similar law or regulation. Contractor certifies that to the best of his knowledge no circumstances exist which will cause a conflict of interest in performing the Work. Should Contractor become aware of any circumstances that may cause a conflict of interest during the Term of this Agreement, Contractor shall immediately notify the City. If the City determines that a conflict of interest exists, the City may require that Contractor take action to remedy the conflict of interest or terminate the Agreement without liability. The City shall have the right to recover any fees paid for services rendered by Contractor when such services were performed while a conflict of interest existed, if Contractor had knowledge of the conflict of interest and did not notify the City within five (5) business days of becoming aware of the existence of the conflict of interest.
- B. Meetings. The Contractor is required to meet with the 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 the City. Meetings will occur as problems arise and will be coordinated by the City or the Contract Administrator. The Contractor will be given a minimum of three (3) full business days' notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor'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 the contract for cause.

- C. Expertise of Contractor. Contractor accepts the relationship of trust and confidence established between it and the City, recognizing that the 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 Contractor under this Agreement. The Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of City and the Project in accordance with City's requirements and procedures, and Contractor shall employ only persons duly qualified in the appropriate area of expertise to perform the Work described in this Agreement.
- D. Proper Execution by Contractor. Contractor agrees that it will perform its services in accordance with the usual and customary standards of the Contractor's profession or business and in compliance with all federal, state, and local laws, regulations, codes, ordinances, or orders applicable to the Project, including, but not limited to, O.C.G.A. § 50-5-63, any applicable records retention requirements, and Georgia's Open Records Act (O.C.G.A. § 50-18-70, *et seq.*). Any additional work or costs incurred as a result of error and/or omission by Contractor as a result of not complying with the Contract Documents or not meeting the applicable standard of care or quality, including but not limited to those of repeated procedures and compensation for the Contract Administrator's services or expenses, will be provided at Contractor's expense and at no additional cost to the City. This provision shall survive termination of this Agreement.

It is the Contractor's responsibility to be reasonably aware of all applicable laws, statutes, ordinances, building codes, and rules and regulations. If the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Contract Administrator and the City in writing of any portions of the Contract Documents that are at variance with the applicable laws, statutes, ordinances, building codes, and rules and regulations.

The Contractor's duties shall not be diminished by any approval by the City or Contract Administrator of Work completed or produced; nor shall any approval by the City or Contract Administrator of Work completed or produced release the Contractor from any liability therefore, it being understood that the City is

ultimately relying upon the Contractor's skill and knowledge in performing the Work required under the Contract Documents.

Organization of the specifications into divisions, sections and articles, and arrangement of drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

E. Familiarity with the Work.

- (i) *Contractor Familiarity with Work.* Contractor represents that it has familiarized itself with the nature and extent of the Contract Documents, the Work, work site(s), locality, and all local conditions, laws and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work. Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Contract Documents, site conditions, authorities, tests, reports and studies relative to that portion of the Work, as well as the information furnished by the City, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Project site(s) affecting it. Contractor represents and agrees that it has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, inconsistencies, or ambiguities in the Contract Documents; however, any errors, inconsistencies, omissions, or ambiguities discovered by the Contractor shall be reported promptly to the Contract Administrator and City in writing. Contractor represents that it has given the City written notice of all errors, omissions, inconsistencies, or ambiguities that the Contractor has discovered in the Contract Documents so far, and the written resolution thereof by the City is acceptable to the Contractor. Further, Contractor acknowledges that its obligation to give notice of all such errors, omissions, inconsistencies, or ambiguities shall be continuing during the Term of this Agreement. Any failure on the part of the Contractor to notify the Contract Administrator and City in writing of any errors, omissions, inconsistencies, or ambiguities in the Contract Documents that Contractor discovered or reasonably should have discovered shall result in a waiver and full release by the Contractor of any future arguments or defenses based on such errors, omissions, inconsistencies, or ambiguities against the City. Further, if the Contractor fails to perform its obligations pursuant to this paragraph, the Contractor shall pay such costs and damages to the City as would have been avoided if the Contractor had performed such obligations.

- (ii) *Inspection of Prior Work.* If part of the Contractor's Work depends for proper execution or results upon construction or operations by a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Contract Administrator apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the City's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable, and Contractor shall be responsible for all costs and damages resulting from its failure to report reasonably discoverable defects.
- (iii) *Contractor Requests for Information.* If, with undue frequency (as determined by the City in its sole discretion), the Contractor requests information that is obtainable through reasonable examination and comparison of the Contract Documents, site conditions, and previous correspondence, interpretations or clarifications, the Contractor shall be liable to the City for reasonable charges from the Contract Administrator for the additional services required to review, research and respond to such requests for information.

F. Supervision, Inspection and Construction Procedures. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety therefore and, except as stated below, shall be fully and solely responsible for the jobsite safety for such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the City and Contract Administrator and shall not proceed with that portion of the Work without further written instructions from the City or Contract Administrator as approved in writing by the City.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees and other persons who may be affected, (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site(s), under care, custody or control of the Contractor or Contractor's

subcontractors or sub-subcontractors, and (c) other property at the Project site(s) or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the Project site(s) by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the City and Contract Administrator in writing.

- G. Tests and Inspections. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, or ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made promptly at an appropriate time to avoid unreasonable delay in the Work. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the City, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Contract Administrator timely notice of when and where tests and inspections are to be made so that the Contract Administrator may be present for such procedures. Required permits or certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and delivered to the Contract Administrator within ten (10) calendar days of issuance.
- H. Budgetary Limitations. Contractor agrees and acknowledges that budgetary limitations are not a justification for breach of sound principals of Contractor's profession and industry. Contractor shall take no calculated risk in the performance of the Work. Specifically, Contractor agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principals of Contractor's profession and industry, Contractor will give written notice immediately to the City.
- I. City's Reliance on the Work. The Contractor acknowledges and agrees that the City does not undertake to approve or pass upon matters of expertise of the Contractor and that therefore, the City bears no responsibility for Contractor's Work performed under this Agreement. The Contractor acknowledges and agrees that the acceptance of Work by the City is limited to the function of determining whether there has been compliance with what is required to be produced under this

Agreement. The City will not, and need not, inquire into adequacy, fitness, suitability or correctness of Contractor's performance. Contractor further agrees that no approval of designs, plans, or specifications by any person, body, or agency shall relieve Contractor of the responsibility for adequacy, fitness, suitability, and correctness of Contractor's Work under professional and industry standards, or for performing services under this Agreement in accordance with sound and accepted professional and industry principles.

