

Dunwoody City Management  
Contract – Program Management Services  
October 27, 2008

BOYKEN INTERNATIONAL, INC.

Project Number: 102-08149

**AGREEMENT FOR CITY MANAGEMENT START UP  
CONSULTING SERVICES**

AGREEMENT BETWEEN the CITY OF DUNWOODY:

City of Dunwoody, Georgia  
P.O. Box 888074  
Dunwoody, GA 30356

and the CONSULTANT:

Boyken International, Inc.  
400 Northridge Road  
Suite 1200  
Atlanta, GA 30350

for the following: Program Management Services

PROJECT: City of Dunwoody, Georgia city management consulting services

This Agreement made this 27 day of October, 2008; between the CITY of DUNWOODY described above (the CITY) and Boyken International, Inc., (the CONSULTANT), for services in connection with the Project referenced above and described herein.

WHEREAS, the CITY intends to establish, start up and operate the City of Dunwoody, Georgia, as approved by Senate Bill 82, enacted on March 25, 2008, and passed by Referendum on July 15, 2008, and all divisions and departments thereof (“the Project”);

WHEREAS, the CITY has selected BOYKEN INTERNATIONAL, INC. as CONSULTANT, to provide consulting services, in connection with the Project; and

WHEREAS, BOYKEN INTERNATIONAL, INC. desires to perform the aforementioned services required by the CITY as set forth and enumerated in this Agreement, including Exhibit “A” attached hereto and incorporated herein;

AND WHEREAS, the Parties recognize that the services required and to be provided by CONSULTANT are intended, in whole or in part, to bring into operation the entity known as the City of Dunwoody, Georgia, which has been established by law as a

municipal entity, and is the CITY in this Agreement, and all divisions and departments of said City;

NOW, THEREFORE, in consideration of the foregoing, the mutual promises, covenants and agreements herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE 1**  
**CONSULTANTS'S SERVICES AND RESPONSIBILITIES**

The CONSULTANT covenants with the CITY to further the interests of the CITY by furnishing the CONSULTANT's services, skill and judgment in cooperation with the services of the Mayor and City Council of the City of Dunwoody, Georgia, and other Consultants as may be retained by or on behalf of the CITY. The CONSULTANT agrees to furnish business and/or program administration and management services and to perform in an expeditious and economical manner consistent with the interest of the CITY. Nothing in this Agreement shall prohibit the CITY from contracting with CONSULTANT for services other than those covered by this Agreement.

1.1 BASIC SERVICES

1.1.1 CONSULTANT'S services hereunder shall include those services enumerated on the attached Exhibit "A," ("City Management Start-Up Services"), and as may be amended from time to time by Change Order or Amendment to this Agreement. In the event of a conflict as to the services to be provided by CONSULTANT, the terms and provisions of Exhibit "A" shall control and take precedence over any other enumeration or description of services.

In this connection, the Parties expressly recognize and agree that services outlined in the proposal which is, in whole or in part, Exhibit A to this Agreement, may be projected to exceed the original duration of this Agreement, or the fees budgeted for the duration of the Agreement. In the event that this Agreement is not extended, or is terminated, prior to the expected completion of such items contained in the proposal or Exhibit A, the Parties agree that nothing in this Agreement shall require CONSULTANT to complete items which are projected to be undertaken or completed beyond the period during which the Agreement is in force, or which exceed the fees projected for that period.

1.1.2 The term of this Agreement shall be through and including December 31, 2008. This Agreement shall be automatically extended for one (1) month, unless written notice of termination is received by CONSULTANT on or before December 15, 2008, or the fifteenth (15<sup>th</sup>) day of each month thereafter. In any event, this Agreement shall be extended beyond April 30, 2009, only upon written Change Order, Amendment, or subsequent agreement of the Parties.

1.1.3 The scope of the services to be performed under this Agreement may be supplemented, increased or modified by agreement of the Parties by Change Order or Amendment. In the event of such modification, CONSULTANT'S compensation shall be changed accordingly.

1.2 ADDITIONAL SERVICES (EXTRA COMPENSATION)

Services in addition to those enumerated herein, or Basic Services for a period of time beyond the original term of the Agreement, plus any and all automatic extensions, shall be considered "Additional Services", and CONSULTANT shall be compensated for such Additional Services on an hourly basis as set forth hereinafter. No such Additional Services shall be required or undertaken unless and until same are authorized in writing by the CITY. In the event that the Parties agree to services by the CONSULTANT in addition to those enumerated as Basic Services under this Agreement, and to a reasonable compensation for such services on a basis other than on an hourly basis as provided herein, those added services shall be considered Basic Services as defined in this Agreement, and this Agreement shall be considered modified accordingly.

