

CONTRACT
BY AND BETWEEN
CITY OF DUNWOODY, GEORGIA
AND
CLARK PATTERSON LEE
FOR PROVISION OF
COMMUNITY DEVELOPMENT
MUNICIPAL SERVICES

THIS AGREEMENT is made and entered into this 17th day of December, 2008, by and between the CITY OF DUNWOODY, a Georgia municipal Corporation, (the "CITY"), and Clark Patterson Lee, a Georgia corporation (referred to as "Contractor").

The City and the Contractor may be collectively referred to as the "Parties" and each individually as a "Party".

WHEREAS, the City of Dunwoody has requested proposals for provision of certain services for the new City which was incorporated on December 1, 2008; and

WHEREAS, the City and the Contractor desire to establish a business relationship in which the Contractor will provide certain services to the City pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the terms and conditions sums hereinafter set forth and for other good and valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged, it is hereby mutually agreed by and between the Parties as follows:

Section 1. Scope of Service. The Contractor agrees to provide to the City professional services set forth in Exhibit A hereof (hereinafter "Services").

1.1 In providing Services to the City, the Contractor shall (1) exercise the professional standard of skill and expertise prevailing in the State of Georgia in providing services to the City as set forth in this agreement; (2) act in a manner consistent with the applicable standards of regulatory, licensing, or other organizations or bodies of which the Contractor is a member or which is customary for the area of the service rendered.

1.2 The Contractor shall be responsible at the Contractor's expense for obtaining and maintaining in a valid status, all licenses, certificates, and permits necessary to perform the services herein. Contractor represents to the city that the Contractor is, and any subcontractors of the Contractor are, properly licensed and/or registered with the State of Georgia for the performance of the Services (if licensure and/or registration is required by applicable law).

1.3 Contractor shall maintain all records in accordance with all applicable laws and guidelines for municipalities, including GAAP, GASB and GFOA standards, and shall produce and deliver to the City Manager any and all information and reports as requested by the City Manager. All records and related materials belong to the City, as do all files, notes, returns, spreadsheets, and any and all other documents or files concerning customers of the City or customers who have been serviced by the City.

1.4 Except as otherwise specifically set forth, such services shall encompass those duties and functions of the type coming within the jurisdiction of and customarily rendered by municipal departments for those services in accordance with the Charter of the City, and the Statutes of the State of Georgia.

1.5 All communications to the Mayor, City Council and press shall be through the City Manager. All mass communications to residents shall be reviewed and approved by the City Manager prior to printing and dissemination.

1.6 All City owned equipment shall be used only for City purposes in performance of this Agreement, and shall not be used for any non-city or personal purposes.

1.7 Contractor shall comply with all OSHA and other applicable standards for work place safety. Contractor shall comply with all applicable laws regarding hazardous materials and maintain all required Manufacturer's Safety Data Sheets (MSDS) forms on site in the City.

1.8 Contractor Compliance with Laws. The Contractor shall comply with all applicable federal, state, local laws, ordinances, regulations, and resolutions. Without limiting the foregoing, Contractor shall comply with all wage and hour laws and OSHA and other applicable federal and state statutes, regulations and standards for workplace safety.

1.9 The Contractor shall perform the Services herein in accordance with this Agreement and shall promptly notify the city concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement. In interpreting the Services and level of Services required hereunder, the Parties shall apply the principle that the City desires to provide the services within the City at a service level at least comparable to similar sized cities in the Atlanta area.

1.10 The Contractor acknowledges that all scope of work items identified in the City's Community Development RFP # 2008.002 dated October 31, 2008, RFP Addendum #2008.002.01 dated November 10, 2008 as well as the RFP Q&A document dated November 14, 2008 are addressed and contained in their Proposal and their Fee Schedule which is attached as Exhibit C.

1.11 The Contractor shall be responsible for providing all necessary cellular telephones, BlackBerry type devices, Air Cards, and other electronic mobile communication equipment as well as associated service costs for their employees that are employed to provide City Services to the City.

Section 2. Contractor Employees

2.1 Contractor shall furnish an Organizational Chart of proposed contractor employees for the Contractor Services as provided in Exhibit B, Organizational Chart section of the contract.

2.2 All personnel employed by Contractor in the performance of such services, functions and responsibilities as described and contemplated herein for the City shall be and remain Contractor employees (the "Contractor Employees").

2.3 Contractor shall be solely responsible for all compensation benefits, insurance and rights of the Contractor employees during the course of employment with Contractor. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers compensation benefits under O.C.G.A. §34-9-1 *et seq.*, or any other amenities of employment to any of the Contractor Employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

2.4 The Contractor Employees, when appropriate, shall wear attire with the logo of the City when they are performing Services for the City, except as otherwise directed by the City Manager.

Section 3. Compensation

3.1 The City shall pay the Contractor for the Contractor Services as provided in Exhibit C, Schedule of Values section of the contract as well as Exhibit D, Letter of Understanding.

3.2 Reimbursable expenses for travel and lodging shall be paid to Contractor employees for any travel authorized by the City Manager that is in excess of twenty five (25) miles from the City Hall offices. All travel that is conducted for the General welfare of the Contractor employees or that which is beneficial to non-City related functions shall be paid for by the Contractor unless authorized by the City Manager. All approved mileage reimbursements shall be provided at the current cost per mile posted by the US Internal Revenue Service at the time of travel.

Section 4. Term and Termination

4.1 This Agreement shall commence on the 26th day of November, 2008, and continue for a period of thirteen (13) months terminating on the 31st day of December, 2009.

4.2 This Agreement may be terminated by either party upon material breach of any term, covenant or condition of this Agreement, upon the failure to cure any such breach within ten (10) days following written notice thereof.

4.3 The City may terminate this Agreement with or without cause upon ninety (90) days' written notice to the other party.

4.4 Contractor may terminate this Agreement at its discretion either with or without cause, by giving written notice thereof to City; provided, however, that such termination shall not be effective until the one hundred and eightieth (180th) day after receipt thereof by City.

