

REQUEST FOR PROPOSALS

FC-6006007909, WIRELESS ATLANTA BROADBAND INITIATIVE



Atlanta, Georgia

**Shirley Franklin
Mayor
City of Atlanta**

**Abe Kani
Commissioner
Department of Information Technology**

**Adam L. Smith, Esq.
Chief Procurement Officer
Department of Procurement**



CITY OF ATLANTA

Shirley Franklin
Mayor

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ATLANTA, GA 30303
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DEPARTMENT OF PROCUREMENT
Adam L. Smith, Esq.
Chief Procurement Officer
asmith@atlantaga.gov

June 19, 2006

ATTENTION INTERESTED PROPONENTS:

Your firm is hereby invited to submit to the City of Atlanta, Department of Procurement (“DOP”), a proposal for **FC-6006007909, Wireless Atlanta Broadband Initiative**. The City of Atlanta (the “City”) is soliciting proposals from qualified proponents for the design, construction and implementation of the City’s wireless network infrastructure.

Your proposal should be responsive to the following:

- Instructions to Proponents
- General Conditions
- Scope of Services
- Appendix A – OCC Requirement
- Appendix B – Insurance/Bonding Requirements
- Appendix C – Contractor’s Disclosure Form and Questionnaire

Proposals will be evaluated initially on a review of the written document. Further evaluation may include an oral interview/presentation with the most qualified proponent. The City may negotiate with the most responsive and responsible proponent for the described services.

A **Pre-proposal Conference** will be held on **Wednesday, June 28, 2006, at 2:00 p.m.**, City Council Chambers, 55 Trinity Avenue, S.W. The purpose of the Pre-proposal Conference is to provide proponents with detailed information regarding the project and to address questions and concerns. There will be representatives from the Department of Information Technology, and the Offices of Contract Compliance and Risk Management available at the conference to discuss this project and to answer any questions. Proponents are urged to attend the Pre-proposal Conference.

Your response to this request for proposals will be received by designated staff of the Department of Procurement at 55 Trinity Avenue, S.W., City Hall South, Suite 1790, Atlanta, Georgia 30303, **no later than 1:59 p.m., Wednesday, August 2, 2006.**

****ABSOLUTELY NO PROPOSALS WILL BE ACCEPTED AFTER 1:59 P.M.****

This project is an eligible bidder project as defined in §2-1443 of the Atlanta City Code of Ordinances, and no proposal shall be accepted unless the proposal is submitted by an eligible bidder as approved by the Office of Contract Compliance.

Proponents' names will be publicly read at 2:00 p. m. on the respective due date in Suite 1900, 1st Floor, 55 Trinity Avenue, S.W., City Hall South, Atlanta, Georgia 30303.

The proposal document may be obtained from the Department of Procurement, Plan Room, City Hall South, Suite 1900, 55 Trinity Avenue, S.W., Atlanta, Georgia, 30303, at a cost of \$25.00 per package or on line at no cost at:

http://www.atlantaga.gov/business/rfp_generalfund.aspx

Please click on the RFP number, FC-6006007909 to download this RFP.

The City reserves the right to cancel any and all solicitations and to accept or reject, in whole or in part, any and all proposals when it is for good cause and in the best interest of the City.

Thank you for your interest in doing business with the City.

Sincerely,

Adam L. Smith

PART I

INSTRUCTIONS TO PROPONENTS

**REQUEST FOR PROPOSALS
FOR
FC-6006007909, Wireless Broadband Network**

PART I

INSTRUCTIONS TO PROPONENTS

- 1.1 DESCRIPTION AND OBJECTIVES.** The City of Atlanta (the “City”) is soliciting Proposals from qualified Proponents to provide a wireless broadband network for the City on behalf of the Department of Information Technology.
- 1.2 PROCUREMENT PROCESS.** The procurement will be on a formally advertised basis. All technical requirements, unless otherwise specified, must be met, or be capable of being met, by the Proponents or their Proposal will be disqualified as being non-responsive. Proponents whose Proposals are not responsive will be promptly notified that they are no longer being considered.
- 1.3 PROPOSAL DEADLINES.** Proposals for this RFP must be received by the City’s Department of Procurement, 55 Trinity Avenue, S. W., City Hall South, Suite 1790, Atlanta, Georgia 30303-0307, **no later than 1:59p.m., Wednesday, August 2, 2006.** The Proposals will not be opened at that time and only the names of the Proponents will be read aloud. Any Proposals received after the deadline will be rejected. Proposals must be responsive to all aspects of the RFP.

A Pre-proposal Conference will be held on Wednesday, June 28, 2006, at 2:00 p.m. City Council Chambers, 55 Trinity Avenue, S. W., Atlanta, Georgia 30303.

- 1.4 SELECTION PROCESS.** Each Proponent should structure its team and allocate responsibilities for each firm on the project so that it will be efficient, cost effective, and responsive to all the requirements of the RFP. The City will evaluate the written Proposals and will determine which Proponents are best qualified to perform the Services based on the evaluation criteria described in Part III of this RFP. A thorough investigation will be made into each Proponent’s qualifications and past performance on similar projects. A short list consisting of a minimum of three (3) Proponents may be established from the evaluations. The short-listed Proponents will be selected based on the highest ratings as determined by the City’s Evaluation Committee for the most responsible and responsive Proposals. Oral interviews/presentations may be conducted with the short-listed Proponents. The purpose of the interview/presentation is to provide the City with an opportunity to seek additional information and to confirm information received.

- 1.5 CONFIDENTIALITY OF DOCUMENTS.** Upon receipt of Proposals by the City, each Proposal shall become the property of the City without compensation to the Proponent for disposition or usage by the City in its discretion. The particulars of the Proposals document shall remain confidential to the extent the law allows. All reports, information, data or other documents given to, prepared by or assembled by Proponent under this Agreement are the exclusive property of the City and will be kept confidential and may not be made available to any individual or organization by the Proponent without prior written approval of the City. This restriction includes, but is not limited, to press releases, presentations, promotional materials and other public disclosures.
- 1.6 NEGOTIATIONS.** Upon evaluation of the Proposals, and following oral interviews/presentations, negotiations may be undertaken with the Proponent(s) determined by the City to be the most responsive and responsible of the short-listed Proponents. The City reserves the option to award multiple Agreements. The purpose of the negotiations will be to arrive at final Agreements concerning the business terms of the transaction. In the event that negotiations with the most qualified Proponents fail to reach final agreement, such negotiations will be terminated. The City will then enter into negotiations with the next most qualified Proponent. This process will continue until final agreements, if possible, are realized. The City reserves the right to waive any formalities canceling this RFP, or to reject any or all proposals or any part thereof.
- 1.7 FORMAT OF RESPONSES.** To be considered, Proponents must submit a complete response to this RFP. The format provided in this document is not negotiable. Responses shall be submitted in sealed envelope(s) or package(s). The outside of the envelope or package must clearly indicate the name of the Project: **“FC-6006007909, Wireless Broadband Network.”** and the time and date specified for receipt. The name and address of the Proponent must also be clearly printed on the outside envelope or package. Submittals shall include one (1) stamped original and ten (10) copies. Specific details on the format for the written Proposal can be found in Part III of this RFP. In addition, each Proponent should submit two (2) Compact Discs (CD) with a digital version of their Proposal in Portable Document Format (PDF). Disc One must contain only information submitted in Volumes I and II, Disc Two must contain only information submitted in Volume III, as described in Part III (Scope of Services) of this RFP. The City assumes no liability for differences in information contained in proponents’ printed volumes and those contained on the Compact Discs. In the event of a discrepancy, the City will rely upon the information contained in the proponent’s printed material.

Submit all responses to:

**Adam Lorenzo Smith, Esq.
Chief Procurement Officer
Department of Procurement
55 Trinity Avenue, S. W.
City Hall South; Suite 1790
Atlanta, Georgia 30303-0307**

- 1.8 CONTACT PERSONS AND INQUIRIES.** Any questions or suggestions regarding this RFP should be submitted in writing to the City's Contact Person: Contracting Officer Mr. Labat Yancey Department of Procurement, 55 Trinity Avenue, S. W., Suite 1790, Atlanta, Georgia 30303, by (fax (404) 658-7705 or e-mail lyancey@atlantaga.gov, not less than twenty-one (21) calendar days before Proposals are due. Inquiries received after the twenty-one (21) day period may not be considered. Responses made by the City will be provided in writing to all Proponents by addendum. No verbal response shall be authoritative.
- 1.9 PROHIBITED CONTACTS.** Other than with the consent of the Contact Person, all Proponents, including any persons affiliated with or in any way related to a Proponent, are strictly prohibited from contacting City employees or Contractors for the City on any matter having to do in any respect with this RFP, other than as provided herein. Any and all contacts with such persons associated with the City shall be made only through and in coordination with the Contact Person and may be required to be in writing, in appropriate circumstances or cases, as directed by the Contact Person. Failure to comply with the provisions of this section may result in disqualification from this and/or future solicitations.
- 1.10 COMPLETION OF WORK.** The selected Proponents will prepare a detailed Scope of Services. City and the selected Proponents will negotiate any modifications and fine-tuning of the Scope of Services prior to finalization and execution of the Agreement. Upon the formal award and execution of Agreement, the tasks set forth in the Scope of Services are to be completed pursuant to the terms and conditions set forth in the Agreement.
- 1.11 INSURANCE.** Insurance requirements are outlined in Appendix B of this document.
- 1.12 HOLD HARMLESS AGREEMENT.** In addition to its agreement to obtain and maintain the insurance as set forth herein above, Proponent shall indemnify and hold harmless the City, its officers, agents and employees, from and against any and all claims against the City, its officers, agents and employees which arise out of any negligent act or omission of the Proponent or any Subcontractor employed by the Proponent or any of their officers, agents or employees, and any and all claims which result from any condition created or maintained by the Proponent or any Subcontractor employed by the Proponent or any of their officers, agents or employees, which condition was not specified to be created or maintained by this Agreement. The Proponent further agrees that its agreement to indemnify and

hold harmless the City, its officers, agents and employees, shall not be limited to the limits of the liability insurance under this Agreement and the attached Specifications.

- 1.13 REPORTING RESPONSIBILITIES.** The successful Proponents will report directly to the Commissioner of the Department of Information Technology, or designated representative of the department requesting the Scope of Services.

PART II

GENERAL CONDITIONS

GC-1 AUTHORIZED REPRESENTATIVES

- 1.1 **City's Representatives: Designees.** City will designate in writing a person(s) to serve as its representative(s) ("**City's Representative**") in all dealings with Contractor under this Agreement, and to carry out the duties specified in this Agreement, or necessarily implied from this Agreement; provided, however, City's Representative(s) will have no authority to relieve Contractor of any of its obligations under this Agreement. Any communication given by City's Representative(s) will have the same effect as though it has been given by City; provided that any failure of City's Representative(s) to disapprove or reject any services shall not prejudice the authority of City to disapprove the services or give instructions for the rectification of defects in the services. The City's initial representative will be the Chief Information Officer, Department of Information Technology. The City's Representative or any of its designee(s) may be changed upon prior written notice delivered to Contractor.
- 1.2 **City's Representative(s) Discretion.** Whenever under this Agreement, City's Representative is required to exercise its discretion by giving a decision, opinion or consent, by expressing satisfaction or approval, or by determining values, it will exercise that discretion reasonably, fairly and impartially within the terms of this Agreement.

GC-2 CONTRACTORS REPRESENTATIVE(s)

- 2.1 Contractor must designate in writing a person(s) acceptable to City's Representative to serve as its representative ("**Contractor's Representative**") in all dealings with the City. Contractor's Representative may be changed upon prior written notice delivered to the City's Representative.

GC-3 COMMENCEMENT, PROSECUTION AND TERMINATION OF AGREEMENT

- 3.1 **Commencement.** This Agreement will commence as of the date it is executed by the Mayor of City, attested to by the Municipal Clerk and delivered to Contractor.
- 3.2 **Notice to Proceed.** Contractor must commence the Services described in the work authorization under this Agreement within ten (10) days from the date of the Notice to Proceed ("**NTP**").
- 3.3 Term of Agreement is as follows: The initial term of the Agreement shall be five years(5) with four (4) one (1) year renewal options at the City's sole discretion.

GC-4 PROFESSIONAL RESPONSIBILITY

- 4.1 Contractor represents that it has or will secure at its own expense, all personnel required to perform all work to be completed under this Agreement.
- 4.2 All the services required hereunder shall be performed by Contractor or under the direct supervision of Contractor. All personnel engaged in the Services by Contractor shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services.
- 4.3 None of the Services covered by this Agreement shall be transferred, assigned, or subcontracted by Contractor without the prior written consent of the City.

GC-5 CHANGES IN SCOPE OF SERVICES

- 5.1 The City may, from time to time, request changes in the scope of services to be performed by Contractor hereunder. No such change, including any increase or decrease in the amount of the compensation, which may be mutually agreed upon by and between the City and Contractor, shall be effective and enforceable until and unless a written amendment to this Agreement has been executed by both parties and attached hereto.

GC-6 REPORTS AND DOCUMENTATION

- 6.1 All reports, information, data, or other documents, given to, prepared by or assembled by Contractor under this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without prior written approval by the Department of Information Technology designated representative. For the duration of this Agreement, all records generated by Contractor in the course of performing services in accordance with this Agreement shall be open to inspection and audit by City, or any person designated by City, during Contractor's regular business hours at Contractor's office where such records are maintained. Upon request of City, Contractor shall provide all records and information under this section in a format mutually agreed upon by the parties. Except as required by law, Contractor agrees to treat City's data in a confidential manner. Contractor shall inform its employees of the confidential nature of such data and shall instruct them not to disclose any such data to any non-contractor affiliated third party whatsoever without Contractor's express approval, except as may be necessary in connection with the delivery of services hereunder or as may be required by law.

GC-7 REPORTING RESPONSIBILITIES

- 7.1 The Chief Information Officer or her designee is responsible for overseeing this project.

GC-8 INDEPENDENT CONTRACTOR/SUB-CONTRACTORS

- 8.1 Contractor shall perform under an awarded Agreement as an independent entity and not as an agent or employee of the City.
- 8.2 Contractor must secure written authorization from City before awarding any Agreement to any sub-contractor. Contractor shall be responsible for all aspects of performance under the Agreement and must exercise the appropriate degree of control of, and accepts responsibility for, the performance of all of its sub-contractors and suppliers.
- 8.3 If Contractor deems any sub-contractors essential to the execution of the work requested by this Request for Proposals (“**RFP**”), Contractor must: [i] specifically identify those sub-contractors in its response to this RFP by name, address, telephone and facsimile number and individual Agreement; [ii] provide a detailed description of the portion of the work each sub-contractor will perform; and [iii] provide a detailed explanation as to why each particular sub-contractor is essential to this work.
- 8.4 Even if a sub-contractor is approved by City, Contractor will be fully responsible for the performance of that sub-contractor in every respect. In the event of a default or defective performance by any sub-contractor, contractor is obligated to manage the work, cure any defects and replace that sub-contractor, if necessary, at no additional cost to City.
- 8.5 No contractual relationship between City and any Contractor’s sub-contractor is created by an approval of City for use under the Agreement.

GC-9 LICENSES, PERMITS, TAXES

- 9.1 The price or prices for the services requested in this Agreement include full compensation for all licenses, permits and taxes that the Contractor is or may be required to pay to complete this work. The City is a tax-exempt entity.

GC-10TERMINATION OF AGREEMENT

1. Termination for Default.

a. Reason for Default.