- J. Contractor's Reliance on Submissions by the City. Contractor must have timely information and input from the City in order to perform the Work required under this Agreement. Contractor is entitled to rely upon information provided by the City, but Contractor shall be required to provide immediate written notice to the City if Contractor knows or reasonably should know that any information provided by the City is erroneous, inconsistent, or otherwise problematic.
- K. Uncovering and Correction of Work. If a portion of the Work is covered contrary to the Contract Administrator's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Contract Administrator, be uncovered for examination by the Contract Administrator and be replaced at the Contractor's expense without change in the Agreement Term.

If a portion of the Work has been covered which the Contract Administrator has not specifically requested to examine prior to its being covered or which the Contract Documents did not require to remain uncovered until examined, the Contract Administrator may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the City's expense, which expense shall be agreed upon in writing prior to being incurred. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense, unless the condition was caused by the City, in which event the City shall be responsible for payment of such costs including reasonable charges, if any, by the Contract Administrator for additional service, which expense shall be agreed upon in writing prior to being incurred.

If the City prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the Maximum Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

- L. Clean Up. Contractor shall keep the Project site(s) and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. If the Contractor fails to clean up as

provided in the Contract Documents, the City may do so, and the cost thereof shall be charged to the Contractor.

- M. Contractor's Representative. _____ shall be authorized to act on Contractor's behalf with respect to the Work as Contractor's designated representative.
- N. Independent Contractor. Contractor 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 the City. Nothing contained in this Agreement shall be construed to make the Contractor or any of its employees, servants or subcontractors an employee, servant or agent of the City for any purpose. The Contractor 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 subcontractors, 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. The Contractor 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 the City by virtue of this Agreement with the Contractor. Any provisions of this Agreement that may appear to give the City the right to direct Contractor as to the details of the services to be performed by Contractor or to exercise a measure of control over such services will be deemed to mean that Contractor shall follow the directions of the City with regard to the results of such services only. It is further understood that this Agreement is not exclusive, and the City may hire additional entities to perform Work related to this Agreement.

Inasmuch as the City and the Contractor 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. The Contractor agrees not to represent itself as the City's agent for any purpose to any party or to allow any employee of the Contractor 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. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the City without the express knowledge and prior written consent of the City.

- O. Responsibility of Contractor and Indemnification of City. The Contractor covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. The Contractor shall bear all losses and damages directly or indirectly resulting to it and/or the City on account of the performance or character of the Work rendered pursuant to this Agreement. To the

fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City and the 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 the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable, regardless of whether or not the act or omission is caused in part by a party indemnified hereunder. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of an Indemnified Party. Such 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 the Contractor, its subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor 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 the Contractor 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.

P. Insurance.

- (1) Requirements: The Contractor 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 from or in connection with the performance of the Work by the Contractor, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Administrator.
- (2) Minimum Limits of Insurance: Contractor shall maintain the following insurance policies with coverage and limits no less than:
 - (a) *Commercial General Liability:* \$1,000,000 (one million dollars) combined single limit per occurrence comprehensive/

extended/enhanced Commercial General Liability policy with coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, damage to premises/operations, products/completed operations, independent consultants and contractual liability (specifically covering the indemnity), broad-from property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on "an occurrence" basis ("claims made" coverage is not acceptable). If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location, and the general aggregate limit shall be twice the required occurrence limit.

- (b) *Commercial Automobile Liability (owned, non-owned, hired):* \$1,000,000 (one million dollars) combined single limit per occurrence \$2,000,000 (two million dollars) aggregate for comprehensive Commercial Automobile liability coverage (owned, non-owned, hired) including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
- (c) *Workers' Compensation and Employers' Liability:* Workers' Compensation policy with limits as required by the State of Georgia and Employers' Liability limits of \$1,000,000 (one million dollars) per occurrence or disease. (If Contractor is a sole proprietor, who is otherwise not entitled to coverage under Georgia's Workers' Compensation Act, Contractor 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, the Contractor shall provide a certificate of insurance indicating that such coverage has been secured and that no individual has been excluded from coverage.)

If higher limits are maintained by Contractor than shown above, the City shall be entitled to coverage for any additional insurance proceeds in excess of the specified minimum limits maintained by the Contractor.

- (3) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the City in writing so that the City may ensure the financial solvency of the Contractor; 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 Umbrella Liability Coverage.

- (i) *Additional Insured Requirement.* The 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 the Contractor; products and completed operations of the Contractor; premises owned, leased, or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor. 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 Contractor to provide liability insurance coverage to any Insured Party for claims asserted against such Insured Party for its sole negligence.
- (ii) *Primary Insurance Requirement.* The Contractor'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 the Contractor'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 the Contractor'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.
- (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 the Contractor for the 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 the Contractor for the City.
- (c) All Coverages:
 - (i) *Notice Requirement.* Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be reduced, 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 the City. In addition, Contractor shall provide written notice to City at least thirty (30) days prior to any reduction, suspension, voiding, or cancellation of coverage. The 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 a Project-specific endorsement incorporating the indemnification obligations assumed by the Contractor under the terms of this Agreement, including but not limited to Section 7(O) of this Agreement.
- (5) Acceptability of Insurers: The insurance to be maintained by Contractor must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance shall be placed with insurer(s) with an A.M. Best Policyholder's rating of no less than "A-" and with a financial rate of Class VII or greater. The Contractor 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: Contractor shall furnish to the City for City approval certificates of insurance and endorsements to the policies evidencing all coverage required by this Agreement prior to the start of work. Without limiting the general scope of this requirement, Contractor is specifically required to provide an endorsement naming the 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 Contractor'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. The City reserves the right to require complete, certified copies of all required insurance policies at any time. The Contractor shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

- (7) Subcontractors: Contractor 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: Contractor 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) Progress Payments: The making of progress payments to the Contractor shall not be construed as relieving the Contractor or its subcontractor or insurance carriers from providing the coverage required in this Agreement.