4.5 The following events shall each be deemed to cause immediate termination thereof, and upon occurrence thereof, this Agreement shall automatically terminate without notice: (a) there are instituted proceedings by or against the Contractor in bankruptcy, the Contractor makes an assignment of its assets for the benefit of creditors, or the Contractor shall admit insolvency; or (b) the Contractor is indicted for or convicted of any felony or converts or embezzles any property or funds of others.

4.6 Effects of Termination or Failure to Renew. Upon termination or non-renewal of this Agreement, the Contractor shall: (a) immediately cease all use of, and return to the City within ten (10) days, any and all property of the City in the Contractor's possession at the date of termination furnished by the City and (b) immediately cease all activities promoting the City's business unless otherwise agreed between the parties. Upon termination or non-renewal of this Agreement, the Contractor and the City shall continue to use their best efforts to conclude transactions that have not been completed prior to termination or non-renewal.

4.7 The parties further agree that in the event of termination or non-renewal, neither party shall be liable to the other for compensation or damages for expenditures, investments, leases, or other commitments made in connection with the business of such party or in reliance on the existence of this Agreement.

4.8 In the event of termination by either party, the other party shall render such reasonable aid, coordination and cooperation as might be required for an expeditious and efficient termination of service.

Section 5. Option to Renew

5.1 This Agreement shall be automatically renewed for a period of two (2) one (1) year terms at the expiration of the initial term, unless the City furnishes Contractor affirmative written notice of its intent not to renew this Agreement not less than ninety (90) calendar days prior to the expiration of this Agreement.

Section 6. Default

6.1 An event of default shall mean a material breach of this Agreement. Without limiting the generality of the foregoing, an event of default shall include the following:

- a. Contractor has not materially performed services per this Agreement on a timely basis;
- b. Either Party made a representation or warranty hereunder or herein that was false or inaccurate in any material respect when made, or which materially and adversely affects the legality of this Agreement or the ability of either Party to carry out its obligations hereunder.
- c. Contractor has been adjudged as bankrupt or Contractor makes a general assignment for the benefit of their creditors, appoints a receiver on account of their insolvency, or files a petition to take advantage of any debtor's act.
- d. City has not paid the Contractor for services performed, which are not under dispute, within 60 days of receipt of an invoice.

6.2 In the event of a Default, this Agreement may be terminated by the performing party only after the performing party first provides written notice to the non-performing party of the Default, which notice shall specify the Default, provide both a demand to cure the Default and a reasonable time to cure the Default, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the Default. For purpose of this Section, "reasonable time" shall be ten (10) calendar days except when the failure to perform Services affects the public health, safety or welfare, in which case reasonable time may be less than ten (10) calendar days. A failure to cure a Default within the specified time shall result in termination of the Agreement on the date set forth in the Notice.

6.3 Any Party in Default shall be liable for all damages resulting from the Default.

6.4 The Party's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to the Party in law or in equity.

7. Representations and Warranties of the Contractor

7.1 The Contractor hereby warrants and represents and agrees with the City as follows:

- (a) No approval, authorization, clearance, declaration, or order of or to any other person or entity is required in order to permit the Contractor to perform Contractor Services under this Agreement.
- (b) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will cause, or give any person ground to cause, the maturity, acceleration, or increase of any liability or obligation of the Contractor and will not conflict with, violate, or constitute default under any contract, agreement, duty, obligation, or instrument to which the Contractor is a party or to which the Contractor is bound.
- (c) Contractor by execution hereof does hereby represent to City that Contractor has full power and authority to make and execute this Service Agreement, to the effect that the making and execution hereof shall create a legal obligation upon Contractor, which shall be legally binding upon Contractor.
- (d) Nothing contained or any obligation on the part of Contractor to be performed hereunder shall in any way be contrary to or in contravention of any policy of insurance or surety bond required of Contractor pursuant to the laws of the State of Georgia.

8. Liability for Damages. The Contractor shall be fully responsible for any and all claims or damages whatsoever arising from any act or omission on his part made in connection with providing the Contractor Services.

Section 9. Indemnification.

9.1 Contractor shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from and against any and all liability, suits, actions, damages, losses and expenses, costs of every nature, including attorneys' fees, arising out of or resulting from the acts, omissions, or negligence of the Contractor, its employees, or its agents.

9.2 Should the City seek indemnification pursuant to the above, it shall give prompt notice to the Contractor of the assertion of any claim, or the commencement of any action, suit, or proceeding, in respect of which indemnity may be sought hereunder and will give the Contractor such information with respect thereto as the Contractor may reasonably request, but no failure to give such notice shall relieve the Contractor of any liability hereunder. The Contractor may, at its expense, participate in the defense of any such action, suit or proceeding involving a third party; provided, however, that such defense is conducted with counsel mutually satisfactory to the City and the Contractor. The City and the Contractor shall consult with each other regarding the conduct of such defense. If the defense is assumed by the Contractor, the Contractor shall submit any proposed settlement under this Section for the City's approval, which approval shall not be unreasonably withheld or delayed. The City shall have the right (but not the duty) to participate in the defense thereof, and to employ counsel, at its own expense (except that the Contractor shall pay the fees and expenses of such counsel to the extent the City reasonably concludes that there is a conflict of interest between the City and the Contractor), separate from counsel employed by the Contractor in any such action. The Contractor shall be liable for the fees and expenses of counsel employed by the City if the Contractor has not assumed the defense thereof. Whether or not the Contractor chooses to defend or prosecute any claim involving a third party, all the parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information, and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

9.3 In determining the amount of any loss, liability, or expense for which any City is entitled to indemnification under this Agreement, the gross amount thereof will be reduced by any insurance proceeds actually paid to any City under any insurance policies held by such City; provided, however, that if such party has been indemnified hereunder but does not actually receive such insurance proceeds until after being indemnified, such party shall reimburse the Contractor for amounts paid to such party to the extent of the insurance proceeds so received.