- (1) Performs work, that fails to conform to the technical requirements of the Agreement;
- (2) Fails to make progress so as to endanger performance of the Agreement;
- (3) Abandons or refuses to proceed with any of the work, including any changes to the work made according to Agreement;
- (4) Fails to comply with any term of the Agreement;
- (5) Fails to comply with the social programs of the City, including, but not limited to, its Equal Employment Opportunity and Equal Business Opportunity programs;
- (6) Engages in behavior that is dishonest, fraudulent or constitutes a conflict of interest with Contractor's obligations under the Agreement; or
- (7) Reasonable grounds for insecurity arise concerning Contractor's performance.

b. Notice of Default. If Contractor defaults, City will notify Contractor in writing of the nature of the default. If Contractor does not cure that default within seven (7) calendar days from receipt of the notice, City may, by written notice to Contractor and without notice to Contractor's sureties, if any, terminate in whole or in part, Contractor's right to proceed with the work and City may prosecute the work to completion by Agreement or by any other reasonable method deemed expedient by City. City may take possession of and utilize any data, designs, licenses, equipment, materials, plan, tools, and property of any kind furnished by Contractor and necessary to complete the work.

2. Immediate Termination. This Agreement shall immediately terminate, without the requirement of any action on City's part, and all termination for default remedies available and applicable termination actions required by

Contractor when all work is terminated for default under the Agreement will apply, if Contractor:

- a. Voluntarily consents to an order for relief by filing a petition for relief under the laws of the United States codified as Title 11 of the United States Code;
- b. Seeks consents to or does not consent the appointment of a receiver, custodian or trustee for itself or for all or any part of its property;
- c. Files a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws or any state or other competent jurisdiction;
- d. Admits in writing that it is generally not paying its debts as those debts become due;
- e. Gives notice to any governmental body of insolvency or pending insolvency, or suspend operations;
- f. Becomes insolvent as that term is defined under applicable fraudulent transfer or conveyance laws; or
- g. Makes an assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors.

3. Excess Re-procurement Costs. Contractor and its sureties, if any, will be liable for all costs in excess of the Agreement price for all terminated work reasonably and necessarily incurred by City in the completion of the work, including cost of administration of any Agreement awarded to others for completion.

4. Termination Actions. Upon termination for default, Contractor will:

- a. Immediately discontinue work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the terminated work;
- b. Inventory, maintain and turn over to City all data, designs, licenses, equipment, materials, plans, tools, applicable work product and property furnished by Contractor or provided by City for performance of the terminated work;

- c. Promptly obtain cancellation, upon terms satisfactory to City, of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated work, or assign those agreements, as directed by City;
- d. Cooperate with City in the transfer of data, designs, work product, licenses and information and disposition of work in progress so as to mitigate damages;
- e. Comply with all other reasonable requests from City regarding the terminated work; and
- f. Continue to perform in accordance with all of the terms and conditions of the Agreement such portion of the work that is not terminated.

5. Contractor not in Default. If, after termination for default, it is determined for any reason that Contractor was not in default, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to the Clause titled "Termination for Convenience."

6. Termination for Convenience.

- a. **Termination Actions.** Notwithstanding the City's right to terminate for cause, the City may, terminate for convenience any of the Work under the Agreement, in whole or, from time to time, in part, at any time by written notice to Contractor. The notice will specify the extent to which the performance of the work is terminated and the effective date of the termination. Upon receipt of the notice Contractor will:
 - 1. Immediately discontinue the work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts for materials, service, or facilities, other than as may be required for completion of the portion of the work that is not terminated;
 - 2. Promptly obtain assignment or cancellation, upon terms satisfactory to City, of all purchase orders, subcontracts, rentals, or any other agreements existing for the performance of the terminated work, or assign those agreements as directed by City;
 - 3. Assist City in the maintenance, protection and disposition of work in progress, plans, tools, equipment, work product,

property and materials acquired by Contractor or furnished by City under the Agreement; and

4. Complete performance of the portion of the work that is not terminated in accordance with the scheduled milestones and Agreement completion dates.

b. Waiver and Compensation. In the event of a Termination for Convenience, Contractor waives any claims for damages, including loss of anticipated profits. As Contractor's sole right and remedy, City will pay in accordance with the following:

1. The Agreement price corresponding to the work performed in accordance with the Agreement prior to the notice of termination;
2. All reasonable costs for work thereafter performed as specified in such notice;
3. Reasonable administrative costs of settling and paying claims arising out of the termination of work under purchase orders or subcontracts;
4. A reasonable overhead and profit on items (1) through (3) of this clause.

GC-11 OWNERSHIP OF INFORMATION; CONFIDENTIALITY

- 11.1 All reports prepared by or assembled by Contractor arising out of the work performed under this Agreement are the exclusive property of the City and will be kept confidential and may not be made available to any individual or organization by the Contractor without the prior written approval of the City; provided, however, that these provisions shall not apply to data that is in the public domain; was previously known to Contractor; or was independently acquired by the Contractor from third parties who are under no obligation to City to keep said data and information confidential. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of Contractor, nor shall they be interpreted in any way to restrict Contractor from complying with a legally enforceable court order to provide information or data; provided, however, the Contractor shall immediately place City on notice of such court order to permit City the opportunity to determine whether a Protective Order shall be filed. This restriction includes, but is not limited to, press releases, presentations, promotional materials and other public disclosures.

- 11.2 Except as provided in the preceding paragraph, the Contractor shall keep confidential, and shall require its employees, agents, subordinates, or sub-contractors, to keep confidential all information disclosed by the City or its Contractors to the Contractor, or developed by the Contractor or the Contractor's employees, agents, subordinates, or sub-contractors in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of this Agreement and shall entitle the City to recover from Contractor any damages City incurs because of such breach.
- 11.3 The City shall have the right to any specifications, computer programs, technical reports, operating manuals and similar work product developed and paid for under this Agreement. If research or development is furnished in connection with the performance of this Agreement, and if in the course of such research or development patentable subject matter is produced by the Contractor, its officers, agents, employees, or sub-contractors the City shall have, without cost or expense to it, an irrevocable, nonexclusive royalty-free, license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the City. Promptly upon request by the City, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to the City, but it is expressly understood and agreed that, as between the City and the Contractor, the license herein provided for shall nevertheless arise for the benefit of the City immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by the City to its successors immediate, or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the City, but such license shall not be otherwise transferable.
- 11.4 Any documents, including but not limited to, mylars, Agreement drawings, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the City, and the City shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein.

GC-12 RECORDS AND AUDIT

- 12.1 Contractor and its sub-contractors shall be responsible for maintaining accurate records of all correspondence, documents, accounting records and other relative evidence. These records shall remain on file for a minimum of

three (3) years. All records shall be made available to the City for review upon request. City may examine and copy, at all reasonable times, with advance notification, those records and accounts. Contractor shall maintain all records in a central location in the metropolitan Atlanta area.

GC-13 COMMERCIAL ACTIVITIES

- 13.1 Neither Contractor nor its employees may establish any commercial activity or issue concessions or permits of any kind to third parties for establishing activities at the City.

GC-14 COMPLIANCE WITH CITY'S SECURITY REQUIREMENTS

- 14.1 Contractor must comply with City's security requirements for any jobsite. Contractor must cooperate with City on all security matters and must promptly comply with any project security arrangements established by City. Compliance with these security requirements will not be construed as limiting, in any manner, Contractor's obligations with respect to all applicable governmental requirements and regulations and its duty to undertake reasonable actions to establish and maintain secure conditions at any jobsite.

GC-15 ETHICS: GRATUITIES AND KICKBACKS

- 15.1 The right of Contractor to proceed may be terminated in accordance with the Clause titled TERM AND TERMINATION if, after notice and hearing, City determines that Contractor, any agent, or other representative of Contractor gave or agreed to give, any employee or former employee of City a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or an Agreement or subcontract, or to any solicitation or proposal for an Agreement or subcontract.

GC-16 CONTINGENT FEES

- 16.1 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement; and that Contractor has not paid or agreed to pay

any company, association, corporation, firm or person, other than a bona fide employee working for Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, and upon a finding after notice and hearing, City may terminate this Agreement and, at its discretion, may deduct from the agreement sum, or otherwise recover the full amount of any fee, commission, percentage, gift or consideration.

GC-17 RIGHTS AND REMEDIES

- 17.1 The rights and remedies of City provided in this clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

GC-18 LIMITATION OF LIABILITY

- 18.1 Contractor will not be liable in Agreement, in tort (including negligence and strict liability) or otherwise, for any special, indirect, incidental or consequential damages or for loss of profits or revenue, loss of use of equipment or system, cost of capital, cost of temporary equipment, claims of customers of City, or damage or loss of property or equipment not supplied by Contractor under this Agreement.

GC-19 AWARD VIOLATION

- 19.1 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor to solicit or secure this Agreement; and that it has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the above warranty and upon a finding after notice and hearing, the City shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

GC-20 STATEMENT OF NON-DISCRIMINATION

- 20.1 During the performance of this Agreement, Contractor agrees to comply with all provisions of Part 2, Chapter 2, Article X, Division 11, including Section 2-1414 of the Code of Ordinances ("**Ordinances**"), City of Atlanta, and do warrant the following:
- 20.2 Contractor shall not discriminate against any employee, or applicant for employment, because of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, and disability. As used herein, the words "shall not discriminate" shall mean and include, without limitation, the following:
- Recruited, whether by advertising or other means, compensated, whether in the form of rates of pay, or other forms of compensation, selected for training, including apprenticeship, promoted, upgraded, demoted, downgraded, transferred, laid off, and terminated.
- Contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notice to be provided by the City's Compliance Officer setting forth the provisions of the non-discrimination clause.
- 20.3 Contractor shall in all solicitation or advertisement for employees, placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for the employment without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, and disability.
- 20.4 Contractor shall send to each labor union or representative of workers with which Contractor has a collective bargaining agreement or other Agreement or understanding, a notice advising the labor union or workers' representative of the Contractor's commitments under the Equal Employment Opportunity Program for the City and under this Ordinance, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Contractor shall register all workers in the skilled trades who are below the journeyman level with the Bureau of Apprenticeship and Training.
- 20.5 Contractor shall furnish all information and reports required by the City's Contract Compliance Officer pursuant to this Ordinance and shall permit access to the books, records, and accounts during the normal business hours of Contractor by the contracting agency and the Contract Compliance Officer for the purpose of investigation so as to ascertain compliance with the program.

- 20.6 Contractor shall take such action with respect to any sub-contractor as the City may direct as a means of enforcing the provisions of this subparagraphs (a) through (h) herein, including penalties and sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in or is threatened with litigation as a result of such direction by the City, the City will enter into such litigation as is necessary to protect the interest of the City and to effectuate the Equal Employment Opportunity Program of the City. In the case of Agreements receiving Federal assistance, the Contractor or the City may request the United States to enter into such litigation to protect the interests of the United States.
- 20.7 Contractor and his sub-contractors, if any, shall file compliance reports at reasonable times and intervals with the City in the form and to the extent prescribed by the Contract Compliance Officer of the City. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of the contractor and his sub-contractors.
- 20.8 Contractor shall include the provisions of subparagraphs (a) through (h) of this paragraph in every subcontract or purchase order so that such provisions will be binding upon each sub-contractor or vendor.
- 20.9 A finding, as hereinafter provided, that a refusal by Contractor or sub-contractor to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:
- a. Withholding from Contractor in violation all future payments under the involved public Agreement until it is determined that Contractor or sub-contractor is in compliance with the provisions of the Agreement;
 - b. Refusal of all future bids for any public Agreement with the City or any of its departments or division until such time as the contractor or sub-contractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in this article;
 - c. Cancellation of the public Agreement;
 - d. In a case in which there is substantial or material violation, or the threat of substantial or material violation, of the compliance procedure therein set forth or as may be provided for by the Agreement, appropriate proceeding may be brought to enforce those provisions, including the enjoining, within applicable laws, of Contractors, sub-contractors, or other organizations, individuals or groups who prevent or seek to prevent, directly or indirectly, compliance with the policy as herein provided.

GC-21 EQUAL BUSINESS OPPORTUNITY

- 21.1 During the performance of this Agreement, Contractor agrees to comply with Part 2, Chapter 2, Article X, Division 12, including Sections 2-1441 through 2-1460 of the Code of Ordinances of the City of Atlanta, the Equal Business Opportunity (“**EBO**”) Program and to do warrant the following:
- 21.2 Contractor agrees to make good faith efforts to meet the goals for this Agreement by making available opportunities for Minority Business Enterprises (“**MBE**”), African American Business Enterprises (“**AABE**”), Hispanic Business Enterprises (“**HBE**”), Asian Business Enterprises (“**ABE**”), and Native American Business Enterprises (“**NABE**”) and Female Business Enterprises (“**FBE**”) for utilization in the work set forth within this Agreement, and shall take the following actions as part of its good faith efforts:
1. Notification to MBEs and FBEs that the Contractor has subcontracting opportunities available and maintenance of records of the MBEs and FBEs responses.
 2. Maintenance by the Contractor of a file of the names and addresses of each MBE and FBE contacted and action taken with respect to each such Agreement.
 3. Dissemination of the Contractor’s EBO policy externally by informing and discussing it with all management and technical assistance sources by advertising in news media and by notifying and discussing it with all sub-contractors and suppliers.
 4. Specific and continuing personal (both written and oral) recruitment efforts directed at MBE and FBE Contractor organizations, MBE and FBE assistance organizations.
 5. Sub-division of the Agreement in economically feasible segments as practical to allow the greatest opportunity for participation by MBEs and FBEs.
 6. Increasing where possible the number of aggregate purchase items so as to eliminate the requirement of front-end purchases of material for as many MBE and FBE sub-contractors as possible.
 7. Adoption of the Equal Business Opportunity Plan submitted in its response to the Invitation to Bid or Requests for Proposals obligations under this Agreement, as approved by the Office of Contract Compliance.

8. Submission of monthly reports on the forms and to the extent required by the Director of the Contract Compliance, to be due on the last day of each month following the award of the work set forth in this Agreement.
9. The Contractor further agrees that its breach of the EBO provisions contained herein shall subject it to any or all of the following penalties:
 - a. withholding of 10 percent of all future payments under the involved eligible project until it is determined that the Contractors is in compliance;
 - b. withholding of all future payments under the involved project until it is determined that the Contractor is in compliance;
 - c. refusal of all future bids or offers for any eligible project with the City of Atlanta or any of its departments or divisions until such time as the Contractor demonstrates that there has been established and there shall be carried out all of the EBO provisions contained here; and
 - d. cancellation of the eligible project.

GC-22 STANDARD OF PROFESSIONAL SERVICES

- 22.1 Contractor by the execution of this Agreement, acknowledges that it is possessed of that degree of care, learning, skill, and ability which is ordinarily possessed by other members of its profession and further contracts that in the performance of the duties herein set forth, will exercise such degree of care, learning, skill and ability as is ordinarily employed by Contractor under similar conditions and like circumstances and shall perform such duties without neglect.
- 22.2 All Services must be performed in a manner consistent with the highest generally accepted level of care and skill ordinarily exercised by professionals performing services of a similar nature, taking into account standards, state-of-the-art and governmental requirements existing at the time the Services are performed.

GC-23 INSURANCE

- 23.1 Contractor agrees to obtain and maintain during the entire term of this Agreement all of the insurance required in the Agreement Documents,

Appendix B with the City as an additional insured in each policy of public liability and property damage insurance, and shall furnish the City a Certificate of Insurance showing required coverage. The cancellation of any policy of insurance required by this Agreement shall meet the requirements of notice under the laws of the state of Georgia as presently set forth in the Georgia code.

GC-24 INDEMNIFICATION

- 24.1 In addition to its agreement to obtain and maintain the insurance as set forth herein as Appendix B, Contractor shall defend, indemnify and hold harmless the City, its officers, agents and employees, from and against any and all suits, actions, legal or administrative proceedings, claims, damages, demands, liabilities, interest, attorney's fees, costs, and expenses of whatsoever kind or nature, arising from personal injury or property damage, including, without limitation, those arising out of injury to or death of Contractor's employees, officers, agents or any sub-contractor employed by the Contractor, or any of the sub-contractors' officers, agents or employees, or any third party, whether arising before or after the completion of the work, which allegedly arises out of any intentional bad act or omission or negligent act or omission of the Contractor or any sub-contractor employed by the Contractor or any of the Contractor's and/or sub-contractors' officers, agents or employees, whether active or passive. This defense, indemnification, and hold harmless agreement shall also apply to any and all claims which result from any condition created or maintained by the Contractor or any sub-contractor employed by Contractor or any of the Contractor's and/or sub-contractor's officers, agents or employees, of which condition was not specified to be created or maintained by this Agreement. The Contractor further agrees that its agreement to defend, indemnify and hold harmless the City, its officers, agents and employees shall not be limited to the limits of the liability insurance under this Agreement and the attached specifications. However, Contractor's indemnification obligation hereunder shall not apply to suits, actions, legal or administrative proceedings, claims, damages, demands, liabilities, interest, attorney's fees, costs, and expenses of whatsoever kind or nature, resulting from the intention bad act or omission or negligent act or omission of anyone other than Contractor, its employees, officers agents, any sub-contractor employed by Contractor, or anyone else acting on Contractor's behalf in connection with or incidental to the performance of this Agreement.