1.2.1 CONSULTANT shall be entitled to extra compensation ("Extra Compensation") for Additional Services, which are beyond the scope of services authorized by the CITY for any individual project set forth herein.

1.2.2 Compensation for Additional Services shall be calculated on a time spent basis, in accordance with the schedule of rates set forth in paragraph 5.3.2, or on a lump sum fixed fee basis, as agreed to by both Parties to this Agreement. Payment requests for Extra Compensation shall be submitted as a part of the payment requests referenced in Article 5, provided that the requests shall clearly identify and separately categorize Additional Services, or as separate payment requests in accordance with provisions of Article 5.

1.3 TIME

1.3.1 The CONSULTANT shall perform Basic and Additional Services as expeditiously as is consistent with reasonable skill and care, and the orderly progress of the Project, in accordance with the generally accepted standard in the industry.

1.3.2 The CONSULTANT'S services shall commence immediately upon receipt of written authorization or notice to proceed. For purposes of this Agreement, execution of this Agreement by the appropriate authorized representative of "the OWNER" shall be considered such authorization.

1.3.2.1 Services rendered on and after October 16, 2008 shall be deemed services rendered under this contract.

1.3.3 The term of this Agreement shall be from authorization through and including December 31, 2008, plus any monthly extensions not to extend beyond April 30, 2009. The Parties may extend this Agreement by Change Order, Amendment or separate agreement, in writing, executed by all Parties.

1.4 STANDARD OF PERFORMANCE

1.4.1 CONSULTANT agrees to apply its best efforts in the performance of its obligations hereunder on a timely basis, and represents that (i) its services shall be performed in accordance with recognized professional standards in the industry, and (ii) it will provide assistance to the CITY utilizing its institutional knowledge, experience and information on industry standards and contacts in the furtherance of the CITY's interests, and for the efficient and timely completion of the Project, including without limitation, assistance in the procurement of services, material and specialized services which may be required for the Project.

1.4.2 By execution of this Agreement, CONSULTANT accepts the relationship of trust and confidence established with the CITY pursuant hereto, and covenants with the CITY to cooperate with all other consultants, professionals, engineers, contractors, suppliers, and other persons or entities retained by or on behalf of the CITY (collectively, Consultants), in connection with the planning, development, design and completion of the Project.

**ARTICLE 2**  
**THE CITY'S RESPONSIBILITIES**

2.1 The CITY shall provide full information to the extent known regarding the requirements of the Project, including a program, which shall set forth the CITY's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and other requirements.

2.2 The CITY shall provide the CONSULTANT with a budget for the Project or include the development of the Project Budget in the CONSULTANT's services, if so listed on Exhibit A hereto.

2.3 The CITY's representative authorized to act in the CITY's behalf with respect to the Project is the City Manager or the City Manager's designee. Until a City Manager is appointed the CITY's representative authorized to act in the CITY's behalf with respect to the Project is Brian Anderson, City Attorney, any successor or the City Attorney's designated (in writing) nominee(s). Upon appointment of a Steering Committee, the Chairman of the Steering Committee will act in conjunction with the City Attorney and City Manager nominee.

- 2.4 The CITY shall expeditiously and in a timely manner furnish copies of all project contracts, applications for payment, payment records, Requests for Information, project schedules, project correspondence, permits, and other documents reasonably required for the CONSULTANT to perform its duties.
- 2.5 The CITY shall, at the written request of CONSULTANT, prior to commencement of the services under this Agreement, and thereafter, furnish to the CONSULTANT reasonable evidence that financial arrangements have been made or will be made to fulfill the CITY's obligations under this Agreement. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the all Services under this Agreement. After such evidence has been furnished, the CITY shall not materially vary such financial arrangements without prior notice to CONSULTANT. Any variance without such notice, may be considered a breach of the CITY's obligations under this Agreement, in the sole discretion of CONSULTANT, subject to all rights under this Agreement, including the right of termination. Any non-exercise by CONSULTANT of rights under this paragraph shall not be a waiver of such rights on other occasions, nor a modification of this Agreement.

**ARTICLE 3**  
**PROJECT COST**

- 3.1 Evaluations of the CITY's Project budget and cost estimates prepared by the CONSULTANT represent the CONSULTANT's informed and educated judgment as a professional familiar with the industry. It is recognized, however, that neither the CONSULTANT nor the CITY has control over the cost of labor, materials or equipment, over contractors' methods of determining bid prices or other competitive bidding or negotiation conditions. Accordingly, the CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the CITY, or from any cost estimate or evaluation prepared by the CONSULTANT, nor that budgets and costs will not increase in the course of the Project. CONSULTANT will not exceed the budgeted fees without prior written approval from the City of Dunwoody.