9.4 If both the Contractor and the City have insurance coverage respecting a particular claim for which indemnification is provided pursuant to this Section, the parties agree that the insurance coverage of the Contractor will be called upon before the insurance coverage of the City is called upon.

9.5 Contractor acknowledges that specific consideration has been paid or will be paid under this Agreement for this hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and with the collateral obligation of insuring said indemnity as set forth herein.

9.6 Nothing in this Section shall:

(a.) Limit or prevent the City or the Contractor from determining positions and actions relative to settlement or defense on any matter for which the City or the Contractor are responsible; or

(b) Limit or prevent either Party from joining the other party or any affiliate of a Party in any claim, suit, action or proceeding involving a Third Party Claim through interpleading, third-party claim, cross-claim or otherwise limit or prevent a Party from voluntarily joining any claim, suit, action or proceeding through intervening or as may otherwise be permitted by law or rule.

Section 10. Insurance

10.1 Contractor shall not commence work under this contract until Contractor has obtained

all insurance required under this Section. Certificates of insurance reflecting evidence of the required insurance will be provided to the City Manager for his approval, however, said approval by the City Manager shall not be unreasonably withheld.

- (a) All insurance carriers, except Worker Compensation carrier, must have an A.M. Best Rating of A- VIII or higher. Surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker/agent can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best rating of A- VIII or better

10.2 Contractor shall at all times carry professional liability insurance, workers' compensation insurance, comprehensive general liability insurance, and automotive liability insurance with policy limits and deductibles for each coverage at amounts reasonably approved by the City Manager, with such coverages specifying reasonable amounts of per occurrence, single limit, for property damage and bodily injury, including death, except that the dollar amount of workers compensation coverage shall be as provided by O.C.G.A. § 34-9-1 *et. seq.* Contractor shall be responsible for maintaining this professional liability insurance for a minimum of three (3) years from the date of expiration of this Agreement. Upon request of City, Contractor shall make available for inspection copies of any claims filed or made against any policy during the policy term. Contractor shall additionally notify City, in writing immediately, of any claims filed or made against any policy concerning or relating to this Agreement or the performance of any obligation under this Agreement.

- (a) All insurance coverages required to be provided by the Contractor will be primary over any insurance program carried by the City

10.3 Policies shall be issued by companies authorized to do business under the laws of the State of Georgia, with financial ratings acceptable to the City Manager. The City shall be named as an additional insured on casualty policies. Contractor agrees to furnish City with at least forty-five (45) days prior written notice of any cancellation or reduction of coverage of any insurance policy required under this Agreement.

10.4 In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, Contractor shall furnish, at least ten (10) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension hereunder is in effect. Contractor shall not continue to work pursuant to this contract unless all required insurance remains in full force and effect.

10.5 The costs of all policies of insurance required hereunder shall be the obligation of Contractor and the City shall in no way be responsible therefore.

10.6 Contractor shall provide the following insurances throughout the term of the Agreement, and shall provide to City Certificates of Insurance demonstrating compliance with this provision:

- (a) Statutory Worker's Compensation and Employers Liability Insurance as required by the State of Georgia. Such workers compensation coverage shall be as provided by O.C.G.A. § 34-9-1 *et seq.*
- (b) Comprehensive Automobile and Vehicle Liability Insurance with One Million Dollars (\$1,000,000) combined single limits, covering claims for injuries to members of the public and/or damages to property of others arising from the use of Contractor owned or leased motor vehicles, including onsite and offsite operations.
- (c) Commercial General Liability Insurance with limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any covered acts

of the Contractor undertaken to provide services for the City as required in this Agreement or omission of Contractor or any of its employees, or subcontractors.

(d) Professional Liability Insurance with limits of One Million Dollars (\$1,000,000) per occurrence and in the aggregate.

(e) Excess Liability Insurance with limits of One Million Dollars (\$1,000,000).

10.7 Contractor shall incorporate a copy of the insurance requirements as herein provided in each and every subcontract with each and every Subcontractor in any tier, and shall require each and every Subcontractor of any tier to comply with all such requirements. Contractor agrees that if for any reason Subcontractor fails to procure and maintain insurance as required, all such required insurance shall be procured and maintained by Contractor at Contractor's expense.

10.8 The Contractor shall agree to waive all rights of subrogation against the City, the City Council members, its officers, officials, employees and volunteers from losses arising from work performed by the contractor for the City.

10.9 Special Form Contractors' Equipment and Contents Insurance covering owned, used, and leased equipment, tools, supplies and contents is required if needed to perform the services called for under this Agreement. The City will be included as a Loss Payee in this coverage for City owned equipment, tools, supplies and contents. The City shall not be responsible for any deductibles or coinsurance that may be applicable.

10.10 Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and Subcontractor of their liability provisions under this Agreement.

10.11 The Contractor shall at a minimum apply risk management practices accepted by the contractors' industry.

Section 11. Conflicts

11.1 Neither Contractor nor any of its employees shall have or hold any employment or contractual relationship that is antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment related to its performance under this Agreement.

11.2 Neither Contractor nor any of its officers or employees shall obtain any kickbacks or benefits for itself, themselves or other clients as a result of any City purchases or transactions.

Section 12. Non-discrimination

12.1 Contractor shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. Contractor shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.

Section 13. Independent Contractor

13.1 The parties agree that the Contractor is an independent contractor, and, as such, the Contractor is neither a partner, agent, employee, nor principal of the City, nor is the Contractor a joint venturer with the City.

Section 14. Attorney's Fees

14.1 If the either City is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the Contractor shall pay the actual attorney's fees and costs incurred due to such of both the City and the Contractor.

Section 15. Data

15.1 Drawings, specifications, designs, models, photographs, computer CADD discs, reports, surveys and other data developed or provided in connection with this Agreement shall be the property of City and City shall have the full right to use such data for any official purpose permitted under Georgia Statutes, including making it available to the general public. Such use shall be without any additional payment to or approval by Contractor. City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any data developed or prepared under this Agreement.

