



GATEWAY85 GWINNETT COMMUNITY IMPROVEMENT DISTRICT ON CALL PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and effective the date last signed below by and between the Gateway85 Gwinnett Community Improvement District (“CID”) and _____ - (the “Firm”) (individually referred to as “Party” and collectively as “Parties”).

WHEREAS, the CID desires to enter into a professional services agreement with a qualified and experienced consulting firm to furnish Planning and Engineering Services (“Professional Services”) on an “as needed” basis pursuant to negotiated Task Work Orders; and

WHEREAS, the Firm has represented to the CID that it is experienced and qualified to provide Professional Services, and the CID has relied upon such representations.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, it is agreed that the Firm shall provide Professional Services on an On Call basis pursuant to negotiated Task Work Orders as follows:

1. Term

The “Effective Date” of this Agreement shall be the date last signed below. The initial term (“Initial Term”) of this Agreement shall be from the Effective Date through December 31, 2019 at which time it shall terminate with no further obligation of the CID, unless renewed as provided herein. This Agreement is renewable for up to four (4) additional one-year periods until terminated by the CID. This Agreement shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds or other revenues are no longer available to satisfy the obligations of the CID under this Agreement. The CID may terminate this Agreement and not renew the terms hereof as set forth in Section 9.3 of this Agreement. The terms of this Agreement will survive the Initial Term and renewals if a Contract Time has not expired. The time period from the Effective Date through the Initial Term and all renewals, as well as Contract Times, shall be the “Term”.

2. Definitions.

Wherever used in this Agreement, whether in the singular or in the plural, the following terms shall have the following meanings:

2.1 Consultant.

Primary representative of the Firm and central point of contact for the Liaison.

2.2 Contract.

The Contract includes the Contract Documents and is the entire and integrated agreement between the Parties hereto and supersedes prior negotiations, representations, or agreements, whether written or oral. The Contract may be amended or modified only by a Modification.

2.3 Contract Documents.

The Contract Documents consist of this Agreement between CID and Firm, Drawings, Specifications, Exhibits, and Addenda issued prior to execution of the Task Work Order, and Modifications issued after execution of the Task Work Order.

2.4 Contract Execution.

The Contract Execution means the date on which Firm executes and enters into Task Work Order.

2.5 Contract Price.

The Contract Price means the total monies, adjusted in accordance with any provision herein, payable to the Firm pursuant to a Task Work Order.

2.6 Contract Time.

The Contract Time means the period of time stated in a Task Work Order for the completion of the Work. Time is of the essence.

2.7 Drawings.

The drawings are the graphic and pictorial portions of the Contract Documents, whether completed or partially completed.

2.8 Liaison.

The representative of the CID who shall act as Liaison between the CID and the Firm for all matters pertaining to this Agreement, including review of Firm's plans and work, unless otherwise specified in writing by CID.

2.9 Modification.

(a) A written amendment to the Agreement signed by both Parties, (b) a Change Order, (c) a Design Change Directive, or (d) a written order for a minor change in the Work issued by the Firm.

2.10 Procurement.

Formal public bid and selection process completed by the CID, culminating in the recommendation of several engineering and architectural firms with varying specialties, subsequently approved by the Board of Directors to complete a professional services agreement.

2.11 Project.

Project means a task or set of tasks assigned pursuant to a Task Work Order. It shall have its separate scope of services, milestone dates, and dates for substantial completion. Project shall also mean a task or set of tasks assigned without a separate Task Work Order.

2.12 Specifications.

The Specifications means the written technical provisions including all appendices thereto, both general and specific, which form a part of the Task Work Order.

2.13 Subconsultant.

The Subconsultant means any person, firm, partnership, joint venture, company, corporation, or entity having a contractual agreement with Firm or with any of its subconsultants at any tier to provide a portion of the Work called for by this Agreement. Subconsultants shall also include those furnishing specially fabricated equipment and materials for a Project.

2.14 Supplier.

A Supplier means an entity providing only equipment or materials for the performance of the Work.

2.15 Task Work Order.

A Task Work Order means a written order to Firm signed by the CID and accepted by Consultant on behalf of the Firm, assigning a Project to engineer, design, plan, inspect, or provide similar Professional Services, as specified in the Task Work Order. A Task Work Order shall contain a specific scope of services for a Project, the method of calculating Contract Price, and shall establish the Contract Time, minimally in the form of Exhibit "A", attached.