**ARTICLE 4**  
**REIMBURSABLES COSTS**

- 4.1 REIMBURSABLE EXPENSES
- 4.1.1 In addition to the fee for Basic Services payable to CONSULTANT hereunder, CONSULTANT shall be entitled to reimbursements, where applicable, for the following costs and expenses necessarily and properly incurred by CONSULTANT in connection with the services rendered hereunder ("Reimbursable Expenses"). Each

instance of Reimbursable Expenses shall require prior written approval by the CITY. Reimbursable Expenses include actual expenditures made by CONSULTANT and CONSULTANT’s employees in the interest of the Project for the following items:

1. Expense of transportation and living expenses in connection with out-of-town travel subject to prior written approval by the CITY;
  - a. Air travel of 3-hour duration or less per segment shall be coach class. All other travel shall be in Coach Class;
  - b. Personal automobile travel shall be reimbursed at the rate then approved by the Internal Revenue Service, or for reasonable costs of vehicle rental, whichever shall be less;
2. Reasonable furnished housing and suitable transportation for personnel assigned to Project location, unless provided directly by the CITY;
3. A per diem as agreed to in writing by the Parties;
4. Long distance and facsimile communications related to the project;
5. Reproduction of all documents;
6. Special postage, delivery and handling of documents;
7. Any special employment taxes, work permits or fees, if required;
8. Any duties, levies, assessments or taxes, including without limitations sales taxes, but not including taxes upon income, incurred by or imposed on the CONSULTANT in connection with the Project; and
9. All expenses related to set-up, operation and maintenance of the Project office.

4.2 The following Reimbursable expenses are to be billed at the stated rates, subject to any contrary provisions in paragraph 4.1.1 above:

Travel / Housing Costs	At Cost
Telephone, Overnight Delivery & Courier	At Cost
Printing and Graphic Reproduction	At Cost
Personal Auto	\$0.585 per mile
Photocopies B&W	\$0.10 per page
Photocopies Color	\$1.00 per page
Facsimile	\$1.00 per page
Web Conferencing	\$1.00 per min. per location
Miscellaneous Expenses	At Cost

- 4.3 CONSULTANT shall submit its invoices for Reimbursable Expenses as part of the payment requests referenced in Article 5. Reimbursement requests shall be itemized to the City's satisfaction.

## **ARTICLE 5 PAYMENTS TO THE CONSULTANT**

### 5.1 BASIS OF COMPENSATION

- 5.1.1 CONSULTANT'S scope of services and fee are based upon the scope of work for the Project, within the task specific time frames delineated or projected, as set forth herein and on Exhibit "A", which is incorporated herein by reference.

- 5.1.2 Scope of this Project. The scope of CONSULTANT's services in connection with the Project is as described on Exhibit "A". The scope of work specifically includes as an integral part of the services to be performed the time frames for the specific tasks projected or as may be subsequently agreed upon by the Parties. Any addition or reduction to the scope of the services to be provided by CONSULTANT as described in Exhibit "A" shall be reflected in a written change order, approved by the CITY and CONSULTANT in writing, including any applicable adjustments of CONSULTANT's fees.

- 5.1.3 CONSULTANT does not agree nor shall it be required to perform any additional or expanded services in the absence of such written approval or authorization. Performance of any such services in advance or the absence of such approval shall not constitute a waiver of this requirement for that or any subsequent event.

- 5.1.4 Any addition to or reduction of the scope of the project will be cause for adjustments of CONSULTANT'S fees and services. Hourly rates listed in the attachment are fixed for the duration of this contract (April 30, 2009).

- 5.1.5 In every instance, the interpretation of the CONSULTANT'S scope of services is based upon the understanding that CONSULTANT is to be as consultant to the CITY and is to monitor and manage all aspects and phases of the project, as set forth in the attached Exhibit "A," or as is reasonably consistent therewith.

### 5.2 NOTICE TO PROCEED

CONSULTANT shall proceed promptly with the commencement of its scope of work upon writing authorization to proceed from the CITY. A proposed completion date of December 31, 2008, with possible extensions through April 30, 2009, has been established by the CITY. CONSULTANT's acceptance of this date and obligations hereunder are based upon its receipt of the authorization to proceed no later than October 27, 2008.