GC-25 REPRESENTATIONS AND WARRANTIES

- 25.1 Contractor's representations and warranties regarding capacity to contract and to perform services.

- 25.2 To induce the City to enter into this Agreement, Contractor hereby represents and warrants to the City as of the date first written above that:
- a. Contractor is duly organized and validly existing in good standing under the laws of the state(s) in which it is organized and is qualified to do business and in all jurisdictions in which it is operating, and has the power and authority to execute and deliver and to perform its obligations under this Agreement and the documents to which it is signatory.
 - b. The execution, delivery and performance by Contractor and its undersigned representative(s) of this Agreement and other documents to which Contractor is a signatory do not require the approval or consent of any other person, entity or government agency and do not result in any breach of any agreement to which Contractor is a party or by which it is bound.
 - c. The execution, delivery and performance by Contractor of this Agreement and other documents to which it is a signatory have been duly authorized by all necessary action, and constitute legal, valid and binding obligations of Contractor, enforceable against Contractor in accordance with its terms.
 - d. No action, suit or proceeding to which Contractor is a party is pending or threatened that may restrain or question this Agreement, or any other document to which it is a signatory, or the enjoyment of rights or benefits contemplated herein.

GC-26 ASSIGNMENT

- 26.1 Without prior written consent of City, Contractor may not assign, transfer or convey any of its interest under this Agreement, nor delegate any of its obligations or duties under this Agreement except as provided herein:
- 26.2 **Consent of City Required.**
Any assignment of this Agreement or rights under this Agreement, in whole or part, without the prior written consent of City will be void, except that, upon ten (10) days prior written notice to City, Contractor may assign monies due or to become due under this Agreement. Any assignment of monies will be subject to proper setoffs in favor of City and to any deductions provided for in this Agreement.
- 26.3 **Assignment of Wholly Owned Subsidiary.**
Contractor may assign any of its rights or obligations under this Agreement to a wholly owned subsidiary of such Contractor, member, of the parent company of such member, without City's consent; provided, however, that

Contractor must provide City notice of the proposed assignment prior to its effectuation.

26.4 Change in Ownership or Members.

Contractor shall notify the City prior to any change in the percentage of ownership of the company. In addition, in the event of a change in the minority ownership of the company, such change shall require the prior written consent of the City, which shall not be unreasonably withheld.

26.5 No Relief of Responsibilities.

No assignment will be approved that could relieve Contractor of its responsibilities under this Agreement.

26.6 No Partnership or Joint Venture; Independent Contractor

Nothing contained in this Agreement will be deemed to create a partnership or joint venture between City and Contractor or cause City to be responsible for the debts or obligations of Contractor or any other party. Contractor must not represent to anyone that its relationship to City is other than as City's Contractor. Contractor must act as an independent agent and not as the agent of City in performing this Agreement, maintaining complete control over its employees and all of its lower-tier supplier or sub-contractor and City. No act or direction of the City shall be deemed to be the exercise of supervision or control of the Contractor's performance hereunder.

GC-27 NOTICES

27.1 Delivery.

All notices given by either party to the other under this Agreement must be in writing and may be delivered by: (i) regular mail, postage prepaid; (ii) certified or registered mail; (iii) facsimile; or (iv) hand-delivery to the parties at the addresses and facsimile numbers set forth in the Clause titled "Addresses."

27.2 Receipt.

Notices sent by mail will be deemed to be received upon deposit in the mail, properly addressed. Notices sent by certified or registered mail will be deemed to be received upon the date of the acknowledgment. Notices sent by facsimile will be deemed to be received upon successful transmission to the proper facsimile number. Notices delivered by hand-delivery will be deemed to be received upon acceptance by the respective party or its agent.

27.3 Change of Address or Facsimile Number.

Either party may, at any time, change its respective address or facsimile number by sending written notice to the other party of the change.

27.4 Addresses.

City: *City of Atlanta
Department of Information Technology
55 Trinity Ave., SW
Suite G700
Atlanta, Georgia 30303
(404) 330-6110
Facsimile: (404) 658-6688
Attention: CIO, Abe Kani*

With a copy to: City of Atlanta
Department of Procurement
55 Trinity Avenue, Suite 1790
Atlanta, Georgia 30303
(404) 330-6204
Facsimile: (404) 658-7705
Attention: Chief Procurement Officer

GC-28 EXTENT OF AGREEMENT

- 28.1 This Agreement presents the entire Agreement between the City and the Contractor and may be amended only by written instrument, which is approved by both parties. The parties agree that this Agreement shall not become binding on the City, and the City shall incur no liability upon the same, until such Agreement has been executed by the Mayor, officially sealed by the Clerk of Council and delivered to Contractor.

GC-29 INCORPORATION OF EXHIBITS

- 29.1 All exhibits (and any subsequent amendments thereto), attached hereto, and referenced herein, are hereby incorporated within this Agreement as if set forth fully herein.

GC-30 GOVERNING LAW

- 30.1 This Agreement shall be governed by the laws of the State of Georgia now in force and as hereafter amended from time-to-time.

GC-31 LEGAL CONSTRUCTION

- 31.1 If any provision contained in this Agreement is held to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability will not effect any other provision of this Agreement and this Agreement will be construed as if

the invalid, illegal or enforceable provision had never been contained in this Agreement.

GC-32 PRIOR AGREEMENTS SUPERSEDED

- 32.1 This Agreement and the Contract Documents constitute the sole and only agreement between Contractor and City with respect to the subject matter of this Agreement and supersede any prior understandings or written or oral Agreements between City respecting the subject matter of this Agreement.

GC-33 WAIVER

- 33.1 The failure of City to seek redress for any violation of, or to insist upon the strict performance of, any term of this Agreement will not prevent a subsequent violation of this Agreement from being actionable by City. The provision in this Agreement of any particular remedy will not preclude City from any other remedy.

GC-34 COUNTERPARTS

- 34.1 This Agreement may be executed concurrently in one or more counterparts, each of which will be deemed to be an original, but all of which will together constitute one (1) Agreement.

GC-35 FURTHER ACTS

- 35.1 City and Contractor each agree to perform any additional acts and execute and deliver any additional documents as may reasonably be necessary in order to carry out the provisions and effectuate the intent of this Agreement.

GC-36 MODIFICATIONS

- 36.1 This Agreement may be altered or amended only by written instrument signed by City and Contractor.

GC-37 COMPLIANCE WITH APPLICABLE GOVERNMENTAL REQUIREMENTS

- 37.1 Contractor must comply with all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations, standards, executive orders, consent orders, orders and guidance from regulatory agencies, judicial

decrees, permits, licenses or other governmental requirements of any kind, then in effect or which come into effect during the time the Services are being performed, and any present or future amendments to those Governmental Requirements, which specifically relate to [i] the business of the City; [ii] the business of the contractor or the Contractor's sub-contractors; [iii] the Agreement and the Agreement Documents; [iv] the performance of the Services under this Agreement by the Contractor and its sub-contractors; or [v] any other matters relating to this Agreement.

GC-38 DISPUTES

38.1 Contractor shall proceed diligently with performance of work, pending final resolution of any request for relief, dispute, claim, appeal or action arising under this Agreement and comply with any decision of the City.

38.2 Alternative Dispute Resolution to be considered.

If the decision of the City is not accepted by the Contractor, the parties agree to consider resolution of the dispute through some form of Alternative Dispute Resolution (“**ADR**”) process, which is mutually acceptable to the parties. Either party may propose ADR by written request made within 90 days of the City's final determination. Should the parties agree to pursue an ADR process, each party will be responsible for its own expenses incurred to resolve the dispute.

38.3 In no event shall City or Contractor be required to pursue ADR for any claims, disputes, or other matters if either party is unable to compel the joinder in such ADR process of any person or entity whose claimed acts or omissions are involved, in whole or in part, in the claim between the City and Contractor, and in whose absence either the City or the Contractor may be exposed to risk or incomplete relief or inconsistent results with regard to such ADR and any other forum for the resolution of dispute with such other parties.

38.4 Legal Remedies. If the parties do not agree to an ADR process or are unable to resolve the dispute through ADR, either party shall have the right to pursue any legal remedy.

GC-39 CITY'S LIABILITY

39.1 City's obligations under this Agreement will not become binding on City, and City will incur no liability under this Agreement until the formal written Agreement has been approved by appropriate legislation and executed by the Mayor of City, attested to by the Municipal Clerk and delivered to Contractor.

GC-40 ORDER OF PRECEDENCE

40.1 Precedence of Agreement Documents.

All Agreement Documents and subsequently formally executed Addenda, Amendments or Modifications to the Agreement Documents are essential parts of this Agreement and a requirement occurring in one is binding as though occurring in all.

In resolving conflicts, discrepancies, errors or omission, including, but not limited to, interpretations pursuant to the Paragraph 45 of this Agreement titled "Contract Interpretation," the following order of precedence will be used: Subsequently formally executed Addenda, Amendments or Modifications to the Agreement Documents:

- Form of Agreement
- Exhibit A, General Conditions;
- Exhibit B, Scope of Services;
- Exhibit C, Compensation;
- Exhibit D, Legislation; and
- Contractor's Submittals

GC-41 INTERPRETATION NOT AFFECTED

- 41.1 The organization of this Agreement into articles, sections, paragraphs and subparagraphs, a Table of Contents and the use of headings and subheadings are for convenience and reference only and will not modify or affect the meaning, interpretation, construction or effect of this Agreement, nor the rights, obligations and liabilities of the parties under this Agreement.

GC-42 STANDARDS AND CODES; GOVERNMENTAL REQUIREMENTS

- 42.1 Wherever references are made in this Agreement to standards or codes in accordance with which the services under this Agreement are to be performed, the edition or revision of the standards or codes current on the effective date of this Agreement will apply unless otherwise expressly stated. In case of a conflict between any referenced standards and codes and any Agreement Documents, the latter will govern. All applicable governmental requirements in effect at the time the services under this Agreement are performed, and as amended during the term of this Agreement and required by law to retroactively apply, will apply to Contractor.

GC-43 NOTICE OF INCONSISTENCIES

- 43.1 If Contractor discovers any discrepancy or inconsistency between any provision of this Agreement and any governmental requirements, Contractor shall report it to City; provided, however, this shall not create an affirmative obligation of Contractor to investigate any provisions for inconsistency.

GC-44 AGREEMENT INTERPRETATION

- 44.1 All questions concerning interpretation or clarification of this Agreement or applicable standards and codes, including the discovery of conflicts, discrepancies, errors or omissions, of the acceptable performance of this Agreement by Contractor, must be immediately submitted in writing to the City for resolution. All determinations, instructions, and clarifications of City will be in accordance with sound professional standards and will be final and conclusive unless determined to be arbitrary and capricious or fraudulent or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence; provided, however, neither party waives any of its rights to seek remedies hereof. At all times, Contractor must proceed with the Services in accordance with the determinations, instructions, and clarifications of the City. Contractor will be solely responsible for requesting instructions or interpretations and will be solely liable for any costs or expenses from its failure to do so.

GC-45 FORCE MAJEURE

- 45.1 Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation, except the payment of money, is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of the affected party, or by a strike, lockout or other labor difficulty, the settlement of which shall be within the sole discretion of the party involved.
- 45.2 Each party hereto shall give notice promptly to the other of the nature and extent of any force majeure claimed to delay, hinder or prevent performance of the services under this Agreement. In the event either party is prevented or delayed in the performance of this obligation by reason of such force majeure, there shall be an equitable adjustment of the schedule and/or the compensation as agreed by the parties.
- 45.3 Contractor will not be liable for failure to perform or for delay in performance as a result of force majeure including the following:
- 45.04 Any cause beyond its reasonable control;
 - 45.05 Any act of God;

- 45.06 Inclement weather;
- 45.07 Earthquake;
- 45.08 Fire;
- 45.09 Explosion;
- 45.10 Flood;
- 45.11 Strike or other labor dispute;
- 45.12 Any shortage or disruption of or inability to obtain labor, material, manufacturing facilities, power, fuel or transportation from unusual sources, or any other transportation facility;
- 45.13 Delay or failure to act of any governmental or military authority;
- 45.14 Any war, hostility or invasion;
- 45.15 Any embargo, sabotage, civil disturbance, riot or insurrection;
- 45.16 Any legal proceedings; or
- 45.17 Failure to act by Contractor's suppliers due to any cause which Contractor is not responsible, in whole or in part.

GC-46 SUBSTITUTION OF APPROVED CONTRACTOR'S KEY TEAM MEMBERS

- 46.1 Contractor shall not, absent good cause, replace or remove the team members presented to the City during the solicitation process and approved key team members during the term of the Agreement, without the prior written approval of the City. If any key member of the City approved team shall retire, resign or otherwise cease employment with Contractor, Contractor shall appoint promptly a replacement team member who shall be subject to prior approval by the City. The City reserves the right to reject any replacement team member. If the City, in its sole discretion, determines that any key team member is performing their responsibilities under the Agreement in an unsatisfactory manner or if irreconcilable differences or an unworkable relationship shall arise, Contractor shall, within five (5) days after receipt of written notice from the City of such circumstance, shall replace such key team member with a successor acceptable to the City; provided, however, the City represents that it will not give such notice to the Contractor unless and until the City, in its sole determination, has exercised reasonable efforts to rectify to its satisfaction, the adverse circumstances regarding the key team member. Any changes in the staffing of Contractor will require written notification to the City and the City's written approval of the replacement team member.

GC-47 MANAGEMENT OF CONFLICTS OF INTERESTS

- 47.1 Contractor shall immediately notify the City in writing, specifically disclosing any and all potential or actual conflicts of interests, which arise or may arise during the execution of its work in the fulfillment of the requirements of this Agreement. The City shall make a written determination as to whether a conflict of interest actually exists and the actions to be taken to resolve said conflict of interest.

GC-48 SUSPENSION OF SERVICES

- 48.1 **Suspension Notice.** City may by written notice to Contractor, suspend at any time the performance of all or any portion of the Services to be performed under this Agreement. Upon receipt of a suspension notice, Contractor must, unless the notice requires otherwise:
- a. immediately discontinue suspended Services on the date and to the extent specified in the notice;
 - b. place no further orders or subcontracts for material, services or facilities with respect to suspended Services, other than to the extent required in the notice; and
 - c. take any other reasonable steps to minimize costs associated with the suspension.
- 48.2 **Notice to Resume.** Upon receipt of notice to resume suspended Services, Contractor will immediately resume performance under this Agreement as required in the notice.

GC-49 LABOR, PERSONNEL AND SERVICES RULES; QUALIFICATIONS AND PROCEDURES

- 49.1 Contractor must employ only competent and skilled personnel to perform the Services and must remove from any jobsite any Contractor personnel determined to be unfit or to be acting in violation of any provision of this Agreement.
- 49.2 The City shall have the sole discretion to approve Contractor's proposed personnel to be assigned to the project.
- 49.3 Contractor is responsible for maintaining labor relations in a manner resulting in harmony among workers and will comply with and enforce project and jobsite safety rules, procedures, regulations, services rules and hours established by City. Contractor represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the services under this Agreement.

GC-50 INDEPENDENT CONTRACTOR/CONTRACTOR.