2.17 Work.

The Work means any and all obligations, duties and responsibilities, including furnishing equipment, engineering, design, workmanship, labor, and any other services or items necessary to the successful completion of a Project, assigned to or undertaken by Firm under a Task Work Order.

3. Compensation

3.1 For Professional Services as provided by this Agreement, CID shall pay Firm the Contract Price set

forth in the Task Work Orders. Firm is not authorized to begin Work, and CID is not obligated to pay compensation, unless pursuant to a Task Work Order. It is anticipated that professional services will be performed and reimbursed on payment terms (i.e., lump sum, hourly, etc.) set forth in the Task Work Order. Any unique unit rates or costs related to outside subconsultants contracted to the Firm to provide specialized services for specific Work tasks will be included in the Project specific Task Work Orders. It will be the responsibility of the Firm to at least monthly update the CID regarding incurred fees for the various Projects executed under this Agreement as it relates to a Project budget. Firm and CID will also periodically review Project progress and schedules to ensure timely completion of work.

- 3.2** In addition to the customary overhead items, the following costs are specifically defined as overhead charges and there shall be no additional charges for these costs: telephone charges, computer expenses, use of company vehicles, in-house reproduction, photocopying, and routine expendable/office supplies.
- 3.3** The CID reserves the right to insert a liquidated damages provision in any Task Work Order.

4. Scope of Professional Services, Procedures.

Professional Services shall be provided to the CID only pursuant to execution of a written Task Work Order with a defined scope of Work identified by CID. CID will not compensate for services performed by informal or verbal request.

The CID may, in its sole discretion, issue multiple Task Work Orders to the Firm requiring Professional Services on multiple Projects. If the CID determines it is most advantageous for the CID to obtain the same or similar Professional Services from another professional consultant, pursuant to a separate agreement with another source, it may do so.

The Firm is not assured, guaranteed or promised that any Task Work Orders will be issued to Firm for Professional Services pursuant to this Agreement and the Firm is not assured, guaranteed or promised that any minimum amount of compensation shall be paid to the Firm for Professional Services pursuant to this Agreement.

The CID shall determine, in its sole discretion, whether it is in the CID's best interest to issue an independent Request for Proposals for a Project or to negotiate a Task Work Order pursuant to this Agreement or any other Agreement for Professional Services.

If the CID determines that it is most advantageous for the CID to negotiate a Task Work Order with the Firm pursuant to this Agreement, then the CID shall prepare a written Task Work Order for the Project and request a "not to exceed" cost estimate from the Firm. If the CID and the Firm are able to successfully negotiate a not to exceed price for the Task Work Order, then the CID shall submit the Task Work Order to the Board, unless the Board previously approved a commitment of funds to finance the Project. The Executive Director of the CID shall reserve the right, however, to tender a proposed Task Work Order to the Board for approval regardless of prior commitments or decisions by the Board.

If an independent Request for Proposals is issued by the CID for a Project for Professional Services, then the Firm shall be eligible to respond to the Request for Proposals and shall not be disqualified from responding due to entering into this Agreement with the CID.

5. Personnel, Subconsultant and Suppliers

5.1 Terms of Subcontracts.

All subcontracts and purchase orders with Subconsultants shall afford Firm rights against the Subconsultant which correspond to those rights afforded to CID against Firm herein, including those rights of Contract suspension, termination, and stop work orders as set forth herein. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between CID and any Subconsultant of Firm and a provision to this effect shall be inserted into all agreements between Firm and its Subconsultants.

5.2 Firm Responsible for Acts of Its Subconsultants.

Should Firm subcontract all or any part of the work, such subcontracting of the Work shall not relieve Firm of any liability or obligation under the Contract or under any applicable policy, law, or regulation, and Firm shall be responsible for all and any acts, defaults, omissions, or negligence of its Subconsultants, Suppliers, and consultants.

5.3 Personnel.

Firm shall employ and assign only qualified and competent personnel to perform any service or task concerning a Project. Firm shall designate one such person as a Project Manager. Absent written instruction from Firm to the contrary, a Project Manager shall be deemed to be the Consultant and shall be authorized to receive and accept any and all communications from CID.

5.4 Removal of Subconsultants and Personnel.

If, at any time during the course of the Work, CID reasonably determines that the performance of any Subconsultant or any member of Firm's staff working on the Work is unsatisfactory, CID's Liaison may require Firm to remove such Subconsultant or staff member from the Work immediately and replace the staff member at no cost or penalty to CID for delays or inefficiencies the change may cause.