5.3 FEE FOR BASIC SERVICES

5.3.1 CONSULTANT shall be compensated on an hourly basis, subject to not exceeding the cumulative monthly budgets for the original period of the Agreement, and for the extensions to the Agreement, if any, for its Basic Services as set forth on Exhibit "A" hereto, including any specified fees for home office support, and as may be revised by written Change Order signed by both Parties to this Agreement.

5.3.2 CONSULTANT shall be compensated for work performed outside of the scope of Basic Services or by employees or agents of CONSULTANT not listed on Exhibit A at the following rates:

<u>Category</u>	<u>Hourly Rate US\$</u>
Senior Project Manager/Scheduler	\$145.00/hour
Project Manager	\$100.00/hour
Senior Estimator	\$140.00/hour
Mechanical/Electrical Engineer	\$125.00/hour
Estimator	\$115.00/hour
Clerical	\$50.00/hour

For the purposes of this engagement, CONSULTANT will from time to time have senior staff members as part of the team (Principal and Team Leader) engaged in the work. Their time will be invoiced at the following rates (Principal - \$300/hour, Vice Presidents - \$250/hour, and Team Leader - \$200/hour).

In the event the CONSULTANT shall assign personnel to the Project who do not fall within the categories set forth above, new personnel shall be billed at 2.8 times direct payroll expense (DPE).

These rates shall remain in effect through April 30, 2009, at which time they may be increased upon written acceptance of the Parties to this Agreement.

5.4 ADDITIONAL SERVICES

5.4.1 Extra Compensation for Additional Services, as defined in Paragraph 1.2, shall be determined utilizing the scheduled rates in Paragraph 5.3.2 or on a lump sum fixed fee basis stated in writing signed by both Parties to this Agreement, whichever is acceptable to the Parties.



5.5 REIMBURSIBLE EXPENSES

5.5.1 Payments for reimbursement of cost and expenses that are incurred in connection with the Project, as defined in Article 4, shall be at the rates established herein or as agreed by the parties hereto in writing.

5.6 INVOICING

5.6.1 The initial invoices for basic services, additional services, and reimbursable expenses, for services rendered and expenses incurred through December 31, 2008, shall be submitted to the CITY on or after January 1, 2009, and shall be due within thirty (30) days. Thereafter, invoices for basic services, additional services, and reimbursable expenses shall be submitted monthly according to a format established by the CITY on or before the tenth (10) business day of each month.

5.7 PAYMENT

5.7.1 Upon timely and acceptable submission of invoices, the CITY will make payment to the CONSULTANT with respect to any such invoice not later than thirty (30) calendar days from the date of the invoice.

5.7.2 If the Project or the work to be performed by CONSULTANT should be substantially deferred or abandoned as documented by a written "Stop Work" or suspension order, labor disputes, adverse weather conditions, or any causes beyond CONSULTANT'S control, CONSULTANT shall be paid for services performed to the time of receipt of the written order, or the occurrence of other enumerated event, plus reasonable demobilization expenses, subject to the termination provisions in Article 7 of this Agreement.

5.8 TAXES AND SPECIAL COST

5.8.1 CONSULTANT'S Proposed fees and rates are CONSULTANT'S net fees and do not include costs for local taxes, fees, assessments, special cost, etc. These costs shall be reimbursed to CONSULTANT without mark-up.

5.9 FEE SCHEDULE

5.9.1 CONSULTANT'S Fee shall be as set forth in the attached Exhibit "A", which is incorporated herein by reference.

5.10 PAYMENT WITHHELD

5.10.1 No deductions shall be made from the CONSULTANT'S compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or

on account of the cost changes in work other than those for which the CONSULTANT is held liable as a result of legal proceedings or arbitration.

5.11 PROJECT SUSPENSION OR ABANDONMENT

5.11.1 If the Project is suspended or abandoned in whole or in part, the CONSULTANT shall be compensated for all services performed prior to receipt of written notice from the CITY of such suspension or abandonment, together with Reimbursable Costs then due and all Termination Expenses as defined in Paragraph 7.3. If the Project is resumed after being suspended for more than three months, the CONSULTANT'S compensation shall be equitably adjusted.

5.11.2 Upon the termination of the stoppage, the CONSULTANT shall provide the necessary Project staff as soon as practicable.

**ARTICLE 6**  
**DISPUTE RESOLUTION**

6.1 NEGOTIATION

6.1.1 The CITY and CONSULTANT shall use their best efforts to promptly negotiate a resolution of any claim or dispute arising between them. The CITY and CONSULTANT shall submit any such matter that they cannot resolve to Arbitration.