- 50.1 Nothing contained in this Agreement will be deemed to create a partnership or joint venture between City and Contractor or cause City to be responsible for the

debts or obligations of Contractor or any other party. Contractor must not represent to anyone that its relationship to City is other than as City's Contractor. Contractor must act as an independent Contractor and not as the agent of City in performing this Agreement, maintaining complete control over its employees and all of its lower-tier suppliers and sub-contractors. Nothing contained in this Agreement or any lower tier purchase order or subcontract awarded by Contractor will create any contractual relationship between any lower-tier supplier or sub-contractor and City.

GC-51 DECREASES IN SCOPE OF SERVICES

- 51.1 City may decrease the Services during the term or any extension or renewal of the Agreement. In the event City decreases the scope of any Services, City will provide Contractor fifteen (15) days prior written notice, describing in that notice the specific Services decreased. Upon notification of a decrease in any Services, Contractor must:
- a. immediately discontinue the decreased Services on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the decreased Services;
 - b. inventory, maintain and turn over to City all data, information, documents, work product and property furnished by Contractor or provided by City for performance of the decreased Services;
 - c. cooperate with the City in the transfer of data, information, documents, work product, and property and disposition of decreased Services in progress so as to mitigate damages;
 - d. comply with other reasonable requests from City regarding the decreased Services; and
 - e. continue to perform, in accordance with all of the terms and conditions of this Agreement, that portion of the Services remaining.

PART III

SCOPE OF SERVICES

**REQUEST FOR PROPOSALS
FOR
FC-6006007909, WIRELESS ATLANTA BROADBAND**

PART III

SCOPE OF SERVICES

3.1 PROJECT OVERVIEW

3.1.1 Introduction and background

The City of Atlanta has been and will continue to be a leader in the application of wireless technology. The time is right for the City to facilitate a wireless broadband network over the entire City.

With Atlanta's population growth, excellent business climate, and new investments in quality of life, residents are returning from the suburbs to the City. New businesses and mixed use developments are consuming old factory and warehouse space. High density residential properties are replacing tracts of old single family homes. Parks are being renewed and a more walk-able Atlanta is coming to fruition.

Atlanta is developing a new image of itself. Brand Atlanta focuses on the optimism, openness, and opportunity provided by the South's fastest growing city. With the opening of the world's largest aquarium and a number of innovative redevelopment projects including the Beltline, Brand Atlanta and the City have partnered with stakeholder organizations to reinforce Atlanta's brand around the world.

Under the leadership of Mayor Shirley Franklin, the City has focused on leveraging technology to transform itself into a digital government. The Mayor has stressed the importance of leveraging wireless broadband as an enabling, strategic medium for information exchange and effective service delivery. In November 2005, CIO Abe Kani developed a vision for a new network that would quicken the pace of change and more rapidly reach the City's overall goals. This network will reflect the openness that Atlanta desires and will facilitate the applications that will demonstrate its value. This vision is supported by Mayor Shirley Franklin, the Metro Atlanta Chamber of Commerce, Brand Atlanta, and other major leadership groups throughout the City.

3.1.2 Vision

This project will leverage a ubiquitous, low-cost wireless broadband network that will help achieve the Mayor's Vision for the City. Specifically, it will:

- **Improve the Quality of Life:** Through fixed and mobile access and applications, the network will improve life for the citizens of Atlanta. Citizens will be able to make better transportation decisions, further utilize Atlanta's great cultural and educational institutions, and build better relationships in their communities. The low subscription price will ensure that everyone, regardless of economic status, can realize these benefits.
- **Promote Tourism and Economic Development:** Through location based services for visitors and convention attendees, an open architecture that lets Atlanta businesses develop and run innovative applications, and cooperation with redevelopment initiatives, the network will further Atlanta's economy.
- **Leapfrog Current City Service Levels:** Through applications in public safety and field workforce, the network will allow the City to serve its citizens with more efficiency and speed than ever before. Enhancing public safety capabilities and meeting the ever increasing concern over homeland security requires on demand access to critical information by first responders anywhere at any time.

3.1.3 Policy Goals

The City's policy goals for this initiative are summarized below:

- **Universal Service** – All government employees, residents, businesses and visitors to the City should have high-speed broadband services available to them;
- **Affordability** – Services shall be priced at a level that creates cost savings for the City and is affordable for all residents, businesses and visitors;
- **Use of City Assets** – The City shall apply its rights-of-way and assets, as well as those for which the City may negotiate mounting rights with the local electric utility, in a way that maximizes the benefit for the City and the community;
- **Competition and Consumer Choice** – Strong competition for broadband services is good for the City's economy. City agencies, residents, businesses and visitors shall have a choice of providers for these services;
- **Network Neutrality** – The successful Proponent who finances and manages the Network shall not discriminate against any content, application or services provider, except in order to prevent abuse of the Network;
- **Private Sector Cooperation** – The City's role shall be that of a catalyst - to improve and enhance the market for broadband services in Atlanta. The City seeks to fulfill this role by collaborating with the private sector in a mutually-beneficial partnership. The City values the sustainability of this partnership.

3.1.4 Use of City Assets

The City intends to leverage its significant real estate holdings and rights of way to stimulate private investment in the wireless network and provide maximum value for the community.

The City's assets include:

Approximately four hundred (400) city-owned buildings
Twenty-two (22) communications towers and monopoles
More than 900 traffic signals

The City will provide electronic Geographic Information Systems (GIS) data files with information regarding the number and location of City assets to RFP respondents after the Proponent has indicated intent to respond to the RFP and signed a GIS Confidentiality agreement. More GIS information is provided in Exhibit 2.

The City also intends to support the successful Proponent in securing access to additional assets necessary for city-wide deployment including street light and utility poles, which are owned by the local electric utility and other entities, and deployed in the City's rights-of-way.

3.1.5 Cooperation with Stakeholders

In order to accomplish its vision and policy goals, the City recognizes the importance of cooperation with stakeholders involved in the metropolitan Atlanta area. In recent months, the City has met with multiple stakeholders representing the business community, educational institutions, utility companies and public transportation providers.

The City has identified a number of opportunities for strategic cooperation including:

- Atlanta Public Schools (APS) has expressed interest in providing access to APS assets including buildings throughout the City. In addition, APS has requested that the selected service provider provide broadband access at a discounted cost for underprivileged students/students in underprivileged areas. Proponents are encouraged to specify their benefits to APS in Section 3.2.11 & Section 3.3.
- Georgia Power has expressed interest in providing access to its utility poles located throughout the City. The successful Proponent will be expected to negotiate a separate agreement with Georgia Power regarding attachment rights. However, the City will work with the successful Proponent and Georgia Power to facilitate the pole attachment process. The City's discussions with Georgia Power have yielded valuable information about unmetered power

usage, the allowable height and location of communications equipment, etc. More specific information is included in Exhibit 6.

- The Metropolitan Atlanta Regional Transit Authority (MARTA) has expressed interest in providing access to its fiber along the rail lines. Prospective bidders are encouraged to consider making use of this asset as well. Rail lines are shown in Exhibit 2.

3.2 DETAILED REQUIREMENTS

3.2.1 Business Model

1. The successful Proponent will provide the best financial proposition to the City. The Proposal must be a “no cost to the City” capital build out and require no ongoing City funding for operational expenses.
2. The successful Proponent will design, deploy and manage a citywide wireless broadband network.
3. The City and other entities will grant rights to street and/or utility-poles, rooftops, electricity and other assets on a competitively-neutral and non-discriminatory basis to the successful Proponent.
4. The successful Proponent will make access to the network available on a wholesale basis to multiple and competing retail Service Providers, who will market the service to residents, businesses and visitors. These Service Providers will also be responsible for subscriber billing, customer care and other required functions. The City will regulate wholesale rates through its contract with the successful Proponent in order to stimulate competition for lower-priced retail services.
5. The successful Proponent may also market retail services over the network.
6. The successful Proponent may propose revenue sharing with the City during the contract term.
7. The City will not own the network or maintain, operate, upgrade, or support the customers who access it.
8. The City is not requiring that a free solution be provided throughout the City, but it is interested in creative pricing models promoting the availability of the Network, including those that would provide access at low or no cost.
9. The City will retain the right to the Capture Portal, in terms of both revenue related to commercial content and advertising on this page, as well as management of the pages’ design, branding, layout, development and maintenance.

10. The City will retain the right to review and suggest alternative providers and solutions for the Internet connectivity required at the POP.
11. The City and the successful Proponent will collaborate with social service, nonprofit and other community groups to affect affordable computer purchase, training and content for low-income and disadvantaged residents of the City.
12. The City may desire to extend its rights under any resulting contract to other political entities within Metropolitan Atlanta and its surrounding counties - with the same or similar terms and conditions. This may result in the successful Proponent having the right, but not the obligation, to create and operate similar networks in other communities throughout the region.
13. The successful Proponent will provide a proposed renewable term for access to the City's infrastructure assets. Based on past partnerships of this type, the City strongly encourages an initial five year term with four one-year renewable terms.

3.2.2 Coverage

1. Wireless Internet access shall be provided throughout the entire City. The City of Atlanta is 132 square miles with 425,000 citizens and a daytime population of approximately 675,000 people. Solutions that provide access in only parts of the City that are more densely populated or commercially attractive, or that do not provide wireless coverage to entire neighborhood, will not be considered.
2. Outdoor coverage shall be provided for a minimum of 95% of all areas of the City. An area is considered covered under this requirement if a laptop, handheld or other personal computing device - equipped with a minimum of an 802.11g (Wi-Fi) interface - can access the network at the provisioned service level with no additional hardware required beyond the device's standard wireless interface.
3. Indoor, Perimeter Room coverage shall be provided for a minimum of 90% of all residential and commercial buildings throughout the City. A building is assumed covered under this Requirement if a device located in each Perimeter Room on the ground and second floor of the building can access the Network at the provisioned service level. This coverage requirement may be met by using a Wi-Fi interface built into a user's device, a signal amplifier, a high-gain antenna and/or a dedicated Wi-Fi bridge or other type of CPE.
4. The City strongly encourages Proponents to offer a solution that will provide Indoor, Perimeter coverage on all floors of a building. Should Proponents include a solution to meet this standard of coverage, Proponents shall address the following as it relates to this Requirement:

- a. Does your solution propose to meet this Perimeter-Room coverage Requirement using Wi-Fi or another wireless technology?
- b. If so, will your solution meet this Perimeter-Room access Requirement using an indoor or outdoor mounted antenna? What are the Proponent's assumptions about who will pay for the indoor or outdoor mounted antenna?
- c. If not, what commitment is your organization willing to make to outreach to - and cooperate with - building owners, landlords, the City or other parties to meet this Requirement using in-building distribution networks?

3.2.3 Multi-Use

The Network shall support concurrent usage by City agencies (Public Service and Public Safety), residents, businesses, institutions and visitors to the City:

1. Residents and visitors may use the Network for such uses as E-mail, web browsing, instant messaging, and entertainment and voice services.
 - To assist Proponents in forecasting demand for residential usage, and planning for the required capacity, see <http://www.atlantaregional.com/regionaldata/regionaldata.html>. The City is not liable for the accuracy of this information.
2. Businesses may use the Network for such uses as remote office connectivity, supply chain integration, and customer relationship management. Atlanta has one of the largest concentrations of Fortune 500 companies in the United States. The City of Atlanta New Century Economic Development Plan targets 1) Transportation and Logistics, 2) Hotels, Tourism and Entertainment, 3) Health Services, and 4) Universities and Biosciences as the existing large industries that have high short term growth prospects. This plan is available at http://www.atlantaga.gov/client_resources/special%20reports/edp051.pdf. The City is not liable for the accuracy of this information.
3. Institutions such as universities and nonprofits may use the network for such uses as increased interaction between their institution and students/constituents.
4. The City's Public Service agencies may use the Network for uses such as those indicated in the following table. Expected demand is listed below this table.

Applications/Timeline	Already Deployed	Planned for < 6 Months	Planned for > 6 Months	Network Utilized if Deployed or In Plan
Law Enforcement Communications				
Cellular Digital Packet Data replacement				
Remote access to local databases	x			19.2 (LDAP)
Remote access to police reporting system	x			
In-car insurance verification		x		
Remote issuance of citations			x	
Transmission of video			x	
Portable surveillance			x	
Fire Dept Communications				
Remote access to current Hazardous Material maps			x	
Automated reporting of vehicle location to firehouse			x	
Firefighter location and transmission of biometric data			x	
Fire inspector remote access and report submission			x	
Remote access tools for Arson investigator analysis and reporting			x	
Wireless EMT reporting to firehouse software			x	
Overall First Responders/Incident management				
Interoperable communications across agencies and jurisdictions			x	
Eliminate dependence on cellular network				
Mobile drug data and medical record access			x	
Ability to quickly place cameras at incident scene and send video				
Transportation Management				
Coordination of traffic signals			x	
Variable message signs (Amber Alert)				
Variable speed limit signs				
Traffic sensors			x	
Video monitoring of traffic flow				
Freeway ramp monitoring				
Other Intelligent Transportation Systems (category including roads, incidents, weather, mass transit, electronic tolls, etc)				
Economic Development				
Ubiquitous access to high-speed data to promote tourism				
Satisfactory commercial/industrial network access throughout City				
Discounted rates for small business				
Other related economic development programs				
Community Development				
Code Enforcement				
Access to current code history		x		
Remote creation of reports and citations		x		
Instant submission of digital photographs of violations				
Building Inspection		x		
Remote access to architectural drawings			x	
Homeless Center Connectivity				
Sufficient library internet access and access to its digital resources				
Domestic Violence Emergency Communications				
Public Works				
Parking Enforcement				
Remote ticketing				
Electronic parking meters with credit card capability				
Sign/Traffic Signals				
Remote access to database				
Instant reporting of signal outages				
General Fleet Management				
Dispatcher communications				
Vehicle location (constant communication of GPS coordinates)				
Telemetric applications to monitor vehicle performance				
General Municipal Operations				
Remote access to email and calendar for staff often out of office				
Real-time work order issuance			x	
Wireless real-time Inventory tracking				

- The City currently has approximately 1,800 mobile City employees including employees who provide public safety services, who will use the network. However, the City estimates that it may require up to 5,000 accounts for mobile access during the contract term. The network must support such usage in a secure, reliable

manner. In exchange for access to infrastructure assets and the City's rights of way, Proponents shall include the number of free user accounts that will be provided to mobile City employees for conducting City business each year of the contract term.

6. The Network shall provide for the logical segmentation of different "domains" of users (e.g. secure access by Public Service and/or Public Safety usage, secure and/or open access for public users, residential users, business users, etc.). This shall include the ability to define and manage different profiles (e.g. VLANs) for authentication, encryption and other service characteristics based on the requirements of each user-domain.
7. The Network shall provide the ability to prioritize traffic for Public Service and/or Public Safety usage in cases of emergency or as required by the City. Proponents shall define the methods that will be used to prioritize municipal traffic in cases of natural disaster or other emergency.

3.2.4 Open Access

1. The successful Proponent shall provide neutral access to its wireless broadband Internet access transport services to multiple unaffiliated Service Providers.
2. The Network shall provide for unilateral, inbound roaming relationships whereby subscribers to other fee-based national Wi-Fi roaming services may gain access to the Network.
3. The Network shall provide for unilateral, outbound roaming relationships whereby subscribers to the Network may gain access to other fee-based national Wi-Fi roaming services.

3.2.5 Services and Provisioning

1. The Network shall provide a Fixed Broadband service. This service must support 802.11g devices at a best-effort minimum 1 Mbps symmetric data transmission rate, a dynamic IP address and other Core ISP Services.
2. The Network shall provide a Nomadic Broadband service. This service must support 802.11g devices at a best-effort minimum 1 Mbps symmetric data transmission rate, a dynamic IP address and other Core ISP Services.
3. The Network shall provide a Portable Broadband service. This service must support 802.11g devices at a best-effort minimum 1 Mbps symmetric data transmission rate, a dynamic IP address and other Core ISP Services. Session-level connectivity must be maintained for in-motion subscribers at a minimum speed of 60 MPH.