Q. Bonds. In accordance with O.C.G.A. § 32-4-69, for road construction/maintenance contracts valued at five thousand dollars (\$5,000.00) or more, or in any other instance where the City has elected to include such bond requirements as exhibits to this Agreement, the Contractor shall provide Performance and Payment Bonds on the forms attached hereto as **"Exhibits B.1 and B.2"** and with a surety licensed to do business in Georgia and listed on the Treasury Department's most current list (Circular 570 as amended) and has an A.M. Best rating of "A-" or better. Bonds given shall meet the requirements of the law of the State of Georgia including but not limited to, O.C.G.A. § 13-10-1 and § 32-2-70 et seq. AIA (The American Institute of Architects) forms for any type of bonds are not acceptable. All bonds must be returned using the bond forms provided by the City in this RFP. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

R. Assignment of Agreement. The Contractor 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 the City, which consent may be withheld in the City's sole and absolute discretion. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them, and the City shall have no obligation to them.

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

- (1) the Contractor shall provide evidence on City-provided forms, attached hereto as **“Exhibits E.1 and E.2”** (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 its subcontractors have registered with, are authorized to use and use 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, and that they will continue to use the federal work authorization program throughout the contract period, **or**
- (2) the Contractor provides evidence that it is not required to provide an affidavit because it is an *individual* licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing.

The Contractor hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in **“Exhibit E.1”**, and submitted such affidavit to City or provided the 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, Contractor 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 the Contractor employs or contracts with any subcontractor(s) in connection with the covered contract, the Contractor 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.2”**, which subcontractor affidavit shall become part of the contractor/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is licensed and in good standing as noted in sub-subsection (2) above. If a subcontractor affidavit is obtained, Contractor agrees to provide a completed copy to the City within five (5) business days of receipt from any subcontractor.

Where Contractor 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 the Contractor’s and Contractor’s subcontractors’ verification process at any time to determine that the verification was correct and complete. The Contractor and Contractor’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 Contractor 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 Contractor or Contractor's subcontractors employ unauthorized aliens on City contracts. By entering into a contract with the City, the Contractor and Contractor's subcontractors agree to cooperate with any such investigation by making their records and personnel available upon reasonable notice for inspection and questioning. Where a Contractor or Contractor'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. The Contractor's failure to cooperate with the investigation may be sanctioned by termination of the contract, and the Contractor shall be liable for all damages and delays occasioned by the City thereby.

Contractor agrees that the employee-number category designated below is applicable to the Contractor. [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.

Contractor hereby agrees that, in the event Contractor 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, the Contractor 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.

T. Records, Reports and Audits.

(1) Records:

- (a) Books, records, documents, account ledgers, data bases, and similar materials relating to the Work performed for the City under this Agreement ("Records") shall be established and maintained by the Contractor in accordance with applicable law and requirements prescribed by the 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 Contractor by the 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, the Contractor shall furnish to the City any and all Records in the form requested by the City. All Records stored on a computer database must be of a format compatible with the City's computer systems and software.
- (3) Audits and Inspections: At any time during normal business hours and as often as the City may deem necessary, Contractor shall make available to the City or City's representative(s) for examination all Records. The Contractor will permit the City or City's representative(s) to audit, examine, and make excerpts or transcripts from such Records. Contractor shall provide proper facilities for City or City's representative(s) to access and inspect the Records, or, at the request of the City, shall make the Records available for inspection at the City's office. Further, Contractor shall permit the City or City's representative(s) to observe and inspect any or all of Contractor's facilities and activities during normal hours of business for the purpose of evaluating Contractor's compliance with the terms of this Agreement. In such instances, the City or City's representative(s) shall not interfere with or disrupt such activities.

U. Confidentiality. Contractor acknowledges that it may receive confidential information of the City and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, contractors, and/or staff to likewise protect such confidential information. The Contractor agrees that confidential information it receives or such reports, information, opinions, or conclusions that Contractor 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 the City. Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether specifically deemed confidential or not.

Contractor acknowledges that the City's disclosure of documentation is governed by Georgia's Open Records Act, and Contractor further acknowledges that, if Contractor submits records containing trade secret information and if Contractor wishes to keep such records confidential, Contractor 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.

- V. Licenses, Certifications and Permits. The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits, or the like required of the Contractor 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; provided that some permits or licenses related to the Project may be obtained as part of the Work and shall be obtained as required. The Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work, which are customarily secured after execution of the Agreement and which are legally required. Contractor shall furnish copies of such permits, licenses, etc. to the City within ten (10) days after issuance.
- W. Key Personnel. All of the individuals identified in “**Exhibit H**”, 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 Contractor’s Project Manager or members of the Project team, as listed in “**Exhibit H**”, without written approval of the City. Contractor recognizes that the composition of this team was instrumental in the City’s decision to award the Work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the 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 Contractor’s obligations under this Agreement and shall be grounds for termination.
- X. Authority to Contract. The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners, or similar authorities to simultaneously execute and bind Contractor to the terms of this Agreement, if applicable.
- Y. Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, work product, and other materials, including those in electronic form, prepared or in the process of being prepared for the Work to be performed by the Contractor (“Materials”) shall be the property of the City, and the City shall be entitled to full access and copies of all Materials in the form prescribed by the City. Any Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the Work shall be delivered immediately to the City whether or not the Project or Work is commenced or completed, provided, however, that Contractor may retain a copy of any deliverables for its records. The Contractor assumes all risk of loss, damage or destruction of or to Materials. If any Materials are lost, damaged, or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Any and all copyrightable subject

matter in all Materials is hereby assigned to the City, and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

- Z. 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, the Contractor agrees that, during performance of this Agreement, Contractor, 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, Contractor 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.

Section 8. Covenants of the City

- A. Right of Entry. The City shall provide for right of entry for Contractor and Contractor's equipment as required for Contractor to complete the Work; provided that Contractor shall not unreasonably encumber the Project site(s) with materials or equipment.
- B. City's Representative. **Joe Moravec, Public Works Dept.** shall be authorized to act on City's behalf with respect to the Work as the 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 6 above.