5.5 Notice of Personnel Changes.

No changes or substitutions shall be permitted in the Firm's key personnel as set forth herein without the prior written approval of CID.

5.6 Supervision of the Work.

The Work shall be performed in a safe manner and strictly supervised and directed using Firm's best and highest skill and effort. Firm shall bear full responsibility for any and all acts or omissions of those engaged in the Work on behalf of Firm.

5.7 Warranty of Workmanship and Materials.

Firm warrants and guarantees to CID that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only quality results in strict compliance with a Task Work Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by a Task Work Order, and that the Work will be of high quality, free from faults and defects and in strict conformance with a Task Work Order. Any and all Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Firm's warranty.

6. Payment to Firm

6.1 For each specific Work authorized under Section 4 above, CID shall pay the Firm on the basis of the method specifically set forth in a Task Work Order. If applicable, each invoice shall be accompanied by a letter progress report, which outlines the Work accomplished during the billing period, the percentage of the task completed, the percentage of the task budget expended, and any problems that may be affecting a Project's execution.

6.1.1 The Firm shall not perform Work on any phase or task of a Project that will result in costs that will exceed the budget specified for such Task Work Order without the written consent of CID.

6.2 The Firm shall bill for its services for Work completed in accordance with Subsection 6.1 for each Task Work Order. Invoices shall be paid within forty-five (45) calendar days from proof of receipt, as determined by CID. If there is any dispute regarding an invoice, then the Firm may separate the disputed portion of the invoice and resubmit the undisputed portion of the invoice. The disputed portion of the invoice will be reviewed for payment by CID upon resolution of the dispute.

6.3 Final Payment.

Upon completion by the Firm of the Work, including the receipt of any final written submission of the Firm and the approval thereof by the authorized CID representative, the CID will pay the Firm all amounts earned. The CID incurs no obligation to pay the Firm for 100 percent of a not-to-exceed amount. Payment will only be made for the amounts earned. The Firm agrees that acceptance of final payment shall be in full and final settlement of all claims arising against the CID for work done, materials furnished, costs incurred, or otherwise arising out of a Task Work Order and shall release the CID from any and all further claims of whatever nature, whether known or unknown for and on account of said Task Work Order, and for any and all work done, and labor and materials furnished, in connection with same.

7. Changes in Work and Extensions of Time.

7.1 CID's Right to Order Changes.

Changes in the Professional Services or the Work within the general scope of a Project, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by CID

without invalidating the Contract. Such changes shall be communicated by Change Order or by Field Order. Firm shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the following terms and conditions as set forth in this Section 7.

7.2 Change Order.

Change Order shall mean a written order to Firm executed by CID, issued after execution of a Task Work Order, authorizing and directing a change in the Work, an adjustment to the Contract Price, the Contract Time, or any combination thereof. The Contract Price and the Contract Time, when a guaranteed Contract time is agreed upon, may be changed only by Change Order.

7.3 Adjustments to Guaranteed Maximum Price or Contract Time.

Upon the occurrence of a change as set forth in Subsection 7.1 hereinabove which increases the Cost of the Work or Professional Services, the Contract Price will thereafter include such Cost of the Work and Services attributable to such change. Any extension of the Contract Time requested by Firm for performance of any change in the Work ordered by CID may be granted by mutual agreement and then set forth in the Change Order. Otherwise, extensions of the Contract Time must be requested by Firm pursuant to the terms and conditions of Section 7 of this Agreement, and any such request for extension of the Contract Time shall be subject to Subsection 7.7 of this Agreement. The failure of Firm to provide notice in writing to CID in accordance with Section 8 of this Agreement of any request for an increase in the Contract Price or for an extension of the Contract Time shall constitute a waiver by Firm of any entitlement thereto.

7.4 Continuing Duty to Perform Work and Make Payment.

In the event the Parties are unable to agree on the terms of a Change Order, then Firm shall continue to diligently perform the Professional Services and the Work, including any change directed by CID by Change Order, and shall keep thorough records of the cost of performance of such Change Order.

7.5 Changes in Unit Prices.

If unit prices are provided in the Contract, and if the quantities contemplated are changed in a proposed Change Order such that an application of the unit prices to the quantities of Work proposed will cause substantial inequity to CID or to Firm, the applicable unit prices shall be equitably adjusted.