4. The Network shall provide free public access in City-designated areas surrounding convention centers, libraries, parks and other public spaces.
5. The Network shall provide a Fixed Broadband service at a discounted rate for low-income subscribers or a free service throughout the City.
6. The Network shall provide a Fixed Broadband business-class service at a guaranteed minimum 3 Mbps symmetric data transmission rate.
7. The successful Proponent shall allow other Service Providers to provision services on a monthly, weekly and daily basis.
8. Payment methods for all residential services must include credit and debit card. Other methods must be proposed for users who do not have the ability to pay with credit or debit cards (e.g. pre-paid vouchers, top-off cards).
9. Proponents shall include in their proposal the expected costs of any required CPE for each Coverage Requirement and Service defined above. Proponents shall also state who will be responsible for CPE costs during the provisioning process.

3.2.6 Service Pricing

1. Proponents shall propose specific wholesale rates in their proposals for each service defined in the Services and Provisioning Requirements above. All rates, terms and conditions for Service Providers not affiliated with the successful Proponent shall be as favorable as those provided to the successful Proponent and/or Service Providers affiliated with the successful Proponent.
2. Proponents shall estimate the retail rates for any services to be marketed to the public by the successful Proponent.

3.2.7 Network Infrastructure

1. The Network shall include a wireless Access Tier that supports connectivity from 802.11g devices through the City.
2. The Network shall include a fixed wireless point-to-multipoint solution as a Backhaul Tier for aggregating Wi-Fi traffic from the Access Tier.
3. The Network shall include a fixed wireless point-to-point solution, using licensed or leased spectrum, as a Distribution Tier for aggregating traffic from the Backhaul Tier back to an Internet POP. The successful Proponent shall be responsible for acquiring the licensed or leased spectrum.

4. All Network traffic shall be aggregated back to a high-speed Internet backbone service at a POP, which shall support layer-three network transit for registered Service Providers. Provisions shall be made for redundancy of the POP facility.
5. The Network shall include fault tolerance mechanisms to mitigate and/or eliminate single points of failure and ensure high reliability. The Network shall provide reliability levels of 99.9% for the Access Tier and 99.999% for the Backhaul Tier, Distribution Tier and POP. Proponents shall identify the MTBF for any proposed network equipment and explain the processes that will be used to guarantee these service levels.
6. The Network shall support contingency mechanisms to insure operation during a natural or other disaster. Proponents shall describe their proposed disaster recovery plan for the Network.
7. The Network shall be scaled and upgraded in a modular fashion to support additional subscribers, new applications and new requirements, in order to meet evolving user demands and technology solutions. Proponents shall estimate the percentage of the initial Network capital cost that will be invested in upgrades during the contract term and elaborate on what steps they will take to determine when upgrades are required and how they will be rolled out.
8. All outdoor equipment shall comply with IP56/NEMA4 dust and water ingress ratings, must withstand ambient temperature ranges of -40 C to +50 C and must adhere to all other applicable local ordinances.
9. All outdoor equipment shall be powered by existing power sources located on or around the mounting asset to avoid increasing the number of wires connected to each mounting asset.
10. Proponents shall define any initial and/or future ability for their solution to provide, integrate with, coexist with or complement 4.9 GHz wireless public safety technology that may be of value to the City's public safety agencies. The Network shall not prohibit or negatively impact any initiative by the City during the contract term related to the deployment of wireless or other public safety technology.
11. The Network shall provide backup power for all network equipment sufficient to ensure continuous operation during a loss of electrical power. Proponents shall state the amount of time their solution will operate without electrical power and elaborate on any initial or future commitments they will make to increase backup power support.

3.2.8 Customer Service

1. Tier 1 Support for all subscribers shall be provided by all registered Service Providers (including the successful Proponent if they are also providing retail

services). Tier 1 Support shall provide subscribers with phone, web, e-mail and instant messaging support options for at least the following issues:

- Sales inquiries
- Order status
- Service cancellation
- Service setup
- Connectivity problems
- Service interruption/degradation
- Credits and refunds processing
- Account and billing inquiries
- Disconnect and relocation requests

2. Tier 2 Support shall be provided by the successful Proponent for all registered Service Providers. Tier 2 Support must provide Service Providers with phone and email support options for at least the following issues:

- Escalation of issue not resolved by Service Provider's Tier 1 representatives
- Proactive network status information
- Three-party calling with Tier 2 Support agents, Tier 1 Support agents and subscribers
- Settlement and billing inquiries between Service Provider and the successful Proponent

Tier 3 Support shall be provided by the successful Proponent for all registered Service Providers. This shall include at least the following:

- 7x24x365 management of personnel at the NOC
- 7x24x365 pager and phone support for registered Service Providers
- Call escalation of critical issues not resolved by Tier 2 Support representatives
- Proactive publishing of network status information, alerts, etc. by the successful Proponent

3.2.9 Security

The Network shall provide for multi-layered security protocols and methods, to include at a minimum the following:

1. Physical security for all critical network equipment components via secured facilities.
2. Mechanisms to prevent or mitigate the risk of hackers, spammers, denial of service and other forms of malicious attacks on or through the network.
3. No client software that is specific to the successful Proponent or Service Provider(s) shall be required on PCs, laptops or other mobile devices in order to use the network.

4. Media Access Control ("MAC") address filtering.
5. Wired Equivalent Privacy ("WEP") encryption, including both 64 and 128 bit keys.
6. Temporal Key Integrity Protocol ("TKIP") encryption.
7. Advanced Encryption Standard ("AES") encryption.
8. Wi-Fi Protected Access ("WPA").
9. 802.1x authentication using Extensible Authentication Protocol ("EAP") and Remote Authentication Dial-In User Service ("RADIUS").
10. Suppression of Extended Service Set Identifier ("ESSID") broadcasts.
11. Multiple ESSIDs and the ability to map ESSIDs individually to Virtual LANs ("VLANs").
12. Filtering of traffic based on Internet Protocol ("IP") addresses, subnets and Transmission Control Protocol ("TCP") ports.
13. VPN tunneling using Internet Protocol Security ("IPSec"). This VPN support must support true end-to-end encryption, regardless of at what point in the Network users elect to terminate their session.
14. Encryption of all control and network management traffic.
15. The Network's systems infrastructure (nodes, servers, access points, etc.) must offer compliance with applicable regulatory requirements; monitoring and logging of device activity (i.e., logon, logoffs, privileged/authorized user access activity; program access activity, file/folder access activity, security violations, and production environment changes); real-time alerts and notifications; and allow detailed customizable reporting for audit ability and ensuring the privacy, integrity and accountability over the network information and assets.
16. The Network's system infrastructure must be capable of real-time identification, monitoring, auditing and alerting of inappropriate network access activity (i.e. denial of service attacks).

3.2.10 Privacy

1. A full disclosure of the privacy policy for all Proponents is required. This privacy policy shall adhere to all applicable federal and state laws, shall be communicated to all users on the Network and shall require users' explicit acceptance before any service is provisioned.

2. Users must be required to explicitly opt-in to any service that tracks information about the user's physical location.

3.2.11 Enhanced Quality of Life

The expansion of broadband and other relevant technologies into underserved communities develops the ability of these communities to adequately address their local issues and concerns. Many communities desire to increase their capacity to improve quality of life in their communities through education, healthcare, jobs, public safety and other services in their communities.

Proponents have the opportunity to recommend programs that utilize broadband or other technology to address the above issues. Innovative uses of technology to address the above issues are encouraged. The City is particularly interested in any best practices, which can be applied in the City in partnership with community technology leaders.

Proponents are requested to describe in detail:

1. Your firm's capabilities
2. Your firm's experience regarding the coordination of this type of service delivery and connections with community-based organizations
3. Proposed methods to enhance or coordinate with existing community technology initiatives to strengthen the delivery of these life enhancing programs
4. Proposed methods to utilize broadband technology as a catalyst to improve education, health, jobs, public safety or other critical services in underserved communities

3.3 PROPOSAL FORMAT

The Proposal must include responses to all of the information requested in this RFP. The Proposal shall include three (3) volumes, addressing each numbered section/subsections in the order requested, indexed and clearly identified. Submittals that are not in compliance will be downgraded accordingly.

Each Proponent must format their written Proposal in accordance with the appropriate specifications detailed below. Ten (10) copies of the Proposal must be submitted in addition to one (1) original, marked "Original." Submittal shall be prepared on standard weight 8-1/2" x 11" letter size paper, with material on one side only, using 12-point font size and inserted in a flexible binder with standard three-hole punched paper, for each copy. Charts may be 11" x 17" in size **only if necessary for clarity** and provided they are Z folded to fit in the 8-1/2" x 11" binder. In addition, each Proponent should submit two (2) Compact Discs (CD) with a digital version of their Proposal in Portable Document Format (PDF). Disc One must contain only information submitted in Volumes I and II, Disc Two must contain only information submitted in Volume III, as described in Part III (Scope of Services) of this RFP.

3.3.1 VOLUME I

A. EXECUTIVE SUMMARY

The executive summary shall provide a concise overview of Proponent's solution for the City. Additionally, it should include the firm's background and qualifications in municipal wireless networks, both deployment and operation, as well as the firm's financial stability and overall organization, and why firm is the best value choice for the City. Include any other information the Proponent feels relevant. Include a brief statement of approach to the work, understanding of the Project's goals and objectives and demonstrated understanding of the Project's potential problems and special concerns. (Not to exceed eight (8) pages.)

The Proponent shall state any exceptions taken to any part of the RFP in a separate section titled "EXCEPTIONS." The specific portions to which exception is taken shall be identified and explained. It shall be understood that any exceptions may be used by the City as grounds for rejection of Proposal.

B. TEAM ORGANIZATION

Provide the following:

1. Introduction of Proposed Professional Team ("**Team**") (maximum of (5) five pages):
 - a. Name, address and telephone number of one (1) individual to whom all future correspondence and/or communications will be directed;

- b. A narrative description of the Team, and all proposed Subcontractors;
 - c. A narrative description of the role assigned to the Team members and all proposed Subcontractors;
 - d. An organization chart of the proposed Team for this project indicating the role each Proponent member will fulfill; and
 - e. In the event that key Team members must be replaced during the course of the term of the Agreement, describe your back-up personnel plan.
- 2. Submit an experience matrix for the Team and proposed Subcontractors. This matrix should describe exactly the type of work each Team member has performed within the past five (5) years on projects of comparable scope and nature to the City's project. It is not sufficient to simply identify names of projects, or indicate an association with a project.
- 3. It is a policy of the City to expand the number of qualified contractors. Proponents must submit a list of all projects performed for the City by the Team members during the past five (5) calendar years. Provide the following information for each project:
 - a. Name of the project, City Department, City Project manager/contact, Project Manager/Contact phone and fax numbers, and date of completion;
 - b. Short description of the project (one paragraph) and
 - c. Original contract amount and actual sum paid.

C. OVERALL PROJECT EXPERIENCE AND PERFORMANCE

Identify Municipal Wireless Broadband expertise exhibited or experience that the Proponent has had during the past five (5) calendar years. Limiting your response to two (2) projects and one (1) page per project, please provide the following information for each project:

- 1. The name of the project, the owner, and the project location;
- 2. A description of the project;
- 3. The dates of major project milestones including the date of completion and the date on which each milestone was actually achieved. Explain the reason for any significant schedule differences; and
- 4. The cost of the Network as originally contracted, and if the Network is fully deployed as of the date for receipt of proposals, then provide the actual cost, of the Network. Explain the reason for any significant differences. The reference should include a contact name, position, address, telephone, and fax number. This reference should be the owner's staff member who was in charge of the project for the owner.

5. Please list governmental clients indicating the government name, contact and telephone number for each client (not to exceed one page).

D. KEY PERSONNEL

Provide resumes for each of the specific key personnel of the Proponent's proposed Team. The resumes should be limited to no more than two (2) pages per person and be organized according to the following:

- Name and Title;
 - Personnel Billing Category;
 - Professional Background;
 - Current and Past Relevant Employment;
 - Education;
 - Certifications;
 - List of Relevant Projects;
 - Client Name;
 - Project Name;
 - Project Description;
 - Role of the Individual;
 - Project Completion Date;
 - Reference Contact (Name and Phone Number); and
 - If the Proponent does not intend to locate all of these people in Atlanta, state what other arrangements would be proposed.
2. Provide the percent availability and percent commitment of key Team members to the project during the various stages of the project.
 3. Provide a table that summarizes the involvement and role of each of the key personnel discussed in Item B, "Team Organization."

3.3.2. VOLUME II

A. TECHNICAL APPROACH

Proponent shall submit a well-developed technical approach, incorporating quality control/quality assurance measures, and coordination and communication processes. For each phase of that technical approach, describe how the requirements and objectives can be met. As part of the approach, please address all relevant subjects as you perceive them, and specifically address the following:

1. Your technical approach to providing a cost-effective, well-designed, and operable project that meets the objectives;

2. Cooperative relationships between your team, the City, other contractors and how your team will establish and maintain the necessary cooperative relationships;
3. Coordination with City staff;
4. Assistance to the City in validating the initial project program, budget and schedule;
5. Ensuring that proper and necessary communications will occur, and that pertinent project information is distributed to affected individuals to ensure that they are informed and appropriately involved;
6. Your activities such that the Agreement schedule and costs are appropriately monitored and controlled. Include as part of your submittal the “tools” which you intend to use in the management of the project elements; and

Proponents should provide a detailed description of the solution that is being proposed to meet the Detailed Requirements in Section 3.2. Proponent’s proposal submittal should be tabbed with page dividers that identify the required items as follows:

- Business Model
- Coverage
- Multi-Use
- Open Access
- Services & Provisioning
- Service Pricing
- Network Infrastructure
- Customer Service
- Security
- Privacy
- Enhanced Quality of Life

Proponents shall also enumerate their responses according to the outline in Exhibit 4.

The City desires an expedited deployment strategy and plan in order to realize the benefits of the initiative. Proponents must provide a strategic outline for deployment

with a high level plan for deployment over a proposed period of time. Proponents shall describe the methodology to be used for project management of the network deployment. Proponents shall include the anticipated timeline for this project. All costs shall, at a minimum, reflect the ability to meet this timeline.

The City will require the successful Proponent to complete an RF analysis and proof of concept following the approval of any agreement with the City to demonstrate and validate that the solution can meet the requirements defined in this RFP and that all service levels can be attained. Provide your firm's scope and terms for a proof of concept deployment.

B. COST & VALUE PROPOSAL

The City requires that each Proponent provide - using the template in Exhibit 5 - economic/financial projections for the costs, benefits and return on investment for the financing and management of the Network. Each proposal must include the projections and assumptions underlying the proposal regarding the following:

1. The estimated capital cost to design and build the network;
2. The estimated operating and maintenance expenses for a nine-year period;
3. All other cost related to the Detailed Requirements in Section 3.2;
4. The amount and types of compensation paid by the successful Proponent in exchange for the use of City assets and other assets required for Citywide deployment;
5. The number of commercial subscribers for all services for a nine-year period;
6. The proposed wholesale rates to be charged to Service Providers;
7. The proposed fees to be charged to the City for Public Services and Public Safety usage of the Network; and
8. The estimated rates for retail services (if the Proponent intends to offer retail services).
9. Estimated costs for Internet connectivity at the POP must be itemized separately as noted in Exhibit 5. The company proposed to provide this Internet connectivity must also be stated.

The City intends to retain the rights to the Capture Portal, but reserves the right to conduct a separate competitive process for these rights. Proponents should estimate the revenue they anticipate over the nine-year period - should they be granted these

rights - for any content, advertising or other use of the Capture Portal using the template in Exhibit 5.

Proponents shall show their proposal's value to the community by providing detailed information regarding the promotions and/or discounted retail rates for low-income subscribers and other groups including APS students, college and university students, and small businesses as defined by the Small Business Administration.

Proponents shall also provide detailed information on their plans to offer and promote comprehensive community technology programs and to encourage the development of innovative applications in the City's education, healthcare, small business, and public safety sector.