Section 9. Final Project Documents; Warranty

- A. Final Project Documents. Prior to final payment, Contractor shall deliver to the City a written assignment of all warranties, guaranties, certificates, permits, and other documents, including without limitation, all contractors' and manufacturers' warranties. At such time, Contractor shall also deliver to the City copies of all as-built drawings, operations, and maintenance manuals, and any other pertinent documents relating to the construction and operation of the Work that is not otherwise in the possession of the City.
- B. Warranty. The Contractor warrants to the City and the Contract Administrator that materials and equipment furnished under the Agreement will be of good quality and new, unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, is considered defective. This warranty excludes remedy for damage or defect caused by abuse by the City or modifications to the Work

not executed by the Contractor or an employee/subcontractor/sub-subcontractor thereof.

Except as may be otherwise specified or agreed, the Contractor shall repair or replace all defects in materials, equipment, or workmanship appearing within One (1) year(s) (the “Warranty Period”) from the date of Final Completion (as defined in “**Exhibit G**”, attached hereto and incorporated herein by reference) at no additional cost to the City. Further, Contractor shall provide all maintenance services, including parts and labor, for One (1) year(s) (the “Maintenance Period”) from the date of Final Completion at no additional cost to the City. An inspection shall be conducted by the City or its representative(s) near the completion of the respective Warranty Period/Maintenance Period to identify any issues that must be resolved by the Contractor. After the expiration of the Maintenance Period, City shall be responsible for repairing issues resulting from normal wear and tear and shall be responsible for general maintenance of any equipment; however, expiration of any Warranty Period or Maintenance Period shall not affect the Contractor’s continued liability under an implied warranty of merchantability and fitness. All warranties implied by law, including fitness for a particular purpose and suitability, are hereby preserved and shall apply in full force and effect beyond any Warranty Period or Maintenance Period. The City may purchase additional maintenance services from the Contractor upon a written bid for such services being executed by authorized representatives of both Parties, and upon execution, such bid for additional services shall be incorporated herein by this reference.

Section 10. Termination

- A. For Convenience. The City may terminate this Agreement for convenience at any time upon providing written notice thereof to Contractor at least seven (7) calendar days in advance of the termination date.
- B. For Cause. The Contractor shall have no right to terminate this Agreement prior to completion of the Work, except in the event of City’s failure to pay the Contractor within thirty (30) calendar days of Contractor providing the City with notice of a delinquent payment and an opportunity to cure. The City may terminate this Agreement for cause as provided in Section 11 of this Agreement. The City shall give Contractor at least seven (7) calendar days’ written notice of its intent to terminate the Agreement for cause and the reasons therefor, and if Contractor, or its Surety, fails to cure the default within that period, the termination shall take place without further notice. The City shall then make alternative arrangements for completion of the Project.
- C. Statutory Termination. In compliance with O.C.G.A. § 36-60-13, this Agreement shall be deemed terminated as provided in Section 4(A) 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 the City.

- D. Payment. Provided that no damages are due to the City for Contractor's failure to perform in accordance with this Agreement, and except as otherwise provided herein, the City shall, upon termination for convenience or statutory termination, pay Contractor for Work performed prior to the date of termination in accordance with Section 5 herein. The City shall have no further liability to Contractor for such termination. At its sole discretion, the City may pay Contractor for additional value received as a result of Contractor's efforts, but in no case shall said payment exceed any remaining unpaid portion of the Maximum Contract Price.

If this Agreement is terminated for cause, the City will make no further payment to the Contractor or its Surety until the Project is completed and all costs of completing the Project are paid. If the unpaid balance of the amount due the Contractor, according to this Agreement, exceeds the cost of finishing the Project, the City shall provide payment to the Contractor (or its Surety) for services rendered and expenses incurred prior to the termination date, provided that such payment shall not exceed the unpaid balance of the amount otherwise payable under this Agreement minus the cost of completing the Project. If the costs of completing the Project exceed the unpaid balance, the Contractor or its Surety shall pay the difference to the City.

- E. Assumption of Contracts. The City reserves the right in termination for cause to take assignment of all contracts between the Contractor and its subcontractors, vendors, and suppliers. The City will promptly notify the Contractor of the contracts the City elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.
- F. Conversion to Termination for Convenience. If the City terminates this Agreement for cause and it is later determined that the 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 10(A) above.
- G. Requirements Upon Termination. Upon termination, the Contractor shall: (1) promptly discontinue all services, cancel as many outstanding obligations as possible if requested to do so by the City, and not incur any new obligations, unless the City directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Agreement, whether completed or in process, in the form specified by the City.
- H. Reservation of Rights and Remedies. The rights and remedies of the City and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

Section 11. City's Rights; Contractor Default

A. City's Rights Related to the Work.

(i) *City's Right to Stop the Work.* If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, as required by the Contract Administrator, or persistently fails to carry out Work in accordance with the Contract Documents, the City may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity. Such a stoppage of Work shall not extend the Expected Date of Final Completion of the Work.

(ii) *City's Right to Carry Out the Work.* If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) calendar day period after receipt of written notice from the City to commence and/or continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies the City may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including City's expenses and compensation for the Architect/Engineer's and/or Contract Administrator's additional services (if any) made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City.

- B. Contractor Default. For the purposes of this Agreement, Contractor shall be in default if any of the following occur during the Term of this Agreement: (a) a failure to fulfill in a timely and proper manner Contractor's obligations under this Agreement; (b) Contractor violates any of the material provisions, agreements, representations or covenants of this Agreement or any applicable city, state, or federal laws, which do not fall within the force majeure provisions of this Agreement; (c) the Contractor becomes insolvent or unable to pay its debts as they mature, or makes an assignment for the benefit of creditors, or files a bankruptcy petition under the United States Bankruptcy Code; or (d) Contractor is the subject of a judgment or order for payment of money, which judgment or order exceeds \$100,000 and is no longer subject to appeal or, in the opinion of the City, would be fruitless to appeal and where (i) such judgment or order shall continue un-discharged or unpaid for a period of thirty (30) calendar days, (ii) an insurer acceptable to the City has not acknowledged that such judgment or order is fully covered by a relevant policy of insurance, or (iii) the City is otherwise reasonably satisfied that such judgment or order is not likely to be satisfied or complied with within sixty (60) calendar days of its issuance.