7.6 Minor Changes.

CID shall have authority to order minor changes in the Work not involving a change in the Contract Price or extension of the Contract Time and not inconsistent with the intent of the Contract. Such minor changes shall be made by written Field Order, and Firm shall promptly carry out such written Field Orders.

7.7 Effect of Executed Change Order.

The execution of a Change Order by Firm shall constitute conclusive confirmation of Firm's agreement to the ordered changes in the Professional Services or the Work, the Contract Price, and the Contract Time, if any, as amended.

7.8 Consent of Surety.

Firm shall notify and obtain the consent and approval of Firm's surety with reference to all Change Orders if such notice, consent, or approval is required by CID, Firm's surety, or by law. Firm's execution of the Change Order shall constitute Firm's warranty to CID that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

7.9 Fiduciary Relationship.

Firm recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Firm and CID and agrees that the Firm will at all times in good faith use its best efforts to advance CID's interests and agrees to perform the Professional Services and the Work in the best professional manner.

8. Claims by Firm

8.1 Terms and Conditions of Claims.

Claims by Firm against CID are subject to the terms and conditions of this Section 8, and strict compliance herewith shall be a condition precedent to any liability of CID therefore.

8.2 Notice of Claim.

All Firm claims, disputes and other matters in question against CID arising out of or related to the Contract or any Task Work Order issued pursuant to the Contract or the breach thereof, including without limitation claims in respect of changes in the Contract Price or Contract Time, shall be initiated by a written notice of claim submitted to CID. Such written notice of claim shall be received by CID no later than seven (7) days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim including the amount claimed. Firm agrees and acknowledges that its failure to provide written notice of a claim as set forth herein shall constitute a waiver of any claim for additional compensation or time extension related thereto.

8.3 Documentation in Support of Claims.

Upon discovering an event or condition forming the basis of a claim for an increase in the Guaranteed Maximum Price or an extension of the Contract Time, Firm shall, until the claim is resolved, commence to maintain separate records evidencing all costs and delays incurred in connection with the event or condition forming the basis for the claim.

8.4 Formal Written Claim.

No later than thirty (30) days after the date of the written notice of claim, Firm shall submit a formal written claim which shall include at least the following information: (1) a concise statement of the occurrence(s) supporting the claim, dispute, or other matter, and the relief sought; (2) identification of the facts giving rise to the claim dispute or other matter; (3) the date Firm discovered the occurrence(s); (4) a detailed schedule identifying all costs resulting from the claim, dispute, or other matter; (5) documentation supporting the schedule; (6) identification of any impact the claim, dispute, or other matter has on the critical path schedule; and (7) all correspondence, internal memoranda, progress notes, and other documentation relating to the events which form the basis of the claim, dispute, or other matter. Other information or documents shall be submitted to CID within ten (10) days after written request by CID. The failure to provide a claim as set forth herein, or the failure to provide such other documents or information requested by CID within ten (10) days after the written request shall constitute a waiver of any claim for additional compensation or time extension related thereto.

8.5 Continuous Duty to Provide Documentation.

Firm shall provide, and continue to provide, to CID all such documentation, including cost and time records, as and when CID may request so that CID may evaluate Firm's claim.

8.6 Duty to Continue Performance.

Firm and CID shall continue their performance hereunder regardless of the existence of any claims submitted by Firm.

8.7 Claims for Increase in Guaranteed Maximum Price.

In the event Firm seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of CID therefore, Firm shall strictly comply with the requirements of Subsection 8.2 above, and such notice shall be given by Firm before proceeding to execute any additional or changed Work. Failure of the condition precedent to occur shall constitute a waiver by Firm of any claim.

8.8 Limit of CID's Liability for Increased Costs.

In connection with any claim by Firm against CID for compensation in excess of the Contract Price, any liability of CID (1) shall be strictly limited to the Cost of the Work and Services as allowed in hereinabove and shall in no event include indirect, consequential impact, or other costs, expenses, or damages of Firm or its Subconsultants. CID shall not be liable to Firm for claims of third parties, including Subconsultants, for acts, omissions, events, or conditions for which CID would not be liable to Firm under the terms of the Contract. As a condition precedent to CID's liability to Firm for any loss or damage resulting from claims of third parties, including Subconsultants, such third parties must have complied with all conditions contained in their agreements with Firm and such claims must have been submitted to CID by Firm in strict compliance with all the requirements of this Section 8. CID shall not be liable to Firm for claims of

third parties including Subconsultants, unless and until the liability of Firm therefore has been established in a court of competent jurisdiction.