3.3.3. VOLUME III

A. LEGAL CAPACITY AND STATUS

1. List any lawsuits to which any members of the Contracting Entity is currently a party or has been a party (either as a plaintiff or defendant) during the past five (5) years. For each suit, list all parties and indicate whether any party was a bonding company, insurance company, an owner, or other. State the project giving rise to the suit, explain the basis for the claim, and state whether a judgment was entered into against the member, or the member's bonding company or insurance company.
2. State whether any member of the Contracting Entity, or any entity presently or previously associated with a member has ever filed a petition in bankruptcy, taken any actions with respect to insolvency, reorganization, receivership, moratorium, or assignment for the benefit of creditors, or otherwise sought relief from creditors. Explain the circumstances.
3. For all facilities contracted or owned by the Proponent Team member or members in the past ten (10) years, specify all violation of local, state, or national health and safety standards and summarize Proponent team members' performance with respect to accidents, injuries, lost time-on-job, worker's compensation claims, and safety awards (include reported information and benchmarks wherever available).
4. For all facilities contracted by the Proponent Team member in the past ten (10) years, specify any instance where it defaulted or materially failed to comply with contractual or regulatory permit-related obligations regarding operating performance, financial obligations, or other standards. Has the Proponent team member ever had a contract terminated due to the quality of its work?

5. Explain all cases in the last ten years in which the Proponent team member has had a claim in excess of \$250,000.00 made against it, had a claim for injunctive relief filed against it, or itself filed for injunctive relief. Note any previous and pending litigation against the Proponent team member based upon fraud, theft, breach of contract, misrepresentation, safety, wrongful death or similar conduct under any local, state, or national jurisdiction.
6. Provide details if the Proponent team member, or any officer, director, executive level employee or individual authorized to represent the Proponent team member for purposes of this RFP, has been charged with a criminal offense within the last ten (10) years.
7. Describe any citation or notices of violation which the Proponent has received or caused to receive from any governmental agency in connection with any of the Proponent's work during the past five (5) years.

B. REQUIRED ATTACHMENTS

The following required submittals should be included in Volume II:

1. All EBO, EEO and First Source Job Program forms applicable, see Appendix A, must be completed and submitted. These forms will be included in all contracts issued to the Proponent.
2. Insurance certificates in accordance with Appendix B requirements.
3. Contractor's Disclosure Form and Questionnaire (Appendix C).

C. FINANCIAL STATEMENT/CAPABILITY

Given the magnitude and nature of the Work contemplated in this RFP, the City must be able to evaluate, verify and understand the Contracting Entity's financial capability and expertise to undertake and perform the Services. The Contracting Entity should demonstrate financial capability by providing the following documentation for each member of the Contracting Entity:

1. Documentation and discussion of the financial condition and capability of the firm(s);
2. Annual reports and financial statement for the last three (3) years, including income statements, balance sheets, and changes in financial position;
3. The latest quarterly financial report and a description of any material changes in financial position since the last annual report;
4. The prospectus or offering for the member's latest security offering;
5. The most recent Dunn & Bradstreet and/or Value Line Reports on the Proponent;

6. Current rating of senior and subordinate debt, if any, and any rating agency reports issued in the last five (5) years;
7. At least two (2) bank or other institutional lender references; and
8. Provide any other information that the Proponent may deem appropriate to reflect its financial capability.

D. SUPPLEMENTAL RESUMES

Please include resumes for supplemental personnel who may be assigned to the project. Resume shall not exceed two (2) pages per individual. Not more than fifteen (15) resumes shall be submitted.

3.4 EVALUATION CRITERIA.

All submittals will be evaluated using the criteria specified on the Percentage Evaluation Form. (See Exhibit 1 of this RFP). An Evaluation Committee, consisting of City representatives, will review the RFP submittals in accordance with the submittal requirements and the evaluation criteria set forth below:

**A. GENERAL CAPACITY/ORGANIZATION/PERSONNEL
(5 points)**

This criterion measures the overall organization infrastructure, which should successfully incorporate the role of Subcontractors in a well thought out approach in undertaking the required Scope of Services. Experience of the individuals proposed to lead and manage this project as well as the experience and resources of the Proponents will be carefully considered. Key factors to be considered are experience in providing these types of Services for projects similar in scope and size, professional credentials and project leadership, reputation in the industry and the references provided or obtained.

B. EXPERIENCE AND PERFORMANCE (10 points)

This criterion measures the competence, qualifications and experience of the key professionals and technical staff. The evaluation of key personnel will be based upon their experience to meet the requirements of this wireless program.

This will be determined by the quality of references provided that demonstrate the Proponents' experience in partnering with local governments to finance and manage network infrastructure to achieve similar vision, objectives, policy goals and requirements as those defined in this RFP.

C. TECHNICAL APPROACH (20 points)

This criterion measures quality, thoroughness, and demonstrated success of proposed solution and methodology, including but not limited to:

Degree of Compliance with Requirements

This will be determined by the degree to which proposals are compliance with the Requirements stated in this RFP.

Quality of Technical Approach

This will be determined by the quality and soundness of the proposed technology solution sets and the methodology used to address the City's requirements.

Deployment Strategy and Plan

This will be determined by the timeliness and reasonableness of the Proponents' deployment strategy and plan

D. COST PROPOSAL (25 points)

Proponent's cost Proposals will be evaluated on the completeness of their approach in addressing cost Proposal issues and estimating their costs. The cost Proposal is expected to demonstrate the Proponent understands the factors to be considered in providing the Services required and the level of effort required to adequately address the factors, without excess. Proponents will be evaluated on factors these factors, as well as:

Value to the Community

This will be determined by the financial subscription rates proposed and the level of commitment to community technology programs articulated in response to Section 3.2.11.

Value to the City

This will be determined by the proposed amount and type of compensation for the use of City assets, proposed revenue shares, and the proposed fees for Public Service and Public Safety usage of the Network.

Sustainability

This will be determined by the proposed strategy to insure the Network's viability over the contract term.

E. FINANCIAL CONDITION (20 points)

Proponents will be evaluated on the strength of their Financial Statements. Annual Reports, which include Financial Statements from recent years, will also be reviewed. The review will focus upon the Proponent's Statement of Income, Balance Sheet, and Cash Flow Statements. Ratio

Analysis will be included while determining the Proponent's financial strength as well as a review of the sources and uses of funds.

F. LEGAL CAPACITY (5 points)

Proponents will be evaluated on an assessment of past and current lawsuits and bankruptcy petitions filed in the past five (5) years.

G. EQUAL BUSINESS OPPORTUNITY (15 points)

Presentation of an Equal Business Opportunity Plan detailing:

1. Proponents proposed Minority and Female Business Enterprise involvement on the project as Subcontractors, suppliers, or joint venture team members;
2. Members or mentor protégé team members; and
3. Any good faith efforts made to meet project goals that have not been met.

H. COMPLIANCE TO ORDINANCES AND RESOLUTION (Pass/Fail)

Ability to comply with applicable ordinances and resolutions of the City, the regulations and ordinances of the County in which the work is to be performed, and the laws of the State of Georgia and the United States.

I. COMPLIANCE TO COMMENCEMENT AND COMPLETION SCHEDULES (Pass/Fail)

Ability to comply with the schedule of the commencement and completion of the work or Services as required by the City.

EXHIBIT 1**FC-6006007909 (RFP)**

EVALUATION		FORM	
CRITERIA	WEIGHT	SCORE	
General Capacity/Organization/Personnel	5		
Experience and Past Performance	10		
Technical Approach	20		
Financial Condition	20		
Legal Capacity	5		
Cost Proposal	25		
Equal Business Opportunity Presentation of an Equal Business Opportunity Plan detailing: (1) Proponent's proposed Minority and Female Business Enterprise involvement on the project as Subcontractors, Suppliers, joint venture team members or mentor protégé team members and (2) any good faith efforts made to meet project goal which have not been met.	15		
The ability to Comply with applicable ordinances and resolutions of the City, the regulations and ordinances of the County in which the work is to be performed, and the laws of the State of Georgia and the United States.	PASS/FAIL		
The ability to comply with the schedule of the commencement and completion of the work or Services as required by the City.	PASS/FAIL		
TOTAL SCORE			
	100%		

The City's direct assets are portrayed in the following image:

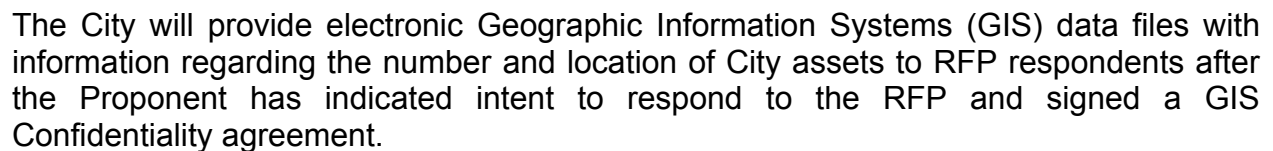


EXHIBIT 3 – DEFINITION OF TERMS

Capture Portal shall refer to the web page that unauthenticated users will be redirected to when their computing device first attaches to the Network.

City shall refer to the City of Atlanta, GA.

Core ISP Services shall refer to value added features which are bundled with Internet access by Service Providers such as email accounts, newsgroup access and virus and/or spam protection.

CPE shall refer to Customer Premise Equipment.

CTC shall refer to Community Technology Center

Fixed Broadband shall refer to a service that provides Internet access for a stationary subscriber at a single location (the location where service is provisioned).

Interior Room shall refer to a room within a building that does NOT have at least one wall directly facing a public street.

Joint Venture Partner shall refer to any organization proposing to provide products or services in response to this RFP through a partnership with the Proponent.

Mbps shall refer to Megabits per second.

MPH shall refer to Miles Per Hour.

MTBF shall refer to Mean Time Between Failures.

M/WBE shall refer to Minority/Women Businesses Enterprises

Network shall refer to a wireless broadband Internet access system that is deployed throughout the City.

Network Operator shall refer to the successful Proponent to this RFP who is responsible for the financing and management of the Network.

NOC shall refer to Network Operations Center.

Nomadic Broadband shall refer to a service that provides Internet access for a stationary subscriber at a variety of locations throughout the City.

Open Access shall refer to the successful Proponent's commitment to provide access to its wireless broadband Internet access transport services to multiple unaffiliated Service Providers.

Perimeter Room shall refer to a room within a building that has at least one wall facing a public street.

PMSA shall refer to Primary Metropolitan Statistical Area.

POP shall refer to an Internet Point of Presence.

Portable Broadband shall refer to a service that provides Internet access for an in-motion subscriber at a variety of locations throughout the City.

Proponent shall refer to a prime offeror to this RFP.

RFP shall refer to Request for Proposals.

Requirements shall refer to items defined in Part III and Exhibit 4 of the RFP.

Service Provider shall refer to any organization, whether affiliated with the successful Proponent or not, who markets, sells and supports services over the Network.

Tier 1 Support shall refer to the process of responding to, diagnosing and attempting to resolve issues reported by users of the Network.

Tier 2 Support shall refer to the process of responding to issues escalated by Tier 1 Support representatives who are unable to resolve issues reported by users of the Network.

Tier 3 Support shall refer to the process of responding to issues escalated by Tier 2 Support representatives who are unable to resolve issues escalated from Tier 1 Support representatives.

VPN shall refer to Virtual Private Network.

VLAN shall refer to Virtual Local Area Network.

Wi-Fi (Wireless Fidelity) shall refer to wireless technologies adhering to the IEEE 802.11b and 802.11g technical standards.

WiMAX (Wireless Interoperability for Microwave Access) shall refer to wireless technologies adhering to the IEEE 802.16 technical standards.

EXHIBIT 4 – REQUIREMENTS COMPLIANCE WORKSHEET

See Exhibit 4

EXHIBIT 5 – ECONOMIC/FINANCIAL DESCRIPTION WORKSHEET

See Exhibit 5

EXHIBIT 6 – DATA PROVIDED BY GEORGIA POWER

In discussions with Georgia Power, the City has identified a number of issues that may be helpful and informative to Proponents as they prepare their responses. The successful Proponent(s) must negotiate an agreement with Georgia Power in order to use Georgia Power assets. The information provided below in no way commits Georgia Power to provide access to its assets or limits Georgia Power's ability to negotiate on the items below. **Moreover, the City is providing this information as an accommodation to all proponents. The City is not liable to proponents for the accuracy of information regarding Georgia Power assets or policies, or lack of information regarding Georgia Power assets or policies.**

Partial Requirements for Installation of Communications Equipment

- Must meet the National Electrical Safety Code (NESC)
- Must be mounted within the communications space of the utility pole (height varies but is in a range of 20-35 feet above ground level depending on pole height)
- Must meet Occupational Safety and Health Administration (OSHA) regulations

Current Rates for Unmetered Power Usage

- Georgia Power's tariff for unmetered power usage can be found at <http://www.southerncompany.com/gapower/pricing/gpc-pdf/gp-3.pdf>

Pole Replacement/Upgrade

- Should the successful Proponent find it necessary to upgrade or replace existing poles, Georgia Power's policy is that the successful Proponent will be responsible for all reinstallation and reorganization required in the upgrade or replacement process.

The above items and specifications only apply to Georgia Power assets and Georgia Power can only negotiate an agreement to provide the successful Proponent with access to Georgia Power assets.

APPENDIX A

CONTRACT COMPLIANCE REQUIREMENTS



CITY OF ATLANTA

SUITE 1700

55 TRINITY AVENUE, SW

ATLANTA, GA 30303

(404) 330-6010 Fax: (404) 658-7359

Internet Home Page: www.atlantaga.gov

Shirley Franklin
Mayor

OFFICE OF CONTRACT COMPLIANCE
Hubert Owens
Director
howens@atlantaga.gov

6/7/2006

RE: FC-6006007909, Atlanta Wireless Broadband Initiative

Dear Prospective City of Atlanta Bidder:

The Office of Contract Compliance information is an integral part of every City of Atlanta bid. Your efforts to assist the City of Atlanta in mitigating the present effects of past discrimination against minority and female owned businesses are essential. The City of Atlanta's Equal Business Opportunity (EBO) Program requires ALL Potential Bidders on Eligible Projects to be Eligible Bidders in one of the three alternate categories as outlines on pages two through five of this section. Please read all of the information very carefully. Pay close attention to the specific availability of minority and female business enterprises for this project and the EBO program reminders listed on page 13.

If you have any questions about the information included in this section of the solicitation, please contact the City of Atlanta Office of Contract Compliance at (404) 330-6010.

The City of Atlanta looks forward to the opportunity to do business with your company.

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CITY OF ATLANTA

EQUAL BUSINESS OPPORTUNITY EQUAL EMPLOYMENT OPPORTUNITY

POLICY STATEMENT

It is the policy of the City of Atlanta to actively promote full and equal business opportunities for minority and female business enterprises through the City of Atlanta's Equal Business Opportunity (EBO) Program. It is also the policy of the City of Atlanta to actively promote equal employment opportunities for minority and female workers and prohibit discrimination based upon race, religion, color, sex, national origin, marital status, physical handicap or sexual orientation through the City's Equal Employment Opportunity (EEO) Program. The purpose of the Equal Business Opportunity and Equal Employment Opportunity Programs is to mitigate the present and ongoing effects of the past and present discrimination against women and minority owned businesses and women and minority workers so that opportunity, regardless of race or gender, will become institutionalized in the Atlanta marketplace. It is important to note that all bidders, without exception, including minority and female owned business enterprises, must comply with the City of Atlanta's EBO and EEO Program requirements. Availability information on minority and female business enterprises for this project is set forth on page 10.

ELIGIBILITY TO BID ON CITY OF ATLANTA PROJECTS

Any bidder on City of Atlanta Eligible Projects must be deemed an Eligible Bidder by the City of Atlanta Office of Contract Compliance as defined by the City of Atlanta Code of Ordinances §2-1449(a). To be approved as an Eligible Bidder on a City of Atlanta Eligible Project, a Potential Bidder must submit a written application to the Office of Contract Compliance on a form provided by the Office of Contract Compliance. The application must specifically indicate the Standard Industrial Classification (SIC) Codes the business is interested in working on City of Atlanta projects. The Potential Bidder must demonstrate that their process for contracting or utilizing individuals or businesses as subcontractors or suppliers for work on projects undertaken by the Potential Bidder is open to individuals or businesses regardless of race, gender or ethnicity, by fulfilling one of three alternative Eligible Bidder categories.