In the event of Contractor's default under this Agreement, the City shall send written notice to the Contractor setting forth the specific instances of the default and providing the Contractor with at least seven (7) calendar days to cure or otherwise remedy the default to the reasonable satisfaction of the City. If the default is not

remedied during the stated cure period, then the City may, at its election: (a) in writing terminate the Agreement in whole or in part; (b) cure such default itself and charge the Contractor for the costs of curing the default against any sums due or which become due to the Contractor under this Agreement; and/or (c) pursue any other remedy then available, at law or in equity, to the City for such default.

Section 12. Construction Administration

If a Contract Administrator other than the City has been hired in relation to the Project, the Contract Administrator's administration of the construction of the Project shall be as described in "**Exhibit I**", attached hereto. The Contractor agrees to the construction administration provisions contained in "**Exhibit I**."

Section 13. Miscellaneous

- A. Complete Agreement. This Agreement, including all of the Contract Documents, 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 or the Contract Documents shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.
- B. Governing Law, Venue, and Attorneys' Fees. 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 Barrow County, Georgia or the U.S. District Court for the Northern District of Georgia – Gainesville Division, and Contractor submits to the jurisdiction and venue of such court. The prevailing party in any litigation arising out this Agreement shall be entitled to recover its reasonable costs and attorneys' fees.
- C. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- D. Invalidity of Provisions; Severability. 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 invalid.

- E. Business License. Prior to commencement of the Work to be provided hereunder, Contractor shall apply to the City for a business license, pay the applicable business license fee, and maintain said business license during the Term of this Agreement, unless Contractor 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 **Joe Moravec, Public Works Dept.**, for the City and _____, for the Contractor.

(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 calendar 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 addresses given below, or at a substitute address previously furnished to the other Party by written notice in accordance herewith:

NOTICE TO CITY shall be sent to:

City of Auburn
City Manager
Auburn Municipal Complex
1 Auburn Way, P.O. Box 1059
Auburn, Ga. 30011

NOTICE TO CONTRACTOR shall be sent to:

- G. Waiver of Agreement. No failure by the City to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Contractor with this Agreement, and no custom or practice of the City at variance with the terms and conditions of this Agreement shall constitute a general waiver of any

future breach or default or affect the City's right to demand exact and strict compliance by Contractor 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, warranties, and insurance maintenance requirements.
- I. Sovereign Immunity. Nothing contained in this Agreement shall be construed to be a waiver of the City's sovereign immunity or any individual's qualified good faith or official immunities.
- J. 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 the Contractor or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Agreement. Likewise, Contractor's performance of services under this Agreement shall not subject Contractor's individual employees, officers, or directors to any personal liability, except where Contractor is a sole proprietor. The Parties agree that their sole and exclusive remedy, claim, demand, or suit shall be directed and/or asserted only against Contractor or the City, respectively, and not against any elected or appointed official, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers.
- K. Force Majeure. Neither the City nor Contractor shall be liable for their 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 their respective duties or obligations under this Agreement or for any delay in such performance due to: (i) any cause beyond their 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 Contractor; (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.
- L. Headings. 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.

- M. 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.
- N. Successors and Assigns. Subject to the provision of this Agreement regarding assignment, each Party binds itself, its partners, successors, assigns, and legal representatives to the other Party hereto, its partners, successors, assigns, and legal representatives with respect to all covenants, agreements, and obligations contained in the Contract Documents.
- O. Agreement Construction and Interpretation. Contractor represents that it has reviewed and become familiar with this Agreement. 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 Contract Documents 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.
- P. Material Condition. Each term of this Agreement is material, and Contractor’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 the City at law or in equity.
- Q. Use of Singular and Plural. 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.

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

[SIGNATURES ON FOLLOWING PAGE]

CONTRACTOR: _____

By: _____

Print Name: _____

Its: _____

[CORPORATE SEAL]

Attest/Witness:

By: _____

Print Name: _____

Its: _____

CITY OF AUBURN, GEORGIA

By: _____
Rick E. Roquemoore, Mayor

[CITY SEAL]

Attest:

Print Name: _____

Its: City Clerk

“EXHIBIT A”

BID DOCUMENTS FROM CONTRACTOR

“EXHIBITS B.1 AND B.2”

PAYMENT AND PERFORMANCE BONDS

“EXHIBIT B.1”

PERFORMANCE BOND

CITY OF AUBURN, GA.

KNOW ALL MEN BY THESE PRESENTS THAT _____

(as CONTRACTOR, hereinafter referred to as the "Principal"), and _____

(as SURETY, hereinafter referred to as the "Contractor's Surety"), jointly and severally, and their heirs, executors, administrators, successors, and assigns, are held and firmly bound unto City of Auburn, Georgia (as OWNER, hereinafter referred to as the “City”), for the performance due under the Contract in the sum of _____.

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with the City for the construction of a project known as **RFP26-004, ROADSIDE TREE TRIMMING SERVICES** (hereinafter referred to as "the Project"), which agreement is incorporated herein by reference in its entirety (hereinafter referred to as the "Contract").

NOW THEREFORE, the conditions of this obligation are as follows:

1. That if (a) the Principal shall fully and completely perform each and all of the terms, provisions and requirements of the Contract, including and during the period of any warranties or guarantees required thereunder, and all modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made, and (b) the Principal shall indemnify and hold harmless the City from any and all losses, liability and damages, claims, judgments, liens, costs and fees of every description, including but not limited to, any damages for delay, which the City may incur, sustain or suffer by reason of the failure or default on the part of the Principal in the performance of any or all of the terms, provisions, and requirements of the Contract, including all modifications, amendments, changes, deletions, additions, and alterations thereto, and any warranties or guarantees required thereunder, then Principal and Surety shall have no

obligation hereunder; otherwise this Performance Bond shall remain in full force and effect;

2. In the event of a failure of performance of the Contract by the Principal, which shall include, but not be limited to, any breach or default of the Contract:

- a. The Contractor's Surety shall commence performance of Principal's obligations and undertakings under this Bond no later than thirty (30) calendar days after written notice from the City to the Contractor's Surety, though the failure of City to provide such notice shall not constitute a failure to comply with a condition precedent to Contractor's Surety's obligations hereunder or release Contractor's Surety from its obligations hereunder;
- b. The means, method or procedure by which the Contractor's Surety undertakes to perform the obligations under this Performance Bond shall be subject to the advance written approval of the City.
- c. Upon notice of the City of Principal's failure of performance or default under or breach of the Contract, Contractor's Surety shall promptly and at its own expense take one of the following actions:
 - (i) Arrange for Principal, with the City's consent, to perform and complete the performance required under the Contract;
 - (ii) Undertake to perform and complete the performance due under the Contract itself, through its agents or independent contractors;
 - (iii) Obtain bids or negotiated proposals from qualified contractors acceptable to the City for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the City and a contractor selected with the City's concurrence, and in accordance with applicable bidding

requirements, to be secured with performance and payment bonds provided by a qualified surety equivalent to the bonds issued in connection with the Contract, and pay to the City the amount of damages City has incurred as a result of Principal's default under the Contract; or

- (iv) Determine, subject to the approval of the City, the amount for which Contractor's Surety is liable to City and promptly make payment of said amount to City.

3. If Contractor's Surety does not proceed to perform as required hereunder within the thirty (30) day time limit prescribed herein, Contractor's Surety shall be deemed to be in default on the Performance Bond and the City shall be entitled to enforce any remedy available to City at law or equity.
4. Contractor's Surety shall also be responsible for : (a) the responsibilities of the Contractor for the correction of defective work and completion of the performance due under the Contract; (b) any additional legal, design professional, and delay cost resulting from Contractor's default; (c) any liquidated damages due under the Contract, or actual damages if liquidated damages are not provided for in the Contract; and (d) any damages resulting from the failure of Contractor's Surety to perform as required hereunder.
5. This Performance Bond shall be governed by Georgia law, not including Georgia choice-of-law provisions. Exclusive venue for any litigation regarding this performance bond shall be in the Superior Court of Barrow County, Georgia.
6. The City is an intended beneficiary of this Performance Bond.
7. The Contractor's Surety hereby waives notice of any and all modifications, omissions, additions, changes, (including without limitation changes to the contract price), and advance

payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by this Performance Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments.

8. The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

9. Notices hereunder shall be given by certified mail, return receipt requested, or by overnight delivery and shall be effective upon receipt or refusal by the recipient. Addresses for notices hereunder are as follows:

For Notices to Principal:

For Notices to Contractor's Surety:

(Signatures appear on following page)

IN WITNESS WHEREOF, the Principal and Contractor's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers or attorneys-in-fact, as set forth below.

CONTRACTOR (“Principal”):

By: _____ (signature)
 _____ (print)

Title: _____(SEAL)

Date: _____

Attest:

_____(signature)

_____ (print)

Title: _____

Date: _____

CONTRACTOR'S SURETY:

By: _____ (signature)
 _____ (print)

Title: _____(SEAL)

Date: _____

Attest:

_____(signature)

_____ (print)

Title: _____

Date: _____

(ATTACH SURETY'S POWER OF ATTORNEY)

“EXHIBIT B.2”

PAYMENT BOND

CITY OF AUBURN, GA.

KNOW ALL MEN BY THESE PRESENTS THAT _____

(as CONTRACTOR, hereinafter referred to as the “Principal”), and _____

(as SURETY, hereinafter referred to as the “Contractor's Surety”), jointly and severally, and their heirs, executors, administrators, successors, and assigns, are held and firmly bound unto City of Auburn, Georgia (as OWNER, hereinafter referred to as the “City”), to pay for labor, materials, services, and equipment furnished for use and in the performance of the Contract in the sum of any “Claimant,” as hereinafter defined, in the sum of _____ Dollars.

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with the City for the construction of a project known as **RFP26-004, ROADSIDE TREE TRIMMING SERVICES** (hereinafter referred to as “the Project”), which agreement is incorporated herein by reference in its entirety (hereinafter referred to as the “Contract”).

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all Claimants, as hereinafter defined, for all labor, equipment, services, and materials used or reasonably required for use in the performance of the Contract, and defends, indemnifies and holds harmless the City from claims, demands, liens, or suits by any person or entity seeking payment for labor, equipment, services, or materials furnished for use in the performance of the Contract, then the Principal and Contractor's Surety shall have no obligation under this Payment Bond; otherwise it shall remain in full force and effect.

1. A “Claimant” shall be defined herein as any Subcontractor (at any level), or other person or entity furnishing labor, equipment, services, or materials used or reasonably required for use in

the performance of the Contract, without regard to whether such labor, equipment, services, or materials are sold, leased, or rented, and without regard to whether such Claimant is or is not in privity of Contract with the Principal or any Subcontractor performing Work on the Project. A "Claim" shall mean any written claim or demand or suit for payment for the furnishing of labor, equipment, services, or materials used, or reasonably required for use, in the performance of the Contract, made or brought by a Claimant.

2. **Contractor's Surety's Duty to City**

Upon notification by the City of any Claim against the City, or of a Lien filed against the property of the City by a Claimant, Contractor's Surety shall promptly, and at the expense of Contractor's Surety, defend, indemnify, and hold harmless the City against such Claim and shall either settle or resolve the Claim and shall remove, or cause the removal, of any such Lien by bond or otherwise.

3. **Contractor's Surety's Duty to a Claimant**

Upon notice to Contractor's Surety, either by the City or a Claimant, of a Claim, Contractor's Surety shall, within 30 days after receipt of notice of the Claim, respond to such Claimant, with a copy of such response to be furnished to the City and Principal, which response shall: (a) identify and components of such Claim which are undisputed, and (b) identify any components of such Claim which are disputed and the basis for such dispute. Surety shall then pay or tender, or arrange for payment or tender by Contractor, of any amounts indisputably due to such Claimant, within ten days after said response is given. The fact that Contractor's Surety disputes a portion of a Claim shall not relieve Contractor's Surety from its obligation to defend, indemnify, and hold harmless the City hereunder.