8.9 Claims for Increase in Contract Time.

If Firm is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical as the sole result of any act or neglect to act by CID or someone acting in CID's behalf, or by changes ordered in the Design Services or the Work, unusually bad weather not reasonably anticipated, fire, or other Acts of God, then the date for achieving established milestone dates, Substantial Completion, or, as applicable, Final Completion, shall be appropriately adjusted by CID upon the written notice and claim of Firm to CID for such reasonable time as CID may determine. A task is critical within the meaning of this Subsection 8.9 if, and only if, said task is on the critical path of a project schedule so that a delay in performing such task will delay the ultimate completion of a project. As a condition precedent to any right to an extension of time, Firm shall strictly comply with the requirements of Subsection 8.2 above and such notice shall be given by Firm before proceeding to execute any additional or changed Design Services or Work. If Firm fails to give such notice, any claim for an extension of time shall be waived. In the event the delay to Firm is a continuing one, only one notice and claim for additional time shall be necessary, provided the continuing nature of the delay is indicated in the notice and claim.

9. Suspension & Termination

9.1 Claims for Costs of Suspension:

In the event CID directs a suspension of work, through no fault of Firm, and provided Firm submits a proper claim as provided in this Agreement, CID shall pay Firm as full compensation for such suspension Firm 's reasonable costs, actually incurred and paid, of:

- 9.1.1** Demobilization and remobilization, including such costs paid to Subconsultants.
- 9.1.2** Preserving and protecting Work in place.
- 9.1.3** Storage of materials or equipment purchased for a Project, including insurance thereon.
- 9.1.4** Performing in a later, or during a longer, time frame than that contemplated by a Task Work Order.

9.2 Resumption of Work after Suspension.

If CID lifts the suspension it shall do so in writing, and Firm shall promptly resume performance of a Task Work Order unless, prior to receiving the notice to resume, Firm has exercised its right of termination as provided herein.

9.3 Termination by the CID.

9.3.1 For Convenience.

9.3.1.1 The CID may for any reason whatsoever terminate performance under this Contract by the Firm for convenience. The CID shall give written notice of such termination to the Firm specifying when termination becomes effective, which must be a minimum of ten (10) days from the date the Firm receives the written notice.

9.3.1.2 The Firm shall incur no further obligations in connection with the Work and the Firm shall stop Work when such termination notice is received. The Firm shall also terminate outstanding orders and subcontracts. The Firm shall settle the liabilities and claims arising out of the termination of subcontracts and orders.

9.3.1.3 The Firm shall transfer title and deliver to the CID such completed or partially completed Work - including but not limited to hard copies and electronic copies - and materials, equipment, parts, fixtures, information and Contract rights as the Firm has.

9.3.1.4(a) Within thirty (30) days after its termination for convenience, the Firm shall submit a termination claim to the CID specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the CID. The claim shall be signed by an officer of the Firm under oath and under penalty of perjury. If the Firm fails to file a complete and proper termination claim within the time required herein, any claim for termination shall be deemed waived and no further sums will be due the Firm.

(b) The CID and the Firm may agree to the compensation, if any, due to the Firm hereunder.

(c) Absent agreement to the amount due to the Firm, and provided Firm has submitted its claim in accordance with the requirements set forth hereinabove, the CID shall pay the Firm the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under the Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Firm performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profits or consequential damages); provided however, that if it appears that the Firm would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subsection 9.3.1.2. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Firm under this Subsection 9.3.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no

event include duplication of payment. Payment of the sums due hereunder shall constitute full and complete satisfaction of all sums due Firm for the termination of the Contract for convenience.

9.3.2 For Cause.

9.3.2.1 If the Firm persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, supervisory personnel, or proper equipment or materials, or if it fails to make prompt payment to Subconsultants or for materials or labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of the Contract, then the CID may by written notice to the Firm, without prejudice to any other right or remedy, terminate the employment of the Firm and take possession of the site and of all materials, equipment and tools thereon owned by the Firm and may finish the Work by whatever methods it may deem expedient. In such case, the Firm shall not be entitled to receive any further payment until the Work is finished.

9.3.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, including compensation for additional services and expenses made necessary thereby, such excess shall be paid to the Firm. If such costs exceed the unpaid balance, the Firm shall pay the difference to the CID. This obligation for payment shall survive the termination of the Contract.