15.2 No data developed or prepared in whole or in part under this Agreement shall be subject to copyright in the United States of America or other country, except to the extent such copyright protection is available for the City. Contractor shall not include in the data any copyrighted matter unless Contractor obtains the written approval of the City Manager and provides said City Manager with written permission of the copyright owner for Contractor to use such copyrighted matter in the manner provided herein.

15.3 The records of the Contractor related to the provision of Services such as public records as defined in the Georgia statutes ("GORA"), and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the City's records retention and disposal policies. Those records which constitute "pubic records" under GORA are to be at the City offices or accessible and opened for public inspection in accordance with GORA and City policies. Public records requests for such records shall be processed in accordance with City policies and shall be administered through the City Manager or his designee. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law, as per the request of the City. For purposes of GORA, the City Manager is the custodian of all records produced or created as a result of this Agreement. All public records requests shall go through the City Attorney for determination if records should be disclosed, before submitting the request to the Contractor. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

Section 16. Compliance

16.1 Contractor shall fully obey and comply with all laws, ordinances and administrative regulations duly made in accordance therewith, which are or shall become applicable to the services performed under the terms of this Agreement.

16.2 Contractor acknowledges that the City is advised by its City Attorney and that, on all legal matters, Contractor shall abide by the advice and direction of the City Attorney in the performance of its duties as they relate to matters of the City.

16.3 Contractor acknowledges that the City is also advised by various other professionals (including, but not limited to, engineers, traffic engineers, planners, building officials, police officers and firefighters), and that, on all matters within their respective expertise, Contractor shall abide by their advice and direction in the performance of its duties as they relate to matters of the City.

16.4 Contractor shall obtain and keep an active business license and pay the associated tax to the jurisdiction(s) under which the Contractor operates for the benefit of the City of Dunwoody. This shall include all licensing requirements of Sandy Springs, Georgia during the operation of the temporary City Hall facilities which are located in Sandy Springs. Contractor shall obtain and post a Business Occupational Tax Certificate from Sandy Springs, Georgia as soon as practically possible after execution of the contract outlined herein.

Section 17. Audits and Inspections

17.1 The City may, at reasonable times, and for a period of up to three (3) years following the date of final performance of Services by Contractor under this Agreement, audit, or cause to be audited, those books and records of Contractor that are related to Contractor's performance under this Agreement. Contractor agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement. Contractor shall make all necessary books and records available for audit in the City of Dunwoody, Georgia.

17.2 The City may, at reasonable times during the term hereof, inspect Contractor's facilities and perform such inspections, as the City deems reasonably necessary, to determine whether the services required to be provided by Contractor under this Agreement conform to the terms of this Agreement. Contractor shall make available to the City all reasonable facilities and assistance to facilitate the performance of inspections by the City's representatives.

Section 18. Governing Law and Venue

18.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Georgia. Any legal actions concerning or relating to this Agreement or the performance of its obligations under this Agreement instituted by a party hereto shall be brought in a court of competent jurisdiction located in DeKalb County, Georgia, and the parties consent to the venue therein and the jurisdiction of those courts over the parties and the subject matter, and waive any defenses with respect to venue and jurisdiction.

Section 19. Headings

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

Section 20. Severability

If any provision of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

Section 21. Cooperation.

21.1 Each party hereby agrees to cooperate with the other parties hereto in every reasonable manner and to the fullest extent reasonably requested by the other, as appropriate, to enable the purposes of this Agreement.

Section 22. Entire Agreement

22.1 This Agreement and its attachments constitute the entire agreement between Contractor and City, and all negotiations and oral understandings between the parties are merged herein.

22.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

Section 23. Waiver

23.1 The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure.

Section 24. Notices

Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail with return receipt requested or hand delivered. Unless otherwise changed after providing proper Notice, the parties designate the following as the respective places for giving of notice:

For Contractor: **Clark Patterson Lee** – 350 Town Center Avenue, Suite 201
Suwanee, GA 30024

For City: **City of Dunwoody** - P.O. Box 888074 - Dunwoody, GA 30356
Temporary Offices: 400 Northridge Road; Suite 1250, Atlanta, GA 30350

Section 25. Assignability

Contractor shall not assign any of the obligations or benefits imposed hereby or contained herein, without the written consent of the City, which consent must be evidenced by a duly passed Resolution. This contract for services is partially and/or fully assignable by the City on ninety (90) days notice to Contractor. No assignment shall release the Contractor from performance of any duty, obligation, or responsibility.

AGREEMENT BY AND BETWEEN CONTRACTOR AND THE CITY OF DUNWOODY FOR CONTRACT SERVICES AS SET FORTH HEREIN.

IN WITNESS WHEREOF, the parties hereto have caused their respective agents to execute this instrument on their behalf, at the times set forth below.

CONTRACTOR

By: DATE

ATTEST

DATE

CITY OF DUNWOODY

By: Ken Wright DATE
Mayor

Approved as to form and legal sufficiency subject to execution
by the parties

By: DATE
City Attorney

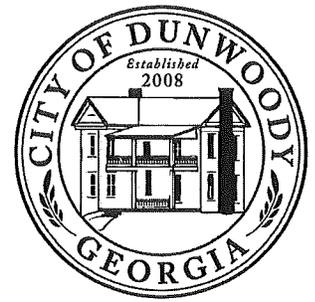
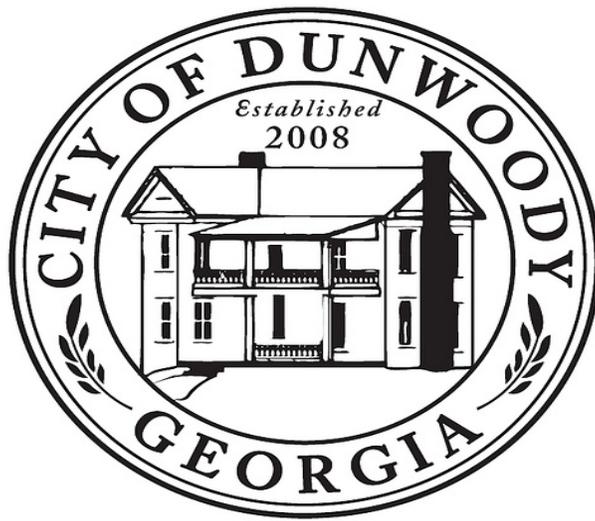