4. This Payment Bond shall be governed by Georgia law, not including Georgia choice-of-law provisions. Exclusive venue for litigation regarding this payment bond shall be in the Superior Court of Barrow County, Georgia.
5. The City is an intended beneficiary of this payment bond.
6. Amounts owed by the City to the Principal under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any construction performance bond issued in connection with the Contract.
7. By the Principal furnishing and the City accepting this Payment Bond, both agree that all funds earned by the Principal in the performance of the Contract shall be dedicated to satisfy obligations of Principal and Contractor's Surety under this Payment Bond, subject to the City's priority to use such funds for the completion of the Work under the Contract and to satisfy amounts due by Principal to the City in connection therewith.
8. The Contractor's Surety hereby waives notice of any and all modifications, omissions, additions, changes (including without limitation changes to the contract price), and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments.
9. The Parties expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.
10. Notices hereunder shall be given by certified mail, return receipt requested, or by overnight delivery and shall be effective upon receipt or refusal by the recipient. Addresses for notices hereunder are as follows:

For Notices to Principal:

For Notices to Contractor's Surety:

IN WITNESS WHEREOF, the Principal and Contractor's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers, as set forth below.

[SIGNATURES ON FOLLOWING PAGE]

CONTRACTOR:

By: _____ (signature)

_____ (printed)

Title: _____ (SEAL)

Date: _____

Attest:

_____ (signature)

_____ (printed)

Title: _____

Date: _____

CONTRACTOR’S SURETY:

By: _____ (signature)

_____ (printed)

Title: _____ (SEAL)

Date: _____

Attest:

_____ (signature)

_____ (printed)

Title: _____

Date: _____

(ATTACH SURETY’S POWER OF ATTORNEY)

“EXHIBIT C”
NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

STATE OF GEORGIA

CITY OF AUBURN

_____, being first duly sworn, deposes and says that:

(1) He is _____ (Owner, Partner, Officer, Representative, or Agent) of
_____ (the “Bidder”) that has submitted the attached Bid;

(2) He is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, included in this affidavit, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price of any other Bidder or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against The City of Auburn or any person interested in the proposed Contract; and,

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this Affiant.

(6) Bidder has not directly or indirectly violated any law, ordinance or regulation related to the Bid.

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 D”

FINAL AFFIDAVIT

STATE OF GEORGIA

CITY OF AUBURN

TO CITY OF AUBURN, GEORGIA

I, _____, hereby certify that all suppliers of materials, equipment and service, subcontractors, mechanics, and laborers employed by _____ or any of its subcontractors in connection with the construction of _____ for the City of Auburn, Georgia have been paid and satisfied in full as of _____, 20____, and that there are no outstanding obligations or claims of any kind for the payment of which the City of Auburn, Georgia on the above named project might be liable, or subject to, in any lawful proceeding at law or in equity.

Signature

Title

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

Notary Public

[NOTARY SEAL]

My Commission Expires

“EXHIBIT E.1”

CONTRACTOR AFFIDAVIT AND AGREEMENT

STATE OF GEORGIA

CITY OF AUBURN

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 Auburn 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 Auburn, 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.2”

SUBCONTRACTOR AFFIDAVIT

STATE OF GEORGIA

CITY OF AUBURN

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 Auburn 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 Subcontractor

Name of Project

City of Auburn, 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 F”

PLANS, DRAWINGS AND SPECIFICATIONS

Plans, drawings and specifications, (a true and correct copy of which has been provided to Contractor as included in the RFP maintained on file with the City Purchasing Department), with any modifications (if issued), attached hereto as **“Exhibit F”**.

“EXHIBIT G”

ADDITIONAL PAYMENT TERMS

- A. Defined Terms. Terms used in this Agreement shall have their ordinary meaning, unless otherwise defined below or elsewhere in the Contract Documents.
- (i) “Substantial Completion” means when the Work or designated portion thereof is complete in accordance with the Contract Documents so that any remaining Work includes only (1) Minor Items that can be completed or corrected within the following thirty (30) calendar days, (2) Permitted Incomplete Work that will be completed by the date agreed upon by the Parties, and (3) any Warranty Work. Substantial Completion shall require complete operation of all applicable building systems including, but not limited to, mechanical, electrical, plumbing, fire protection, fire alarm, telecom, data, security, elevators, life safety, and accessibility (if any).
 - (ii) “Minor Item” means a portion or element of the Work that can be totally complete within thirty (30) calendar days.
 - (iii) “Permitted Incomplete Work” means Work that is incomplete through no fault of the Contractor, as determined by the City in its sole discretion.
 - (iv) “Final Completion” means when the Work has been completed in accordance with terms and conditions of the Contract Documents.
- B. Payment for Work Completed and Costs Incurred. City agrees to pay the Contractor for the Work performed and costs incurred by Contractor upon certification by the Contract Administrator and the City that the Work was actually performed and costs actually incurred in accordance with this Agreement. Payment shall be based on the value of the Work completed, as provided in the Contract Documents, plus the value of materials and equipment suitably stored, insured, and protected at the construction site, and, only if approved in writing by the City (which approval shall be given at the sole discretion of the City), such materials and equipment suitably stored, insured, and protected off site at a location approved by the City in writing, less retainage (as described below). Compensation for Work performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the City of invoices setting forth in detail the Work performed and costs incurred, along with all supporting documents required by the Contract Documents or requested by the City to process the invoice. Invoices shall be submitted on a monthly basis, and such invoices shall reflect costs incurred versus costs budgeted. Each invoice shall be accompanied by an Interim Waiver and Release upon Payment (or a Waiver and Release upon final payment in the case of the invoice for final payment) procured by the Contractor from all subcontractors in accordance with O.C.G.A. § 44-14-366.

The City shall pay the Contractor within thirty (30) calendar days after approval of the invoice by City staff, less any retainage as described in Section D below. No payments

will be made for unauthorized work. Payment will be sent to the designated address by U. S. Mail only; payment will not be hand-delivered, though the Contractor may arrange to pick up payments directly from the City or may make written requests for the City to deliver payments to the Contractor by Federal Express delivery at the Contractor's expense.