9.3.2.3 In the event the employment of the Firm is terminated by the CID for cause pursuant to Subsection 9.3.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subsection 9.3.1 and the provisions of Subsection 9.3.1 shall apply.

10. Indemnification.

10.1 From Personal Injury or Damage to Tangible Property.

Firm shall indemnify, defend, and hold harmless the CID, Gwinnett County, City of Norcross, City of Peachtree Corners, and the State of Georgia, their officers, directors, employees, Commissioners, and agents, from any and all claims, liability, damages, penalties, fines, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with Firm's acts or omissions in performance of the Contract, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the CID.

10.2 From Violations of Laws, Environmental Requirements, Performance Guidelines, and Licensing Requirements.

Firm shall indemnify, defend, and hold harmless the CID, Gwinnett County, City of Norcross, City of Peachtree Corners, and the State of Georgia, their officers, directors, employees, Commissioners, and agents from and against all claims, liabilities, damages, losses, costs, expenses (including reasonable attorney's fees and expenses, and fees and expenses of experts) for bodily injury, including death, or damage to or loss of property, or any other type or form of loss occurring or sustained or resulting from:

- 10.2.1** Any violation by Firm, its Subconsultants, representatives, employees, and agents of any municipal, state or federal laws, rules, or regulations applicable to the performance of its obligations under the Contract;
- 10.2.2** Environmental violations or contamination from hazardous substances, hazardous wastes and emissions or other substances or chemicals regulated by any applicable environmental laws or regulations and resulting from any willful misconduct, negligent act or omission, or legal violation by Firm, its Subconsultants, Suppliers, representatives, employees, or agents;
- 10.2.3** The failure of any of Firm employees, agents, representatives, Suppliers, or Subconsultants to obtain and maintain the required skills, licenses, certificates and permits mandated by applicable federal, state or local governing authorities with jurisdiction over construction, fabrication, environmental, health and safety matters for a Project.

10.3 Hazardous Materials.

In the event Firm discovers hazardous or contaminated materials, including but not limited to asbestos, PCBs, petroleum, hazardous waste, or radioactive material, Firm shall stop all Work in connection with such hazardous condition and in any area affected thereby, and notify the CID of the discovery of said condition. Firm shall strictly comply with all applicable laws, regulations, rules or other promulgations by governing bodies, agencies, authorities, or organizations having jurisdiction over a project or the discovery of said hazardous or contaminated material. Firm shall secure the Work site to prevent access by unauthorized personnel. If Firm fails to comply with this Subsection or contaminated, hazardous or suspected contaminated or hazardous material is transported (either on or off site) without notice to the CID, such materials shall become the property of Firm and Firm shall be solely responsible for all costs and fines associated therewith.

10.4 Lien Indemnification.

If a notice of lien or the like, alleging non-payment, should be filed or served upon CID by an engineer, laborer, materials supplier, or subcontractor on a project, CID shall have the right to retain out of any payment to Firm then due, or thereafter to become due, an amount sufficient to completely indemnify CID against said potential lien. In the event the lien should become perfected, CID may call upon Firm to satisfy it and obtain its removal within ten (10) days and upon his failure to do so may pay the amount of the lien from the retained funds and, within thirty (30) days thereafter, pay the balance, if any, less CID's expenses in the matter (including court costs and actual attorney's fees), to the Firm. Firm specifically agrees in this event that CID may consider the amount of the lien as presumptively correct. In the event the lien is not perfected within the period of time set by law for the enforcement of liens, or within such extended time as the lien holder may by law obtain, CID shall pay, without interest to the Firm whatever sums were retained, less CID's expenses (including court costs and attorney's fees) in disproving the lien. The Firm shall also be responsible for the amount of any premium for any bond given by CID to obtain the discharge of any lien, or for the interest on any money deposited for the purpose of discharging any lien.

11. Insurance.

11.1 Required Coverage and Limits.

Firm shall obtain and maintain the following insurance coverages issued by an insurance company authorized to do business in the State of Georgia with a minimum A.M. Best rating of "A VII" and reasonably acceptable to the CID. Firm shall provide certificates of insurance and Endorsements evidencing these coverages to CID upon execution of this Agreement.