Exhibit A

Scope of Services



COMMUNITY DEVELOPMENT
Dunwoody, Georgia

**Scope of Work
To Provide City Services**

CONTRACT Number 2008.002

December 15, 2008

City of Dunwoody
Scope of Services: Community Development
Dunwoody, Georgia

SECTION 1 - SCOPE OF SERVICES

1.1 GENERAL

Project Description

The City will commence municipal operations on December 1, 2008 in accordance with the recently approved City Charter. While City services will continue to be performed for the City of Dunwoody by DeKalb County from December 1, 2008 until December 31, 2008, some limited services required by this CONTRACT will commence on December 1, 2008. Beginning on January 1, 2009 all services required by this CONTRACT will begin under the direct operation and control of the newly formed City of Dunwoody at the direction of the Mayor, Council, and City Manager.

On December 1st, 2008 the Contractor shall have in place in the City of Dunwoody interim City Hall:

- A full time Community Development Director that will be taking direction from the City Manager.
- A Plan Review and Permitting employee available under the direction of the Community Development Director.
- Administrative and Clerical Support under the direction of the Community Development Director
- Staff shall start planning the Design Review/Planning/Appeals board functions.

On January 1st, 2009 Contractor shall start

- Adding personnel necessary to support the start of receiving zoning applications on or before February 1, 2009. Contractor shall also provide sufficient staff to support the services required by this CONTRACT under the direct operation and control of the Manager.
- Have personnel in place to support the Building Inspection and Permitting function of the city.

The Contractor shall read and acknowledge the Mission, Vision, and Values Statements for the City of Dunwoody and provide services which are in accordance with same. The Contractor shall understand and agree to comply with the Mission, Vision, and Values Statements. The statements are as follows:

Mission Statement

City of Dunwoody
Scope of Services: Community Development
Dunwoody, Georgia

The mission of the City of Dunwoody is to provide the highest quality of life for those who live, work or play in our community and to foster an environment where business can prosper. We will serve all stakeholders in a transparent manner with resourceful, efficient, progressive and professional leadership.

Vision

Dunwoody will provide quality service to our citizens and support the largest economic engine in the Southeast by carefully and thoughtfully planning. We will be inventive, transparent and embrace responsible progress which is tempered by our rich history and our desire to maintain a small community atmosphere. Dunwoody is a community where activities are centered around the family, our schools, our churches and synagogues, and our beautiful parks.

Values

Goals

To make Dunwoody a better community, built on mutual respect and trust and to promote and maintain the highest standards of personal and professional conduct for all involved in City government - elected officials, City staff, volunteers, and members of the City's boards, commissions and committees. Contractor shall also abide by the City Ethics Policy as maintained in the City Ordinances.

1.2 SCOPE OF WORK

Community Development

REQUIRED SERVICES

General

The services required for which this CONTRACT is being issued shall include but not be limited to those outlined in this Exhibit.

The intent of the Contract is that the Contractor assumes full responsibility for the structure, planning, and implementation necessary to provide the required services to the City. Where the Contractor anticipates needs that may occur which are not specifically set forth hereunder, the Contractor is expected to identify with specificity those needs which shall be included herein as part of this CONTRACT. The scope of work under this CONTRACT is to be in conformance with the overall City organization as defined in Exhibit "B".

City of Dunwoody
Scope of Services: Community Development
Dunwoody, Georgia

All services and duties must be operational as of the date indicated in Section 1.1 of this CONTRACT.

Each of the services below shall include, as a material provision thereof, the attendance as necessary and/or requested of any and all meetings of the City Council to discuss and/or make recommendations regarding any matters within the purview of the requested services.

Whenever the requirement calls for the Contractor to develop and/or implement a policy, it shall be material provisions thereof that such policy shall be made in furtherance of the directives as provided to the Contractor by the City Manager.

1.3 PLANNING AND ZONING

The City of Dunwoody City Council intends to adopt a zoning and land use change moratorium for a minimum of 30 days effective December 1, 2008. After the moratorium is in place the City will adopt the existing DeKalb County Land Use, Zoning and Development ordinance. During the period of time that the moratorium is in place, the Mayor and City Council will have the opportunity to advertise and adopt changes and amendments to the old DeKalb County code in order to tailor the code to the specific needs and desires of the new City of Dunwoody.

1.3.1 Community Development Director

1.3.1.1 The successful Contractor shall provide and employ a Community Development Director (CDD) to manage the Community Development operations for the City under the direction of the City Manager. Provide the full name along with a current resume of the Director candidate. The candidate will be expected to be present during all interviews, presentations, and contract negotiations with the City. The successful candidate will also be expected to maintain a presence in the new City Hall. A Summary of the Job Description for the Community Development Director is as follows:

TITLE: Community Development Director

JOB SUMMARY:

Responsible for managing the City's comprehensive planning activities and capital improvement programs, and for ensuring compliance with the City's development regulations and zoning ordinance. Supervises and coordinates the work of Department staff. Duties include preparing and presenting analytical reports to the

City of Dunwoody
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Dunwoody, Georgia

Planning and Zoning Commission, City Council, Mayor, and City Manager. Attends and makes presentations at various City meetings including City Council, Planning and Zoning Board, Zoning Board of Appeals, Preservation District Review Board, internal staffing, and various public hearings. Prepares and submits annual departmental budget request and monitors expenditures and revenues in accordance with adopted budget. Work is performed independently under the general supervision of the City Manager.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

- Meets with developers to review plans and plats for compliance with City's development regulations and zoning codes. Reviews and approves preliminary and final plats.
- Answers questions regarding adopted codes and ordinances and related procedures on development plans, zoning applications and land use; assists in the enforcement of related Ordinances.
- Reviews development plans for compliance with adopted codes and ordinances.
- Prepares agendas for the Planning and Zoning Commission; Zoning Board of Appeals; and Preservation District Review Board.
- Prepares continuous updates to City maps.
- Reviews special exceptions and variance applications to zoning.
- Maintains the City's Comprehensive Plan and performs other current and long-range planning activities regarding growth management, transportation planning, annexation, etc.
- Drafts changes and renders interpretations to zoning ordinances and development regulations.