6.2 ARBITRATION

6.2.1 All claims, disputes and other matters in question between the Parties to this Agreement arising out of or relating to this Agreement or the breach thereof, that cannot be resolved through negotiation, shall be submitted to binding arbitration before and in accordance with the rules and procedures of the American Arbitration Association, unless the parties mutually agree in writing otherwise.

6.2.2 Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the office of the American Arbitration Association in closest proximity to the venue stated in Article 8.1. The demand shall be made within a reasonable time after efforts to negotiate the claim, dispute, or other matter in question have failed, in the opinion of the party initiating the arbitration. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

6.2.3 Once a demand for arbitration, or other action or legal proceeding has been initiated by the CITY or CONSULTANT, the parties shall submit and participate in a voluntary

mediation of their dispute or disputes pursuant to the applicable Mediation Rules of the American Arbitration Association before proceeding to any adjudicatory or decision making proceeding. Nothing in this provision shall not apply to require a delay in the filing of a claim which otherwise would be banned by a statute of limitation or other deadline.

- 6.2.4 The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### **ARTICLE 7** **TERMINATION OF AGREEMENT**

- 7.1 This Agreement may be terminated by the CITY upon thirty (30) days written notice, and by CONSULTANT upon sixty (60) days written notice during the original term of the Agreement. Terminations by the CITY on or after December 15, 2008 shall be governed by Section 1.1.2 of this Agreement.
- 7.2 In the event of termination, the CONSULTANT shall timely be compensated for all services performed through the termination date together with reimbursable Costs then due and all Termination Expenses. In the event of termination, CONSULTANT shall continue to provide services under this Agreement during the applicable notice period, unless specifically directed otherwise by the CITY. If requested by CONSULTANT, the CITY shall provide such assurances as reasonably required by CONSULTANT that the CITY is able to compensate CONSULTANT for services during the notice period. If such assurances are not provided, CONSULTANT shall not be required to continue to provide services.
- 7.3 Termination Expenses are defined as cost directly attributable to termination for which the CONSULTANT is not otherwise compensated, such as reasonable demobilization cost for shutdown of the project office and relocation of project staff back to their home office.

#### **ARTICLE 8** **MISCELLANEOUS PROVISIONS**

- 8.1 The law of the State of Georgia, USA, shall govern this Agreement. The exclusive venue for any dispute resolution proceeding under this Agreement shall be DeKalb County, Georgia.
- 8.2 The CITY and the CONSULTANT waive all rights against each other, and against the contractor's, consultants, agents and employees of the other, for damages, costs or losses covered by property insurance obtained for the benefit of the other during the Project.

- 8.3 Without waiving any sovereign immunity of the CITY, the CITY and CONSULTANT shall hold harmless the other, including its employees, officers and agents, against any claims, judgments, damages, penalties, fines, liabilities losses, costs and/or expenses (including reasonable attorney fees and litigation costs) which arise in connection with the Project that are not the result of the sole negligence or willful misconduct of the party indemnified.
- 8.4 The CITY specifically agrees that the CITY shall not pursue CONSULTANT'S staff for employment directly, or indirectly, by the CITY, or any division, department or subsidiary of the CITY, as either a direct employee or an independent consultant during the term of this Agreement and for a period of twelve (12) months thereafter. In the event that the CITY shall employ any of the CONSULTANT'S staff in violation of this provision, the CITY agrees to reimburse CONSULTANT an additional twelve (12) months fee for the particular staff member(s) employed by the CITY. Such prohibition does not apply to independent contractors or subconsultants retained or employed by CONSULTANT to provide all or part of Basic Services under this Agreement.
- 8.5 The CONSULTANT'S representative authorized to act on the CONSULTANT'S behalf with respect to the project is Donald R. Boyken.
- 8.6 In the event that notice is to be given under any terms of this agreement, notice shall be directed to the following by certified mail:

For the CITY:  
Brian Anderson  
City Attorney  
City of Dunwoody  
P.O. Box 888074  
Dunwoody, GA 30356

Phone: 678-468-2793  
Fax: 404-591-5731

For the CONSULTANT:  
Mr. Donald Boyken  
Chief Executive Officer  
Boyken International, Inc.  
400 Northridge Road  
Suite 1200  
Atlanta, Georgia 30350  
Phone: 770-992-3210  
Fax: 770-992-1489

**ARTICLE 9**  
**EXTENT OF AGREEMENT**

- 9.1 This agreement represents the entire and integrated agreement between the CITY and the CONSULTANT and supersedes all prior negotiations, representations, or agreements, either written or oral, which are merged herein. This Agreement may be amended only in writing signed by both the CITY and the CONSULTANT.
- 9.2 Nothing contained in this Agreement shall be deemed to give any third party any claim, or right of action against the CITY or the CONSULTANT which does not otherwise exist without regard to this Agreement.