NOTE: A Potential Bidder must be deemed eligible prior to submission of a bid or proposal to the City of Atlanta. Please see the Eligible Bidder categories for specific information about timing requirements for submission of Eligible Bidder applications.

If a bidder is approved as an Eligible Bidder under Category A or Category B, such Eligible Bidder may submit bids on City projects during that two-year eligibility period. Category A or Category B Eligible Bidders must submit a Subcontractor Project Plan (Document provided with this solicitation) prior to the execution of the contract on the Eligible Project. The Category A or B Eligible Bidder must continue to make good faith outreach efforts to utilize all businesses, including Minority Business Enterprises (MBEs) and Female Business Enterprises (FBEs), during the two year Category A or B Eligibility.

If a bidder is approved as an Eligible Bidder under Category C, such Eligible Bidder must submit a Subcontractor Project Plan (Document provided with this solicitation) with the submission of every bid. The Subcontractor Project Plan will be evaluated by the Office of Contract Compliance upon submission for every project during the two-year period of the Category C Eligibility. The Subcontractor Project Plan must demonstrate that the Category C Eligible Bidder has satisfied good faith outreach efforts to utilize all businesses, including certified MBEs and FBEs. Documentation of all project-specific good faith outreach efforts must also be provided with the submission of the bid.

Each Eligible Bidder must submit within a year of the date of the Eligibility approval, an Annual Compliance Report on a form provided by the Office of Contract Compliance, including a list and description of private sector and governmental projects undertaken; the dollar value of such projects; all subcontractors, suppliers, joint ventures and mentor protégé relationships; and any good faith outreach efforts to utilize all businesses, including MBEs and FBEs.

**ELIGIBILITY REQUIREMENTS FOR CATEGORIES A, B, AND C
AS DEFINED BY THE CITY OF ATLANTA CODE OF ORDINANCES,
SECTIONS 2-1441 THROUGH 2-1480**

**Eligible Bidder Category A
(Ability to Demonstrate Prior MBE & FBE Participation)**

All Potential Bidders interested in applying for eligibility under Category A to do business with the City of Atlanta are required to submit written documentation reflecting prior MBE and FBE participation on both private sector and governmental projects, as outlined in the City of Atlanta Code of Ordinances, Section 2-1449(a)(2)(A). A Potential Bidder must provide written documentation demonstrating that, for all work performed on projects in the ten county Atlanta Region during the two (2) year period immediately preceding the date of its application to become an Eligible Bidder, at least seventeen percent (17%) of the total project dollars awarded were subcontracted to or expended for services performed by one or more MBEs, **AND** at least seventeen percent (17%) of the total project dollars awarded to the potential bidder were subcontracted to or expended for services performed by one or more FBEs.

The projects submitted to indicate the previous two years of work performed in the Atlanta Region must involve a trade or service included within any or all of the SIC Codes listed in the City of Atlanta Code of Ordinances, Section 2-1449. If a Potential Bidder has not undertaken any projects in the Atlanta Region within two years prior to the date of its application that involve a trade or service included within any of the SIC Codes specified in the City of Atlanta Code of Ordinances, the Potential Bidder may meet the forgoing requirements by verifying that, during the two-year period immediately preceding the date of its application to become an Eligible Bidder, it has met the measures set forth above for projects undertaken in the Atlanta Region, which involved a trade or service included within all other SIC Codes.

If the Potential Bidder wishes to become an Eligible Bidder for a specific upcoming Eligible Project, the application for approval and all supporting documents must be received by the Office of Contract Compliance no later than **thirty (30) calendar days prior to the date bids are received** on such Eligible Project. If the application is not received within the required time period, the Potential Bidder may only be approved as an Eligible Bidder for such project under Category C.

Eligible Bidder Category B
(Ability to Demonstrate Prior Good Faith Outreach Efforts)

All Potential Bidders interested in applying for eligibility under Category B to do business with the City of Atlanta are required to submit written documentation reflecting prior good faith outreach efforts to utilize MBEs and FBEs on both private sector and governmental projects, as outlined in the City of Atlanta Code of Ordinances, Section 2-1449(a)(2)(B). All Potential Bidders must provide written documentation of prior good faith outreach efforts demonstrating that during the two-year period immediately preceding the date of this application, the potential bidder identified, contacted, contracted with or otherwise utilized all businesses, including MBEs and FBEs, as subcontractors or suppliers for all projects undertaken in the private or public sector that involved a trade or service included within any of the SIC Codes listed in the City of Atlanta Code of Ordinances Section 2-1449. Good faith outreach efforts shall include documentation of all of the following:

1. The potential bidder contacted the private sector or governmental entity (such as the Office of Contract Compliance) that awarded the contract, other private sector and governmental entities, or local MBE and FBE organizations to identify qualified, available businesses, including MBEs and FBEs, regardless of race, gender or ethnicity;
2. The Potential Bidder placed notices of opportunities for subcontracting work for qualified firms in newspapers, trade journals, and other relevant publications, including publications specifically targeting MBEs and FBEs, or communicated such notices of opportunities via the Internet or by other available media or means;
3. The Potential Bidder submitted invitations to bid to potential qualified businesses, including MBEs and FBEs regardless of race, gender or ethnicity;
4. The Potential Bidder included in such notices and invitations a full disclosure of the criteria upon which bids, proposals or quotes would be evaluated, and also included contact information for inquiries, submissions, or requests to review any necessary bid documents;
5. The Potential Bidder promptly responded to inquiries, provided necessary physical access and time for interested businesses to fully review all necessary bid documents, and otherwise provided information, and provided access and time to allow businesses to prepare bids and quotes, regardless of race, gender or ethnicity; and
6. The Potential Bidder considered, hired, or otherwise utilized qualified, available businesses, including MBEs and FBEs, regardless of race, gender or ethnicity.

If the Potential Bidder wishes to become an Eligible Bidder for a specific upcoming Eligible Project, the application for approval and all supporting documents must be received by the Office of Contract Compliance no later than **thirty (30) calendar days prior to the date bids are received** on such Eligible Project. If the application is not received within the required time period, the Potential Bidder may only be approved as an Eligible Bidder for such project under Category C.

Eligible Bidder Category C
(Commitment to Future Good Faith Outreach Efforts)

All Potential Bidders interested in applying for eligibility under Category C to do business with the City of Atlanta are required to make a written commitment to future good faith outreach efforts to utilize MBEs and FBEs on both private sector and governmental projects, as outlined in the City of Atlanta Code of Ordinances, Section 2-1449(a)(2)(C). All Potential Bidders must agree in writing that during the initial two year period for which it is approved as an Eligible Bidder, it will engage in good faith outreach efforts (as described under Category B) to identify, contact, contract with, or otherwise utilize all businesses, including certified MBEs and FBEs, as subcontractors or suppliers on all projects in the private sector or for a governmental entity for which it submits a bid or is awarded a contract that involves a trade or service included within any or all of the SIC Codes in which the Potential Bidder seeks to do business with the City of Atlanta and will maintain written documentation demonstrating such compliance. A Category C Eligible Bidder must also commit to submitting a Subcontractor Project Plan to be evaluated by the Office of Contract Compliance with the bid for all City of Atlanta Eligible Projects on which the Bidder bids on during that two years Category C Eligibility. A Potential Bidder that has previously been approved as an Eligible Bidder under Category C may not reapply to become an Eligible Bidder under Category C. Subsequently, a Category C bidder must reapply only under Category A or Category B in order to bid on Eligible Projects.

If the Potential Bidder wishes to become an Eligible Bidder for a specific upcoming Eligible Project, the application for approval as an Eligible Bidder under Category C must be received by the Office of Contract Compliance no later than **three (3) calendar days prior to the date bids are received** on such Eligible Project. In the event that the Potential Bidder wishes to be deemed an Eligible Bidder under Section 2-1449(a)(2)(A) or 2-1449(a)(2)(B), but missed the **thirty (30) day** deadline prior to a specific Eligible Project, the Potential Bidder may submit an application for approval for the specific Eligible Project following all of the guidelines for Category C.

The Office of Contract Compliance will evaluate whether the business is qualified to be an Eligible Bidder under Section 2-1449(a)(2)(C) for the specific project, and will then evaluate the qualifications as submitted otherwise on the application to be an Eligible Bidder under 2-1449(a)(2)(A) or 2-1449(a)(2)(B) for all future projects in which bids are received at least **thirty (30) days** after the Potential Bidder's application was submitted.

Implementation of EBO Policy

The City of Atlanta's Equal Business Opportunity Program recognizes Minority Business Enterprise and Female Business Enterprise participation achieved through subcontracting, supplier, joint venture and mentor protégé arrangements on City of Atlanta projects, private sector projects, and other governmental projects. The Equal Business Opportunity Ordinance requires that any Potential Bidder on a City of Atlanta Project must be deemed an Eligible Bidder prior to submitting a bid or proposal to perform work on a City contract in one of three Eligibility categories. All eligible Bidders must submit a Subcontractor Project Plan indicating all subcontractors and suppliers that will be used on City of Atlanta Projects.

For subcontracting, the Subcontractor Project Plan must include all subcontractors to be utilized on the project, detail the services to be performed, the dollar value of the work to be performed by each subcontractor, and the certification number of the business if the business is a certified minority or female business enterprise with the City of Atlanta.

For Suppliers, the Subcontractor Project Plan must include all suppliers to be utilized on the project, the supplies to be provided, including the dollar value of the supplies being provided and the certification number of the business if the business is a certified minority or female business enterprise with the City of Atlanta.

Project Specific Subcontract and Supplier Participation

Every City of Atlanta certified minority business enterprise and female business enterprise is provided a letter of certification and is assigned a certification number by the Office of Contract Compliance. The certification letter specifically indicates the category or categories in which the business is certified. A business may be certified as an African American Business Enterprise (AABE), a Female Business Enterprise (FBE), a Hispanic Business Enterprise (HBE), an Asian Business Enterprise (ABE) or a Native American Business Enterprise (NABE). Certification by the City of Atlanta assures a bidder that the minority or female business is a legitimate minority or female-owned and controlled business. Businesses that have been certified as both minority and female owned may only be used to satisfy one category of the established project specific availability.

Note: An Eligible Bidder using non-certified minority or female firms to meet the availability on City projects must be sure that the firm is a bona fide minority or female firm.

For purposes of calculating the percentage of total contract dollars awarded or paid to MBE or FBE Suppliers, only amounts paid to manufacturers or warehousemen of goods customarily and ordinarily used, based upon standard industry trade practices, shall be counted.

Monitoring Of EBO Policy

Upon execution of a contract with the City of Atlanta, the successful bidder's Subcontractor Project Plan will become a part of the contract between the bidder and the City of Atlanta. The Subcontractor Project Plan will be monitored by the City of Atlanta's Office of Contract Compliance for adherence with the plan. The successful bidder will be required to provide specific information on a monthly basis that demonstrates the use of subcontractors and suppliers indicated on the Subcontractor Project Plan. Failure to adhere to this requirement may subject the successful bidder to penalties set forth in the City of Atlanta Code of Ordinances, Section 2-1454.

Implementation of EEO Policy

The City effectuates its EEO policy by adopting racial and gender work force availability requirements for every contractor performing work for the City of Atlanta. These requirements were derived from the work force demographics set forth in the 1990 Census EEO file prepared by the United States Department of Commerce for the applicable labor pool normally utilized for the contract.

Monitoring of EEO Policy

Upon award of a contract with the City of Atlanta, the successful bidder must submit a Contract Employment Report (CER), describing the racial and gender make-up of the firm's work force. If the CER indicates that the firm's demographic composition does not meet the adopted EEO goals, the firm will be required to submit an affirmative action plan setting forth the steps to be taken to reach the adopted goals. The CER and the affirmative action plan, if necessary, will become a part of the contract between the successful bidder and the City of Atlanta. Compliance with the EEO requirements will be monitored by the Office of Contract Compliance.

First Source Jobs Program Policy Statement

It is the policy of the City of Atlanta to provide job opportunities to the residents of the City of Atlanta, whenever possible. Every contract with the City of Atlanta creates a potential pool of new employment opportunities. The prime contractor is expected to work with the First Source Jobs Program to fill at least 50% of all new entry-level jobs, which arise from this project, with residents of the City of Atlanta. For more specific information about the First Source Jobs Program contact:

Deborah Lum
Manager, One Stop Services
First Source Jobs Program
Atlanta Workforce Development Agency
818 Pollard Boulevard
Atlanta, GA 30315
(404) 658-6312

Joint Venture Participation on City of Atlanta Projects

The City of Atlanta encourages, where economically feasible, the establishment of joint ventures to ensure prime contracting opportunities for all businesses, including good faith outreach efforts to utilize certified minority and female business enterprises on Eligible Projects. On projects valued at over 10 million dollars, the Office of Contract Compliance shall determine on a project-by-project basis whether good faith outreach efforts to enter into a joint venture shall be required. On such Eligible Projects, joint venture member businesses must have different race ownership, different gender ownership or both. The minority and female business enterprise members of the joint venture on projects on which a Joint Venture is required must be certified as such by the Office of Contract Compliance, and the joint venture team shall include in its bid submittal the MBE or FBE certification number of each MBE or FBE joint venture member.

No bid on a City contract for an Eligible Project shall be accepted from a joint venture team unless each participant is approved independently as an Eligible Bidder. If any participant on the joint venture team is approved as an Eligible Bidder under Category C, then the joint venture team must comply with the requirements of Section 2-1449(a)(2)(C) of the Equal Business Opportunity Ordinance.

A joint venture may submit its agreement to the Office of Contract Compliance for pre-approval no later than fourteen (14) calendar days prior to the date set for receipt of bids on an Eligible Project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an Eligible Project.

Components of a Joint Venture Agreement

The Joint Venture agreement should include at a minimum:

- The initial capital investment of each venture partner.
- The proportional allocation of profits and losses to each venture partner.
 - The sharing of the right to control the ownership and management of the joint venture.
 - A detailed description of the discrete portion of work or tasks that will be performed by each of the venture partners.
- The method of, and responsibility for, accounting.
- The methods by which disputes are resolved.
- All other pertinent factors of the joint venture.

Mentor-Protégé Participation on City of Atlanta Projects

The mentor-protégé program is an initiative to encourage and develop minority and female owned business enterprises in contracting with City government where minorities and women have historically been underrepresented due to various discriminatory barriers. This program will enable prime contractors of all ethnic and gender categories to provide technical, administrative, and other assistance to smaller, developing businesses. On projects valued at over 10 million dollars, the Office of Contract Compliance shall determine on a project-by-project basis whether good faith outreach efforts to enter into a mentor-protégé relationship shall be required. On such Eligible Projects, the mentor and protégé team member must have different race ownership, different gender ownership, or both. The minority and female business enterprise members of the mentor- protégé team must be certified as such by the Office of Contract Compliance, and the mentor-protégé team shall include in its bid submittal the MBE or FBE certification number of each MBE or FBE team member.

No bid on a City contract for an Eligible Project shall be accepted unless submitted by a mentor protégé team in which each participant is approved independently as an Eligible bidder. If any participant on the mentor-protégé team is approved or can only be approved as an Eligible Bidder under Category C, then the mentor-protégé team must comply with the requirements of Section 2-1449(a)(2)(C) of the Equal Business Opportunity Ordinance.

Mentor-Protégé teams may submit agreements to the Office of Contract Compliance for pre-approval no later than fourteen (14) calendar days prior to the date set for receipt of bids on an Eligible Project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an Eligible Project.

Components of a Mentor-Protégé Agreement

- The type of collaboration, training and assistance to be provided. The areas of assistance encouraged include, but are not limited to, bonding and insurance support, management and scheduling support.
- The specific rights and responsibilities of the Mentor and the Protégé.
- Names or titles of the individuals from the Mentor responsible for working directly with the Protégé in the areas identified above.
- Names or titles of the individuals from the Protégé responsible for working directly with the Mentor in the areas identified above.
- The terms of the agreement.