1.3.1.2 The Contractor shall include an Organizational (Org) Chart for the proposed Community Development department. The Org. Chart shall identify the CDD as well as the other proposed positions (or functions) that will make up the Community Development department. All of the Plan Reviewers shall be under the supervision of a Professional Engineer (PE) who is currently registered in the State of Georgia. All of the Contractor's proposed Plan Reviewers and Building Inspectors may also be International Code Council (ICC) certified.

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1.3.2 Planning and Zoning Services

1.3.2.1 Planning and Zoning services shall include, establishing, staffing (as needed to meet the requirements herein), and maintaining the Planning and Zoning Department for the City. The areas of responsibility shall include but are not limited to, the following:

1.3.2.2 Provide information to builders and developers regarding policies and procedures adopted by the City related to land use planning within the city.

1.3.2.3 Provide information to the general public as it relates to all land development activities within the City.

1.3.2.4 Oversee the development, maintenance and updating of land use and zoning maps as required by state and local agencies.

1.3.2.4 Develop a policies and procedures manual which outlines all planning and zoning activities, and develops schedules and time frames for processing all land development activities (including zoning).

1.3.2.5 Provide information to the City Manager, Mayor and Council, Planning and Zoning Boards, and any other City entities needing information regarding all relevant and applicable zoning and/or planning issues.

1.3.2.6 Develop, plan, and implement, in coordination with the City Manager, procedures for the implementation and assessment of potential Impact Fees that may be assessed by the City on new development projects. The Contractor is not required to provide an impact study as part of their CONTRACT; however, in the event the City Council and Mayor elect to have a study performed, the Contractor will be required to manage the process for the city.

1.3.2.7 Develop, plan, and implement, in coordination with the City Manager, procedures for the issuance of certificates of use. Contractor shall verify that all business license applications meet the City's zoning codes prior to their issuance by the Finance and Administration department.

1.3.2.8 Assist the City Manager in developing Requests For Proposals to outside Contractors for the production of a **Comprehensive Land Use Plan (CLUP)**. The CLUP will be the fundamental basis for all future development within the city. After the CLUP is developed, all future zonings and rezoning will be based on this

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document as well as all associated maps and charts. The Requests For Proposals for the CLUP are anticipated to be advertised in the Spring of 2009.

1.3.2.9 Make recommendations to the City Manager regarding the potential administration of a Design Review Board, Planning Commission, and Board of Appeals.

1.3.2.10 Develop a system of standards for City signage and issue all required Signage permits for temporary and permanent Signage at the direction of the Planning Dept. and collect permit fees as appropriate.

1.4 BUILDING INSPECTIONS AND PERMITTING

1.4.1 The Building Inspections and Permitting services shall include, establishing, staffing, and maintaining the Inspections and Permitting Departments for the City. The areas of responsibility shall include, but are not limited to, the following:

1.4.2 Develop and implement, in coordination with the City Manager , a plan review process for the City. Contractor shall develop and execute a plan for the City of Dunwoody to become a Local Issuing Authority (LIA) registered with the State of Georgia within the first two years of operation for plan review and inspections regarding land disturbance activities. Contractor shall include a Fee Schedule for the proposed Plan Review and Permitting process which could be adopted by the City as necessary.

1.4.3 Develop and implement, in coordination with the City Manager, a plan for the Building Permitting process for the City including response time standards.

1.4.4 Perform inspections and accurate enforcement of the adopted Building and City codes to ensure that every new and renovated building's Design Documents meet the building and trade codes and that the work associated with each individual trade is constructed to those standards. For historical reference; in 2007, Dekalb County performed approximately 4430 total building inspections, 6700 Electrical, 3720 Plumbing, and 1730 HVAC inspections within the Dunwoody City limits. Contractor shall develop an outline plan to complete the Building inspection process.

1.4.5 Develop and implement, in coordination with the City Manager, an outline plan for the City to conduct Soil Erosion and Sedimentation Control inspections for the City in accordance with the State of Georgia National Pollutant Discharge Elimination Standards (NPDES).

City of Dunwoody
Scope of Services: Community Development
Dunwoody, Georgia

1.4.6 Collect permit fees and issue all Building, Construction, Plumbing, Electrical, HVAC, Soil Erosion, land disturbance permits and all other related permits; in conjunction with the Planning and Zoning department.

1.4.7 Collect Historical data for the Dunwoody area from DeKalb County's Permits and Inspections department and integrate into the City of Dunwoody database.

1.4.8 Establish a web accessible database and filing system and record retention program and schedule for Permits and Inspections Documents that allows Permit applicants to check status of Permits and Inspections via the Internet.

1.4.9 The successful Contractor shall also evaluate methods to incorporate Energy Efficient and sustainable (LEED) standards into the permit and inspection process.

1.5 MOTOR VEHICLES AND EQUIPMENT

1.5.1 The Contractor shall be responsible for providing Motor Vehicles sufficient for the operations of the Community Development department on the date of initial operation beginning in 2009. This requirement shall exclude any specialized service related emergency vehicles such as Police, Medical and/or Fire Emergency Vehicles.

Vehicle make, model and age shall be subject to the approval of the City Manager and capable of temporary branding to the City of Dunwoody standards.

1.5.2 The Contractor shall submit a detailed Motor Vehicle Use and Safety Policy for the use of such vehicles by any staff of Contractor sufficient to ensure that the City is protected regarding the use of said vehicles.

1.5.3 The Contractor shall further be responsible for all storage, maintenance, inspections, and other necessary service regarding the motor vehicles and equipment.

1.5.4 Insurance Requirements - Vehicle insurance coverage shall be current and maintained by the Contractor as indicated in Exhibit "A".