**ARTICLE 10**  
**INSURANCE**

- 10.1 The CONSULTANT shall obtain and maintain insurance to protect itself from claims arising out of the performance of services under this Agreement and caused by any error, omission, or negligent act for which it is determined to be legally liable. The CONSULTANT shall maintain this insurance in force after the completion of services under this Agreement until the expiration of any applicable statutes of limitation. In the event there is no such statute of limitations specifically applicable to the services to be provided under this Agreement, this insurance shall be maintained in force by the CONSULTANT for a reasonable period after the Date of Completion of the Project as agreed to by the CITY and the CONSULTANT.
- 10.2 The CITY and CONSULTANT shall each obtain and maintain insurance to protect themselves from claims under workers' or workman's compensation acts; from claims for damages because of bodily injury including personal injury, sickness or disease, or death of any employees or of any other person; from claims for damages because of injury to or destruction of property including loss of use resulting therefrom; and from damage to or destruction of property including valuable papers and records coverage and including loss of use resulting therefrom.
- 10.3 The insurance required by paragraph 10.2 shall be in the minimum limits required by law or as provided in Paragraph 10.5.
- 10.4 The CITY and the CONSULTANT shall, upon request, furnish to each other Certificates of Insurance evidencing the insurance carried in compliance with the requirements of Paragraphs 10.1 and 10.2, including appropriate evidence that each type of insurance has been properly amended to include coverage for this specific Project. These Certificates shall contain a provision that at least 30 days prior written notice will be given to each other in the event of cancellation, reduction in or non-renewal of the insurance.

10.5 CONSULTANT shall maintain the following minimum amounts of insurance during the term of this Agreement:

<b>TYPE</b>	<b>COVERAGE</b>
Workman’s Compensation	Statutory
Employer’s Liability	\$100,000
Commercial General Liability	\$500,000
Professional Liability	\$1,000,000
Umbrella Liability	\$4,000,000

10.6 Certificates of insurance acceptable to the CITY shall be submitted to the CITY prior to commencement of services.

10.7 Failure of the CONSULTANT to provide and maintain the insurance required by this Agreement during the term thereof shall be deemed a material breach of this Agreement.

**ARTICLE 11**  
**COUNTERPARTS**

11.1 This Agreement may be signed in one or more counterparts, each of which for all purposes shall be deemed to be an original. This Agreement is entered into as of the day and year first written above.

**ARTICLE 12**  
**OWNERSHIP OF DOCUMENTS AND/OR MODELS; CONFIDENTIALITY**

12.1 OWNERSHIP OF TANGIBLE PRODUCTS

12.1.1 All schedules, plans, calculations, specifications, equipment, data and other work product purchased, prepared, created, developed or otherwise obtained by CONSULTANT for use in the Project, or for the CITY’s benefit, or any other sub-consultant or Consultant in connection with the Project (and all related computer disks and electronic data) are and shall become the property of the CITY. CONSULTANT shall have an unrestricted license to use such work product in connection with other projects or services it provides so long as any information designated in writing by the CITY as confidential or proprietary is protected from disclosure. CONSULTANT shall, upon completion of the Project, or at such other time as may be appropriate, transfer or obtain the transfer of all rights, title and ownership of such products to the CITY. In

the event that such product is obtained by lease or rental, CONSULTANT shall transfer or obtain the transfer of such lease or rental agreement to the CITY.

## 12.2 PROPRIETARY INFORMATION

12.2.1 CONSULTANT agrees that all drawings, specifications, plans, forecasts and other materials received by CONSULTANT from the CITY (or others on behalf of the CITY) in connection with this Agreement, except as specifically excepted herein, shall be accepted and treated as proprietary information that has a substantial commercial value to the CITY, and that CONSULTANT will not use or disclose any such information in any manner except to the extent that such use or disclosure may be necessary for the performance of services under this Agreement, or as agreed by the CITY. Upon completion of the Project, or at any time required by the CITY, CONSULTANT shall return to the CITY all such information, including any copies thereof made by CONSULTANT.

CONSULTANT shall be entitled to use descriptions and/or graphic representations of the Project, or any portion or phase thereof, in its marketing efforts without additional consent or approval of the CITY. The CITY agrees to allow CONSULTANT reasonable access to prepare or produce such descriptions or representations.