- C. Evaluation of Payment Requests. The Contract Administrator will evaluate the Contractor's applications for payment and will either issue to the City a Certificate for Payment (with a copy of the Contractor's application for payment) for such amount as the Contract Administrator determines is properly due, or notify the Contractor and City in writing of the Contract Administrator's reasons for withholding certification in whole or in part. The Contract Administrator may reject Work that does not conform to the Contract Documents and may withhold a Certificate of Payment in whole or in part, to the extent reasonably necessary to protect the City. When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

Even following a Certificate of Payment, the City shall have the right to refuse payment of any invoice or part thereof that is not properly supported, or where requests for payment for Work or costs are in excess of the actual Work performed or costs incurred, or where the Work product provided is unacceptable or not in conformity with the Contract Documents, as determined by the City in its sole discretion. The City shall pay each such invoice or portion thereof as approved, provided that neither the approval or payment of any such invoice, nor partial or entire use or occupancy of the Project by the City, shall be considered to be evidence of performance by the Contractor to the point indicated by such invoice, or of receipt or acceptance by the City of Work covered by such invoice, where such work is not in accordance with the Contract Documents.

- D. Final Payment and Retainage. The City and Contractor shall comply with the provisions of O.C.G.A. § 13-10-80. The Contractor through each invoice may request payment of no more than ninety-five percent (95%) of that portion of the Work completed during the term covered by such invoice. Payment for the remaining five percent (5%) of Work completed and covered by such invoices shall be retained by the City until Substantial Completion. At the discretion of the City and with the written approval of the Contractor, the retainage of each subcontractor may be released separately as the subcontractor completes his or her work.

At Substantial Completion of the Work and as the Contract Administrator determines the Work to be reasonably satisfactory, the City shall, within thirty (30) days after the invoice and other appropriate documentation as may be required by the Contract Documents are provided to the City, pay the retainage to the Contractor. If at that time there are any remaining incomplete Minor Items or Permitted Incomplete Work, an amount equal to 200 percent of the value of each Minor Item or Permitted Incomplete Work, as determined by the Contract Administrator in its sole discretion, shall be withheld until such item, items or work are completed. The reduced retainage shall be shared by the Contractor and subcontractors as their interests may appear.

The Contractor shall, within ten (10) days from its receipt of retainage from the City, pass through payments to subcontractors and shall reduce each subcontractor's retainage in the same manner as the Contractor's retainage is reduced by the City; provided, however that the work of the subcontractor is proceeding satisfactorily and the subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete his or her work including any warranty work as the Contractor in his or her reasonable discretion may require, including, but not limited to, a payment and performance bond.

The subcontractor shall, within ten (10) days from the subcontractor's receipt of retainage from the Contractor, pass through payments to lower tier subcontractors and shall reduce each lower tier subcontractor's retainage in the same manner as the subcontractor's retainage is reduced by the Contractor; provided, however that the work of the lower tier subcontractor is proceeding satisfactorily and the lower tier subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete his or her work including any warranty work as the subcontractor in his or her reasonable discretion may require, including, but not limited to, a payment and performance bond.

Final payment of any retained amounts to the Contractor shall be made after certification by the Contract Administrator that the Work has been satisfactorily completed and is accepted in accordance with the Agreement and Contract Documents.

Neither final payment nor any remaining retainage shall become due until the Contractor submits to the Contract Administrator (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or City property might be responsible or encumbered (less amounts withheld by City) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance, required by the Contract Documents to remain in force after final payment, is currently in effect and will not be canceled or allowed to expire until at least thirty (30) calendar days prior written notice has been given to the City; (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) a release or waiver of liens, claims, security interests, and encumbrances by all subcontractors and material suppliers, and (6), if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, to the extent and in such form as may be designated by the City. If a subcontractor or material supplier refuses to furnish a release or waiver as required by the City, the Contractor may furnish a bond satisfactory to the City to indemnify the City against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the City all money that the City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee, except those claims previously made in writing and identified by that payee as unsettled at the time of final application for payment.

“EXHIBIT H”

KEY PERSONNEL

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

[illegible]

“EXHIBIT I”

CONTRACT ADMINISTRATION PROVISIONS

(if issued)

“EXHIBIT J”

GENERAL CONDITIONS

(if issued)

“EXHIBIT K”

SUPPLEMENTARY CONDITIONS

(Not Applicable to this Agreement)

“EXHIBIT L”

NOTICE OF AWARD



NOTICE OF AWARD

TO: _____

PROJECT TITLE: **RFP26-004, ROADSIDE TREE TRIMMING SERVICES**

The City of Auburn (Owner) has considered the Bid submitted by you for the above described Project which was opened and read on _____. You are hereby notified that your Bid has been accepted for the Project in the amount of _____ dollars.

You are required in the bid documents to furnish the required Payment Bond and Performance Bond each in the amount of one hundred percent (100%) of the Contract amount. Also, a Certificate(s) of Insurance is to be submitted as called for in the bid documents. Attached please find the fully executed Services Agreement for your use. Upon the City's receipt of the other stated documents, a NOTICE TO PROCEED will be generated.

If you fail to furnish the other stated documents within ten (10) days from the date of receipt of this document, Owner will be entitled to such rights as may be granted by law to ensure Project is completed on schedule.

Please acknowledge a copy of this Notice of Award and return it to: Sunshine Palmer, City

Accountant, City of Auburn, 1 Auburn Way, P.O. Box 1059, Auburn, GA 30011.

Dated this _____ day of _____, 20____.

City of Auburn (OWNER)

By: _____

Michael E. Parks, City Manager

ACCEPTANCE OF NOTICE OF AWARD:

RECEIPT OF THIS NOTICE OF AWARD IS HEREBY ACKNOWLEDGED:

BY: _____ TITLE: _____

DATED THIS THE _____ DAY OF _____, 20____.



NOTICE TO PROCEED

TO: _____

PROJECT DESCRIPTION: **RFP26-004, ROADSIDE TREE TRIMMING SERVICES**

You are hereby notified to commence Work in accordance with the Agreement dated _____ on or before _____ and you are to complete the Work in accordance with Agreement.

Date this ____ day of _____, 20__.

BY: _____

Michael E. Parks, City Manager

City of Auburn (OWNER)

Receipt of the above "Notice to Proceed" is hereby acknowledged by _____

_____ this _____ day of _____, 20__.

BY: _____ (CONTRACTOR)

TITLE: _____