1.6 GEOGRAPHIC INFORMATION SYSTEM (GIS)

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Dunwoody, Georgia

1.6.1 Coordinate with all other necessary City and County personnel and/or contractors the transfer, maintenance, storage and retrieval of all documents and records from DeKalb County, Georgia, necessary for the effective implementation and operation of the City's GIS System provided under the Community Development department. The Contractor shall be responsible for determining the documentation necessary for transfer as well as coordinating and implementing the physical retrieval, reproduction and storage of the transferred records.

1.6.2 A citywide, cross departmental GIS shall be purchased for the City which shall include at a minimum:

Software + Hardware: ArcGIS Server 9.x Standard Enterprise - Four Core Server Solution, (1) Microsoft SQL Database Server Solution, ArcIMS for website interface, (2) Desktop Workstations, ESRI ArcInfo, (1) Multi Function Plotter/Scanner)

1.6.3 The Contractor shall be responsible for setting up the new GIS system as well as for the service, update and maintenance of the GIS data bases on not less than a monthly basis.

The Contractor shall have at least one employee located within City Hall during business hours that is capable of operating and producing information from the GIS System as directed by the City Manager.

1.6.4 The Contractor shall provide any GIS related information and/or data in response to requests and needs of City personnel as well as any other contractors who may be engaged in City of Dunwoody Community Development projects.

1.7 ALTERNATES

1.7.1 Add Alternate #1 (Accepted): **CODE ENFORCEMENT**

1.7.1.1 Develop and implement, in coordination with the City Manager, a plan for an on-going Code Enforcement department process for the City.

1.7.1.2 The City of Dunwoody Code Enforcement department shall be established to prevent and remedy violations on City Right of Ways as well as private and commercial property. The Enforcement Officer shall be responsible for enforcing ordinances as directed by the City Manager, Mayor and City Council.

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1.7.1.5 Coordinate with City of Dunwoody Planning Dept. to ensure uniform application of codes and acquisition of any State and Federally mandated certifications

1.7.1.6 Ensure that housing conditions, the general environment, and buildings are maintained to the minimum housing codes

1.7.1.7 Issue permits for Special Events at the direction of the Planning Dept. and collect permit fees

1.7.1.8 Develop a system of standards for Taxi and Limousine licensing and compliance.

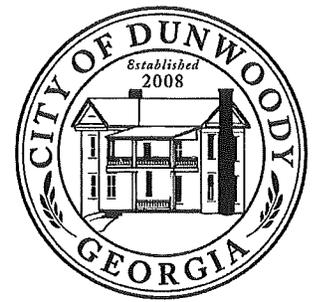


Exhibit B Organizational Chart

**City of Dunwoody
Mayor & City Council**

City Manager
City of Dunwoody
Warren Hutmacher

Principal-in-Charge
Clark Patterson Lee
Kevin McOmber, P.E.

Community Development Director
Clark Patterson Lee
Jennifer Peterson (100%)

Development Coordinators
Clark Patterson Lee
Jerry Oberholtzer (100%)
Nancy Griffin (25%)

Planning & Zoning
Clark Patterson Lee
Howard Koontz (100%)
Jeff Timler (25%)
Kevin McOmber, P.E. (5%)
Kerry Ivers, A.I.C.P. (5%)
Brian Cunningham (50%)

City Engineering
Clark Patterson Lee
Rich Edinger, P.E., C.F.M. (50%)
Kevin McOmber, P.E. (5%)

Building Official
Permitting & Inspections
Clark Patterson Lee
Michael Nier (60%)
Tom LaPenna (50%)

Code Compliance
Clark Patterson Lee
Rich Edinger, P.E., C.F.M. (10%)
Michael Nier (40%)
Tom LaPenna (50%)

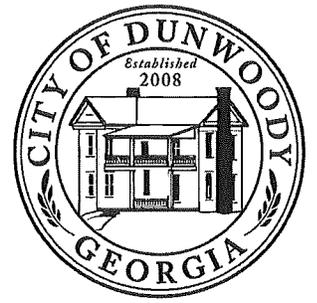


Exhibit C Schedule of Values



Exhibit C

**Community Development Department
Schedule of Values**

Billing Period	Planning & Zoning	City Engineering	Inspections*	Code Compliance	GIS	Misc Expenses	Monthly Total
December-08	\$52,230.77	\$9,615.40			\$45,000.00	\$65,000.00	\$171,846.17
January-09	\$52,230.77	\$9,615.40	\$33,333.33	\$11,166.67	\$20,000.00	\$16,000.00	\$142,346.17
February-09	\$52,230.77	\$9,615.40	\$33,333.33	\$11,166.67	\$6,500.00	\$16,000.00	\$128,846.17
March-09	\$52,230.77	\$9,615.40	\$33,333.33	\$11,166.67	\$5,000.00	\$8,000.00	\$119,346.17
April-09	\$52,230.77	\$9,615.40	\$33,333.33	\$11,166.67	\$1,500.00	\$6,000.00	\$113,846.17
May-09	\$52,230.77	\$9,615.40	\$33,333.33	\$11,166.67	\$1,500.00	\$6,000.00	\$113,846.17
June-09	\$52,230.77	\$9,615.40	\$33,333.33	\$11,166.67	\$1,500.00	\$5,000.00	\$112,846.17
July-09	\$52,230.77	\$9,615.40	\$33,333.33	\$11,166.67	\$1,500.00	\$1,000.00	\$108,846.17
August-09	\$52,230.77	\$9,615.40	\$33,333.33	\$11,166.67	\$1,500.00	\$1,000.00	\$108,846.17
September-09	\$52,230.77	\$9,615.40	\$33,333.33	\$11,166.67	\$1,500.00	\$1,000.00	\$108,846.17
October-09	\$52,230.77	\$9,615.40	\$33,333.33	\$11,166.67	\$1,500.00	\$1,000.00	\$108,846.17
November-09	\$52,230.77	\$9,615.40	\$33,333.33	\$11,166.67	\$1,500.00	\$1,000.00	\$108,846.17
December-09	\$52,230.76	\$9,615.20	\$33,333.37	\$11,166.63	\$1,500.00	\$1,000.00	\$108,845.96
Dept. Totals	\$679,000.00	\$125,000.00	\$400,000.00	\$134,000.00	\$90,000.00	\$128,000.00	\$1,556,000.00

* Estimated fees based on \$500,000 in building permits issued annually.