12.3 CONFIDENTIALITY. The term “confidential information” as used herein means information, data and experience of the CITY relating to the Project, whether of a technical, engineering, security, operational or economic nature, supplied to or developed or obtained by CONSULTANT, in writing, orally, or by observation, except information that becomes known to the public at large through general publication by the CITY. CONSULTANT agrees:

12.3.1 to make no use whatsoever of the confidential information except for the direct benefit of the CITY and accordingly, without limiting the generality of the foregoing, not to use such information in connection with any other work performed by CONSULTANT either for itself or for any other person or entity;

12.3.2 not to reveal any confidential information to third parties (other than approved consultants and approved sub-consultants, if any), and accordingly, without limiting the generality of the foregoing, not to supply any such information to any prospective customer of CONSULTANT;

12.3.3 to keep all such information strictly confidential and to that end, without limiting the generality of the foregoing, to cause all written material relating to or containing such information, including all sketches, drawings, reports and notes, and all copies, reproductions, reprints and translations, to be marked plainly to indicate the confidential nature thereof and to prevent unauthorized use or reproduction;

12.3.4 to take reasonable precautions in order that the confidentiality of such information is preserved among CONSULTANT'S employees and sub-consultants having access to any portion of such information, and to assume the responsibility that such employees and sub-consultants will preserve the confidentiality of such information with respect to third parties;

12.3.5 In the event of a proceeding to obtain, or the issuance of an order or directive from a court or other government entity to produce or disclose information which is or includes confidential or proprietary information covered by this Agreement, CONSULTANT shall notify the CITY as soon as possible in order to allow the CITY to take such action as it in its sole discretion shall deem appropriate to protect the information sought. Nothing in this Agreement shall impose upon CONSULTANT any liability for the production of such information under the terms of an order from a court or other governmental entity. In the event of receipt of an Open Records or other similar request for the production of information related to the Project, CONSULTANT shall notify the CITY as soon as possible so as to allow the CITY to assess its response or reaction to such request.

12.3.6 Notwithstanding any provision to the contrary, before any confidential information is disclosed to a third party, the third party shall execute a non-disclosure agreement with terms at least as restrictive as those contained herein.

#### 12.4 PUBLICITY

12.4.1 The CITY agrees to the photographing of any aspect of the Project by CONSULTANT for publicity or advertising or for any other similar purposes outside the scope of performance of this Agreement.

12.4.2 CONSULTANT shall not release information on the Project or subject matter of this Agreement to the public without the express written consent of the CITY, except as provided hereinabove.

#### 12.5 WORK PRODUCT.

12.5.1 Nothing in this Agreement will have the effect of precluding CONSULTANT from utilizing any general skills and experience gained in carrying out its obligations under this Agreement which CONSULTANT could have reasonably been expected to acquire in similar engagements by other companies, or which CONSULTANT may have developed or acquired from prior experience in the industry.



**ARTICLE 13**  
**ASSIGNMENT AND MANAGEMENT OF THE PROJECT**

13.1 NO ASSIGNMENT BY CONSULTANT

13.1.1 The CITY is relying on the expertise of CONSULTANT in entering into this Agreement, and CONSULTANT shall have no right to assign, convey, subcontract (except as specifically herein provided), pledge or otherwise transfer this Agreement, or any interest herein or any right to payment hereunder, or any duty, obligation or claim hereunder, without the prior written approval of the CITY, which approval may be withheld in the CITY's absolute discretion.

**ARTICLE 14**  
**MAINTENANCE, AUDIT AND EXAMINATION OF ACCOUNTS**

14.1 REQUIRED BOOKS AND RECORDS

14.1.1 CONSULTANT shall maintain books and records (utilizing a modern computer system) relating to (i) Reimbursable expenses, (ii) Additional Services for which CONSULTANT will request or had received Extra Compensation and (iii) personnel time devoted to the project – during the term of the Project and for a period of at least three (3) years after the Final Completion Date. Such records shall be kept on the basis of generally accepted accounting principles and shall be made available to the CITY, or any person or entity designated by the CITY, for review and audit at all such reasonable times as the CITY may, from time to time, direct.

**ARTICLE 15**  
**CLAIMS, LIMITATIONS OF ACTIONS**

15.1 NO INTERRUPTION OF SERVICES

15.1.1 If a claim, dispute or other matter in question (collectively, a “dispute”) shall arise under this Agreement in connection with payments to be made to CONSULTANT hereunder, or otherwise in connection with the performance or alleged non-performance by any party of its obligations hereunder, CONSULTANT shall continue during the pendency of such dispute to perform its services hereunder as if no dispute shall have arisen. During the pendency of any such dispute, CONSULTANT shall be entitled to receive payments from the CITY only for non-disputed items, and payments for disputed items shall be deferred until final resolution of the dispute.