- (a) Workmen's Compensation Insurance in accordance with the laws of the State of Georgia.
- (b) Commercial General Liability Insurance including Bodily Injury and Property Damage in an amount of not less than Two Million Dollars (\$2,000,000) in the aggregate and One Million Dollars (\$1,000,000) per occurrence.
- (c) Automobile Liability Insurance in an amount not less than Two Million Dollars (\$2,000,000) in the aggregate and One Million Dollars (\$1,000,000) per occurrence.
- (d) Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the Work.
- (e) Professional Liability Insurance in the minimum of One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate.
- (f) Umbrella Insurance in the minimum of Five Million Dollars (\$5,000,000) over and above the underlying required coverages of Commercial General Liability and Auto Liability coverage.

Firm shall provide CID a minimum thirty (30) days written notice prior to any change in insurance coverage. Said liability insurance policies shall name CID, Gwinnett County, City of Norcross, City of Peachtree Corners, and State of Georgia as additional insured.

11.2 Increases in Coverage.

At the request of CID, Firm shall increase the above insurance limits or obtain additional coverage at CID's expense.

12. Miscellaneous.

12.1 General Conditions

Any conditions or specification contained in the RFP, not otherwise in conflict with the terms of this Agreement, and not expressly restated herein are hereby incorporated herein by this reference.

12.2 Agreement Not to Discriminate

During the performance of this Agreement, the Firm will not discriminate against any employee or applicant for employment, subcontractor, qualified client, or recipient of services, because of race, creed or belief, political affiliation, color, sex, national origin, age, religion, handicap, or disability which does not preclude the applicant or employee from performing the essential functions of the position. The Firm will also, in all solicitations or advertisements for employees placed by qualified applicants, consider the same without regard to race, creed or belief, political affiliation, color, sex, national origin, age, religion, handicap, or disability which does not preclude

the applicant from performing the essential functions of the job. The Firm will cause the foregoing provisions to be inserted in all subcontracts for any Work covered by the Contract so that such provision will be binding upon each subconsultant, providing that the foregoing provisions shall not apply to contracts or subconsultants for standard commercial supplies of raw materials.

12.3 Assignment

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

12.4 Waiver

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

12.5 Severability

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

12.6 Governing Law

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

12.7 Merger

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

12.8 Findings Confidential

The Firm agrees that its conclusions and any reports are for the confidential information of the CID and that it will not disclose its conclusions in whole or in part to any persons whatsoever, other than to submit its written documentation to the CID, and will only discuss the same with it or its authorized representatives. Upon completion of this Agreement term, all documents, reports, maps, data, and studies prepared by the Firm pursuant thereto shall become the property of the CID and be delivered to CID.

Articles, papers, bulletins, reports, or other materials reporting the plans, progress, analyses, or results and findings of the work conducted under this Agreement shall not be presented publicly or published without prior approval in writing of the CID.

It is further agreed that if any information concerning the Work, its conduct, results, or data gathered or processed should be released by the Firm without prior approval from the CID, the release of same shall constitute grounds for termination of this Agreement without indemnity to the Firm, but should any such information be released by the CID or by the Firm with such prior written approval, the same shall be regarded as public information and no longer subject to the restrictions of this Agreement.

12.9 Firm to Cooperate

If the CID undertakes or awards other contracts for additional related work, the Firm shall fully cooperate with such other contractor and the CID, and carefully coordinate its own Work with such additional work as may be directed by the CID. The Firm shall not commit or permit any act which will interfere with the performance of work by any other contractor or by CID.

12.10 Conflict of Interest

12.10.1 Firm's Interest

The Firm agrees that it presently has no interest and shall acquire no interest, direct or indirect, that would conflict in any manner or degree with the performance of its Professional Services hereunder. The Engineer further agrees that, in the performance of the Agreement, no person having any such interest shall be employed.

12.10.2 Interest of Public Officials

The Firm will not, directly or indirectly, attempt in any manner to hire or attempt to hire or cause or otherwise encourage any employee of the CID to leave the employ of the CID in order to work for the Firm or another entity.

12.11 Anti-Kickback

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

12.12 Audits

At any time during normal business hours and as often as the CID may deem necessary, the Firm shall make available to the CID and/or representatives of the CID for examination all of its records with respect to all matters covered by this Agreement. It shall also permit the CID and/or representatives of CID to audit, examine and make copies, excerpts or transcripts from such records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

Firm shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on a project and used in support of its proposal and shall make such material available at all reasonable times during the period of the Agreement, and for three (3) years from the date of final payment under the Agreement, for inspection by the CID or any reviewing agencies, and copies thereof shall be furnished upon request. Engineer agrees that the provisions of this Article shall be included in any Agreements it may make with any subconsultant, assignee, or transferee.