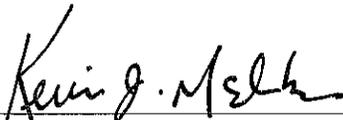
Community Development Base Bid

Provide lump sum costs for the activities outlines in Section 3.0 of the RFP. The Lump Sum cost shall be provided and broken down for each year of services as follows:

SERVICE	YEARLY		
	2008/2009	2010	2011
Planning and Zoning	\$679,000.00	\$643,000.00	\$650,000.00
Building Inspections and Permitting	\$525,000.00	\$525,000.00	\$525,000.00
Miscellaneous Costs including Vehicles and Maintenance	\$128,000.00	\$68,000.00	\$68,000.00
Purchase, Install and Operate GIS System	\$90,000.00	\$18,000.00	\$18,000.00
Total Proposal for Section 3.0:	\$1,422,000.00	\$1,254,000.00	\$1,261,000.00

SERVICE	2008/2009	2010	2011
Add Alternate #1: Code Enforcement – Includes one full time employee and one additional vehicle	\$134,000.00	\$134,000.00	\$134,000.00
Deductive Alternate #1: Community Development Director	\$175,000.00	\$175,000.00	\$175,000.00

SERVICE	2008/2009	2010	2011
Deductive Alternate #2: Utilize only Certified Building Official for Building Plan Review (BPR) and Omit Use of Registered Professional Engineers for BPR.	\$225,000.00	\$225,000.00	\$225,000.00



Kevin J. McOmber, P.E.
Vice President

12/10/08

Date

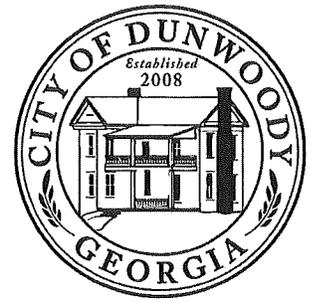


Exhibit D
Letter of Agreement



December 10, 2008

Mr. Warren Hutmacher
City Manager
City of Dunwoody
400 Northridge Road, Suite 1250
Atlanta, GA 30350

RE: Community Development Services

Dear Mr. Hutmacher,

Per your request and as a follow-up to our meeting this afternoon, we have revised our community development fee proposal, which is attached for your use. The following changes to the scope of work and corresponding fee modifications are listed below:

1. No changes are proposed to the Planning and Zoning Services.
2. The most significant change affects the Building Inspections and Permitting services. While this was previously proposed as a lump sum fee, the revised fee of \$525,000 reflects \$125,000 as a lump sum fee for land disturbance permitting and miscellaneous City Engineer services, and \$400,000 of estimated building plan review and inspection services calculated at 80% of the City's \$500,000 budget line item. Final costs to the City shall be invoiced at 80% of the actual permit amounts. This method of fee structure is conditional upon building permit fee rates that are not lower than DeKalb County permit fee rates. Upon 60 days written notice, this fee may be converted to a prorated lump sum of \$569,000.00 in year one (excludes building plan review by professional engineers). CPL will invoice the City monthly using \$400,000 as the annual estimated fee. This will be analyzed annually and adjustments made that may result in additional fees to be paid within 30 days or a credit issued to the City if an overpayment has been made.
3. Under the heading of Miscellaneous Costs including Vehicles and Maintenance, we have reduced each of the annual fees by \$12,000 for the removal of one vehicle.
4. Under the heading of Purchase, Install and Operate GIS System, our lease of a plotter/scanner will be assigned to the City of Dunwoody at the end of our agreement. This is a no cost change item.
5. Add Alternate #1 – code enforcement has been adjusted to include one full time employee and one vehicle (one half time employee eliminated). One full time effort includes 10% Rich Edinger for management and 90% Code Compliance employee. The revised total for this item is \$134,000.



6. We have added 2010 and 2011 calendar year fees for the alternates.
7. We acknowledge that the City has declined Deductive Alternate #1.
8. We acknowledge that the City has accepted Deductive Alternate #2 with modifications identified in item 2 above.
9. We have added an hourly rate schedule for the use of CPL staff members that are not currently designated in this fee proposal, including the professionals removed as part of Deductive Alternate #2. These staff members are available to the City of Dunwoody upon prior written request and approval by the City Manager.
10. In the event that either party should elect to terminate this agreement, in accordance with the provisions in the contract, the City of Dunwoody will have an option to continue lease and purchase agreements for equipment that CPL is providing under this agreement.

We appreciate the time you spent with us today and look forward to a long lasting relationship with you and the City of Dunwoody.

Sincerely,

CLARK PATTERSON LEE

Kevin J. McOmber, P.E.
Vice President

HOURLY RATES

PRINCIPAL ENGINEER	\$180.00/HR
PROJECT MANAGER	\$135.00/HR
SR. STAFF ENGINEER / SR. ARCHITECT / SR. PLANNER	\$110.00/HR
STAFF ENGINEER / ARCHITECT / PLANNER	\$ 97.00/HR
JR. ENGINEER / JR. ARCHITECT / JR. PLANNER	\$ 85.00/HR
CODE COMPLIANCE OFFICER	\$ 85.00/HR
INSPECTOR	\$ 85.00/HR
DESIGNER / DRAFTPERSON	\$ 65.00/HR
JR. DESIGNER / DRAFTPERSON	\$ 59.00/HR
SECRETARIAL	\$ 35.00/HR
AUTO MILEAGE	\$0.585/Mile*
MISCELLANEOUS	COST PLUS 10%

*This rate may be adjusted periodically to remain current with Federal guidelines.