15.1.2 Notwithstanding the above, it is understood and agreed that CONSULTANT shall not be liable to the CITY for any acts, errors, or omissions resulting from the exercise of bona fide professional and/or business judgment by CONSULTANT or its officers,

agents, or employees in the performance of its Services (except for willful misconduct or gross negligence) which results in any loss, claim, demand or injury to the CITY. In any event, such liability shall be limited to the amount of CONSULTANT'S fee.

## 15.2 ACCEPTANCE OF FINAL PAYMENT

15.2.1 The acceptance by CONSULTANT of final payment under this Agreement, or any final payment due on early termination of this Agreement, shall constitute a full and complete release of the CITY from any and all claims, demands and causes of action whatsoever which CONSULTANT may have against the CITY under or in connection with the performance of this Agreement, and which have accrued and of which CONSULTANT has knowledge, constructive or actual, at the time of final payment. It is expressly understood and agreed that the CITY's termination, delay or suspension of the Agreement pursuant to Article 7 thereof shall not give rise to any claim against the CITY for damages, compensation or otherwise, other than the rights to compensation specifically set forth in Article 7, unless such termination shall have been wrongful or fraudulent.

## 15.3 SEVERABILITY

15.3.1 If any provision of this Agreement is invalid or unenforceable against any person, such provision shall be enforced to the maximum extent permitted by law and shall be deemed reformed accordingly such that the intent of this Agreement can be carried out to the maximum extent possible. To the extent that such provision cannot be reformed, the invalidity of such provision shall not affect the validity or enforceability of the remainder of the Agreement, which shall in such event, be read and interpreted as if the invalid provision had been stricken.

## 15.4 ENTIRE AGREEMENT; INTERPRETATION

15.4.1 This Agreement, including the Exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof. Any and all prior representations and/or understandings are merged herewith and superseded hereby. This Agreement may not be changed, waived, modified or amended except by an instrument in writing signed by the party against whom such change, waiver, modification or amendment is sought to be enforced. CONSULTANT and the CITY confirm and agree that no representations of any kind whatsoever have been made to it by the other, other than as appear in this Agreement, that neither has relied on any such representations and that no claim that either has so relied may be made at any time or for any purpose. This Agreement shall apply to and govern all services provided by CONSULTANT in connection with the project, whether performed prior to, on or after the date of this Agreement.

## 15.5 INDEPENDENT CONTRACTOR

15.5.1 It is expressly understood and agreed that CONSULTANT, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent or employee of the CITY. In furtherance of the forgoing, and not in limitation, CONSULTANT has no authority to enter into any contracts or other agreements with any person or entity on behalf of the CITY or to otherwise bind the CITY. Furthermore, nothing contained in this Agreement shall be construed to mean that the CITY and CONSULTANT are joint venturers, partners or the like.

15.6 NO LIABILITY

15.6.1 No personal liability shall accrue, and no claim whatsoever relating to or arising under this Agreement shall be made by CONSULTANT against any director, officer, employee or other individual representative, fiduciary or agent of the CITY.

15.7 NO WAIVER

15.7.1 The failure of either Party to insist upon the strict performance of any provisions of this Agreement, the failure of either Party to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by either Party of any act by the other Party requiring such consent or approval shall not be construed to waive or render unnecessary the requirement for either Party's consent or approval of any subsequent similar act by the other Party. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party against whom such waiver shall apply.

15.8 APPROVAL OF the CITY

15.8.1 The services to be performed by CONSULTANT hereunder at all times shall be subject to the approval of the CITY acting through its authorized representatives, which approval shall not be unreasonably withheld.

15.9 CHANGE IN SCOPE OF CONSULTING

15.9.1 The CITY shall have the right to make changes in, or to increase or decrease the scope of the Basic Services to be rendered by CONSULTANT hereunder, at any time and for any reason, upon written notice to CONSULTANT specifying the nature and the extent of such change. In such event, if the change results in a reduction of the Basic Services to be rendered by CONSULTANT, the relevant amount(s) set forth in the Proposal in Exhibit "A" shall be reduced by the value associated with such work, as reasonably agreed upon between the CITY and CONSULTANT. If the change results in Additional Services, CONSULTANT shall receive Extra Compensation calculated in accordance with the terms of Article 5 hereof.

Dunwoody City Management  
Contract - Program Management Services  
October 27, 2008

The CITY of DUNWOODY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

BOYKEN INTERNATIONAL, INC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date