12.13 Verbal

No verbal agreement or conversation with any officer, agent, or employee of the CID, either before, during, or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle Firm to any additional payment whatsoever under the terms for this Agreement. All changes to this Agreement shall be in writing and appended hereto as prescribed in Section 7 above.

12.14 Independent Contractor

Firm shall perform the Professional Services under this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute the Firm or any of its agents or employees to be the agent, employee, or representative of the CID.

12.15 Ownership of Documents

The Design Documents and the Contract Documents, including but not limited to, the drawings, specifications, and other documents or things prepared by Firm for the Work, shall immediately become and be the sole property of CID. Any documents furnished by CID shall remain the property of CID. Firm may be permitted to retain copies of the Design Documents and Contract Documents and any documents furnished by CID for its records with approval in writing of CID; provided, however, that in no event shall Firm use, or permit to be used, any portion or all of such documents on other projects without CID's prior written authorization. The Firm shall provide an electronic copy and a hard copy of all deliverables.

12.16 Modifications

Any change, alteration, or addition to the terms and conditions set forth in this Agreement must be in the form of a written modification signed by both Parties.

12.17 Notices

Any notices to be given hereunder by either Party to the other may be effected either by personal delivery in writing, by mail (registered or certified), postage prepaid with return receipt requested, or by a recognized overnight delivery service to the addresses below.

12.18 Attorney Fees

If any action at law or in equity is necessary to enforce or interpret the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may be entitled.

12.19 Litigation

As a condition precedent to the filing of any legal action by Firm against the CID arising out of or relating to this Agreement, Firm shall first provide the CID thirty (30) days written notice of its intent to file such action. Such notice shall include an identification of the anticipated parties to said action and a description of all anticipated claims and causes of action to be asserted in said action.

12.20 Venue

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement or the Contract Documents, venue shall lie in Gwinnett County, Georgia, and Firm specifically waives its right under the Georgia Constitution to object to venue lying in Gwinnett County, Georgia.

12.21 Subject to Federal Requirements.

If Federal funds are used to finance any portion of a Project, all requirements resulting from the use of Federal funds are hereby automatically incorporated into a Task Work Order for a Project. The Contractor shall cooperate fully with the City of Norcross, the City of Peachtree City, the Gwinnett County Department of Transportation ("GwDOT"), the Georgia Department of Transportation ("GDOT"), the Federal Highway Administration ("FHWA"), consultants on adjacent projects, construction Contractors, local government officials, utility companies, and others, as may be directed by the CID. Such cooperation shall include attendance at meetings, discussions, and hearings, as may be requested by the CID, furnishing plans, documents, and other data produced in the course of Work on the Project, as may be requested from time to time by the CID to effect such cooperation and compliance with all directives issued by the CID in accordance with this Agreement. It is understood and agreed that the City of Norcross, City of Peachtree City, the GwDOT, GDOT and FHWA will have access to the Work and be furnished information as directed by the CID. Contractor shall provide documents and cooperate with the CID so the CID is in compliance with any intergovernmental agreement with the City of Norcross, City of Peachtree City, GwDOT, GDOT, FHWA, and any other federal, state, or local agencies and departments.

12.22 No Third Party Beneficiaries

Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person, firm, or corporation, any legal or equitable rights by reason of this Agreement or any term, covenant or condition herein, all of which shall be for the sole and exclusive benefit of the Parties hereto and their successors and permitted assigns.

Executed by the Parties' duly authorized representatives as indicated by their signatures below.

**GATEWAY85 GWINNETT COMMUNITY
IMPROVEMENT DISTRICT**

BY: _____

BY: _____

(Printed Name and Title)

(Printed Name and Title)

____Marsha Anderson Bomar_____

____Executive Director_____

1770 Indian Trail-Lilburn Road

Suite 150

Norcross, GA 30093

(Address)

Date signed: _____

Date signed: _____

EXHIBIT A

TASK WORK ORDER

{Description of Project, Professional Services, and tasks as appropriate}

{Contract Price, i.e., lump sum, hourly. If hourly, the rates of each category of worker with not-to exceed amount if appropriate}

{Contract Time. Schedule of tasks with time line}