- A system to monitor and evaluate the effectiveness of the Mentor Protégé agreement, including, at a minimum, the requirements set forth at City of Atlanta Code, Section 2–1450.
- A plan detailing how the Mentor plans to include the Protégé on non-governmental projects during the term of the agreement.
- Protégé shall not subcontract any of their work to the mentor firm or to other contractors without the approval of the Office of Contract Compliance.
- Mentor and Protégé representatives may not bid or otherwise participate independently on a contract in which the Mentor Protege team is bidding or participating as a team.

Equal Business Opportunity M/FBE Availability for Projects

Project No.: **FC-6006007909, Atlanta Wireless Broadband Initiative**

(Required for Eligible Bidders in Category C):

Good Faith Outreach efforts to utilize Minority and Female subcontractors and suppliers throughout the project life.

NOTE: Though this is a requirement for Category C Eligible Bidders, all eligible bidders are expected to make Good Faith Outreach Efforts to utilize Minority and Female Business Enterprises to the extent of their availability in the Atlanta Marketplace. For this project, the Minority Business Enterprise availability is 17% and the Female Business Enterprise availability is 17%. (See reminder number 2 on page 13)

Equal Employment Opportunity Policy for Projects

Project No.: FC-6006007909, Atlanta Wireless Broadband Initiative

A FIRM'S WORK FORCE CONSISTING OF LESS THAN FIFTEEN (15) EMPLOYEES IS EXEMPT FROM THE EEO REQUIREMENTS.

Pursuant to the City of Atlanta Code of Ordinances, Chapter 2, Article X, Division 10 section 2-1381 and Division 11 section 2-1411 through section 2-1419, the city declares that discrimination based upon race, sex, religion, national origin, age, or handicap is inconsistent with the U.S. Constitution, laws and policies of the United States, the State of Georgia and the City of Atlanta. It is the City of Atlanta's policy to prohibit discrimination by contractors who do business with the City against any employee or applicant for employment because of race, sex, religion, national origin, age or handicap. The City implements this policy by adopting gender and racial work force goals for every contractor performing work for the City of Atlanta. The Atlanta area EEO goals for this contract, which were derived from the 2000 Census EEO File prepared by the U.S. Department of Commerce are:

Profession: **Design Engineers**

EEO Goals for minorities: **14.50%**

EEO Goals for women: **11.60%**

- Once a firm is awarded a contract, the selected firm must complete and submit the CER form which identifies the racial and gender demographics of the firm's work force. If the EEO goals for this contract are not met, the selected firm must also submit an affirmative action plan setting forth steps to be taken in an effort to reach the established racial and gender goals, such as advertising, recruitment effort and training programs. If the selected firm anticipates relocating to the Atlanta Metropolitan Area, but does not have an Atlanta office at the execution of the contract then the firm must submit a hiring plan setting forth an agenda for attempting to meet the established EEO goals as discussed above.
- If the City of Atlanta contract will be performed by a work force located outside the Atlanta Metropolitan Statistical Area, the firm must meet the EEO goals for the geographic location of the office performing the work on this project. If work performed on this project is an aggregate of all company locations, the EEO goals must be met for the location of the firm's headquarters. If the company, whose work force is located outside of the Atlanta area, does not provide the City of Atlanta with the EEO goals of the geographic location of the office performing the work, then the company must meet the EEO goals of the Atlanta Metropolitan Statistical Area. The EEO goal for locations outside the Atlanta Metropolitan Statistical area must be reported on the CER form. All entries will be verified for accuracy. The CER, the affirmative action plan and the hiring plan will become a part of the formal contract.

City of Atlanta Contract Compliance Certificate

The undersigned has prepared and submitted all the documents attached hereto. The documents have been prepared with a full understanding of the City's objectives with respect to increased opportunity in the proposed work to be undertaken in performance of this project. It is the Eligible Bidder's intent to comply with the City's Equal Business Opportunity Program, the Equal Employment Opportunity goals and the First Source Jobs employment program.

All information and representations contained herein and submitted with this bid or proposal are true and correct.

_____ This entity is approved as a Category A Eligible Bidder. A copy of the Eligible Bidder Certificate and this Contract Compliance Certificate are being submitted along with the bid.

_____ This entity is approved as a Category B Eligible Bidder. A copy of the Eligible Bidder Certificate and this Contract Compliance Certificate are being submitted along with the bid.

_____ **This entity is approved as a Category C Eligible Bidder. A copy of the Eligible Bidder Certificate, this Contract Compliance Certificate and the subcontractor Project Plan are being submitted along with the bid.**

Witness

Signature
Eligible Bidder Authorized Representative

Date: _____

Eligible
Bidder: _____

FC No.: _____

Project Name: _____

Equal Business Opportunity Program Reminders

1. Subcontractor Project Plan for Category C. Bids submitted by Eligible Bidders in Category C must contain a Subcontractor Project Plan listing all subcontractors and suppliers including MBE and FBE firms and their participation on the project. Availability of MBEs and FBEs is set forth above. The Subcontractor Project Plan to be submitted with the bid is included with this solicitation as Form #1.
2. Subcontractor Project Plan for Category A or B. Eligible Bidders in Category A or Category B must submit a Subcontractor Project Plan of all subcontractors and suppliers, including MBE and FBE firms and their participation on the project prior to execution of the contract. Availability of MBEs and FBEs is set forth on page 10. The form for the Subcontractor Project Plan to be submitted prior to the execution of the Contract is included with this solicitation as Form #1.
3. Joint Venture/Mentor Protégé Agreements. The Joint Venture member businesses must have different race ownership, different gender ownership, or both. MBE or FBE members of the Joint Venture must be certified as such by the Office of Contract Compliance. The Joint Venture team shall include in its submittal the MBE or FBE certification number of each MBE or FBE Joint Venture member. No bid on a City contract for an Eligible Project shall be accepted from a Joint Venture or Mentor-Protégé team unless each participant in the Joint Venture or Mentor-Protégé team is approved independently as an Eligible Bidder under Category A, B, or C. If any participant in the Joint Venture or Mentor-Protégé team is approved or can only be approved as an Eligible Bidder in Category C, then the Joint Venture or Mentor-Protégé team must comply with the requirements of Section 2-1449(a)(2)(C).
4. Certification. It is the prime contractor's responsibility to verify that MBEs and FBEs included on the Subcontractor Project Plan are certified by the City of Atlanta's Office of Contract Compliance, have a certification application pending with the Office of Contract Compliance or are legitimate MBEs and FBEs.
5. Reporting. The successful bidder must submit monthly EBO participation reports to the Office of Contract Compliance.
6. EBO Ordinance. The EBO Program is governed by the provisions of the EBO Ordinance set forth in the City of Atlanta Code Division 12, section 2 - 1441

BUSINESS OPPORTUNITY SUBCONTRACTOR PROJECT PLAN

SUBCONTRACTOR/SUPPLIER UTILIZATION

through 2 -1480. The ordinance can be obtained from the City of Atlanta Clerk's Office at (404) 330-6032.

Name of Sub-contractor/ Supplier	Company Name, Address and Phone Number	City Of Atlanta Business License?	SIC Code	Type of Work to be Performed	Ownership of Business (see code below)	Certifica tion No. and Expirati on Date	Dollar (\$) Value of Work and Scope of Work	Percentage of Total Bid Amount

List all Majority, Minority and Female Business Enterprise subcontractors/suppliers, including lower tiers, to be used

Total MBE% _____

Total FBE% _____

Code: AABE - African American Business Enterprise, HBE – Hispanic Business Enterprise, FBE – Female Business Enterprise. **ABE – Asian Business Enterprise, NABE – Native American Business Enterprise**

Respond “yes” or “no” to question regarding business license held in the City of Atlanta

Company Name: _____

Project Name: _____

Signature: _____

Date: _____

First Source Job Information

Company Name:

FC No.:

Project Name:

The following entry level positions will become available as a result of the above referenced contract with the City of Atlanta.

- 1.
- 2.
- 3.
- 4.
- 5.

Include a job description and all required qualifications for each position listed above.

Identify a company representative and contact phone number who will be responsible for coordinating with the First Source Jobs Program.

Company Representative: _____

Phone Number: _____

THIS AGREEMENT REGARDING THE USE OF THE FIRST SOURCE JOBS PROGRAM BY CONTRACTORS WITH THE CITY OF ATLANTA TO FILL ENTRY LEVEL JOBS is made and entered into by _____

This _____ day of _____, 200__.

Whereas the City of Atlanta requires the immediate beneficiary or primary contractor for every eligible project to enter into a First Source Jobs employment agreement. The contractor agrees to the following terms and conditions:

- The first source for finding employees to fill all entry level jobs Created by the eligible project will be the First Source Program.
- The contractor will make every effort to fill 50% of the entry level jobs created by this eligible project with applicants from the First Source Program.
- The contractor shall make good faith effort to reach the goal of this employment agreement.
- Details as to the number and description of each entry level job must me provided with the bid.
- The contractor shall comply with the spirit of the First Source Jobs Policy beyond the duration of this agreement and continue to make good faith attempts to hire employees of similar backgrounds to those participating in the First Source Program.
- The contractor as a condition of transfer, assignment or otherwise shall require the transferee to agree in writing to the terms of the employment Agreement.

Upon a determination that a beneficiary or contractor has failed to comply with the terms of this Agreement, the City may impose the following penalties based on the severity of the non-compliance:

- The City of Atlanta may withhold payment from the contractor.
- The City of Atlanta may withhold 10 percent of all future payments on the contract until the contractor is in compliance
- The City of Atlanta may refuse all future bids on city projects or applications for financials assistance in any form from the City until the contractor demonstrated that the First Source requirements have been met, or cancellation of the eligible project.
- The City of Atlanta may cancel the eligible project.

All terms stated herein can be found in the City of Atlanta Code of Ordinances Sections 5-8002 through 5-8005.

The undersigned hereby agrees to the terms and conditions set forth in this agreement.

Contractor

APPENDIX B

**INSURANCE/BONDING
REQUIREMENTS**

INSURANCE/BONDING REQUIREMENTS
FC – 6006007909; Wireless Atlanta Broadband RFP

A. General Preamble

The following general requirements apply to any and all work under this contract. Compliance is required by all Proponents and Subcontractors. Insurance/Bonding requirements are based on information received as of date of contract execution. **The City of Atlanta reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this contract.**

1. Evidence of Insurance Required Before Work Begins

No Proponent or Subcontractor shall commence any work of any kind under this contract until all Insurance and Bond requirements contained in this contract shall have been complied with as outlined below, and until evidence of such compliance satisfactory to the City as to form and content has been filed with the City. **The Acord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.**

2. Minimum Financial Security Requirements

Any and all companies providing insurance required by this contract must meet certain minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. The ratings for each company must be indicated on the Acord Certificate of Insurance Form.

For all Contracts, regardless of size, companies providing Insurance of Bonds under this contract must have a current:

- i) Best's Rating not less than A- and current
- ii) Best's Financial Size Category not less than Class IX.
- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia, furthermore, all bid, performance and payment bonds must be a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the City to the Proponent who shall promptly obtain a new policy or bond issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

Upon failure of the Proponent to furnish, deliver and maintain such insurance or bonds as herein provided, this contract, at the election of the City, may be declared forthwith suspended, discontinued or terminated. Failure of the Proponent to take out and/or to maintain any required insurance or bonds shall not relieve the Proponent from any liability under the contract, nor shall these requirements be construed to conflict with the obligation of the Proponent concerning indemnification.

3. Insurance Required for Duration of Contract

Any and all Insurance and Bonds required by this contract shall be maintained during the entire length of this contract, including any extensions thereto, and until all work has been completed to the satisfaction of the City. The City shall have the right to inquire into the adequacy of the insurance coverages set forth in this contract and to negotiate such adjustments as reasonable appear necessary.

4. Mandatory 30-Day Notice of Cancellation or Material Change

The City of Atlanta shall, without exception, be given not less than thirty (30) days notice prior to cancellation for other than non-payment of premium or for material change of any Insurance or Bond required by this contract. Non-payment of premium shall require ten (10) days notice of cancellation. Confirmation of this mandatory 30 days notice of cancellation shall appear on the Acord Certificate of Insurance and on any and all Bonds and Insurance policies required by this contract. The cancellation notice on the Insurance certificate should read as follows:

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREFORE, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, IT'S AGENTS OR REPRESENTATIVES.~~ Please send cancellation notice to **Risk Management at 68 Mitchell Street, Suite 9100 Atlanta, GA 30303**

5. City of Atlanta as Additional Insured

The City of Atlanta shall be covered as Additional Insured under any and all Insurance and Bonds required by this contract, and such insurance shall be primary with respect to the Additional Insured. Confirmation of this shall appear on the Acord Certificate of Insurance, and on any and all applicable Bonds and Insurance policies. However, this requirement does not apply to Workers' Compensation, Professional Liability Insurance or Payment and Performance Bonds.

6. Mandatory Subcontractor Compliance

Proponent shall incorporate a copy of these Insurance, Bond and Hold Harmless requirements in each and every contract with each and every Subcontractor of any tier, and shall require each and every Subcontractor of any tier to comply with all such requirements. Proponent agrees that if for any reason Subcontractor fails to procure and maintain Insurance and Bonds as required, all such required Insurance and Bonds shall be procured and maintained by Proponent at Proponent's expense.

7. Authorization and Licensing of Agent

Each and every agent acting as Authorized Representative on behalf of a Company affording coverage under this contract shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the agent to bind coverage as required and to execute the Acord Certificate of Insurance as evidence of such coverage. City of Atlanta coverage requirements may be broader than the original policies, these requirements have been conveyed to the Companies for these terms and conditions.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

B. Workers' Compensation and Employer's Liability Insurance

The Proponent shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each and every employee who is or may be engaged in work under the contract:

Workers' Compensation Statutory

Employer's Liability

Bodily Injury by Accident/Disease	\$100,000 each accident
Bodily Injury by Accident/Disease	\$100,000 each employee
Bodily Injury by Accident/Disease	\$500,000 policy limit

C. General Liability Insurance

The Proponent shall procure and maintain General Liability Insurance in an amount not less than **\$2,000,000** Bodily Injury and Property Damage combined single limit. The following specific extensions of coverage shall be provided and shall be indicated on the Acord Certificate of Insurance:

1. Comprehensive Form
2. Contractual Insurance - (Blanket or specific applicable to this contract)
3. Personal Injury
4. Broad Form Property Damage
5. Premises – Operations
6. Products-Completed Operations

D. Automobile Liability Insurance

The Proponent shall procure and maintain Automobile Liability Insurance with not less than **\$500,000** Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

1. Comprehensive Form
2. Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event the Proponent does not own any automobiles in the corporate name, non-owned and hire automobile coverage will be maintained by the Proponent in the amount indicated above.

E. Professional Liability Insurance

The Proponent shall procure and maintain during the life of this contract Professional Liability Insurance in an amount of **\$1,000,000** per claim and annual aggregate. The policy will fully address the Proponent's professional services associated with the scope of work contained in this document. The policy will include at least a three year Extended Reporting Provision.

F. Hold Harmless Agreement

In addition to its agreement to obtain and maintain the insurance as set forth herein above, Proponent agrees to indemnify and hold harmless the City of Atlanta, its officers, agents and employees from any and all claims against the City of Atlanta, its officers, agents or employees which arise out of any negligent act or omission of Proponent or any Subcontractor employed by the Proponent or any of their officers, agents or employees, and any and all claims which result from any condition created or

maintained by the Proponent or any Subcontractor employed by the Proponent or any of their officers, agents or employees, which condition was not specified to be created or maintained by this Agreement. Proponent further agrees that its agreement to indemnify and hold harmless the City of Atlanta, its officers, agents and employees shall not be limited to the limits of the liability insurance under this Agreement and the attached specifications.

APPENDIX C

CONTRACTOR'S DISCLOSURE FORM AND QUESTIONNAIRE

CONTRACTOR'S DISCLOSURE FORM AND QUESTIONNAIRE

1. Please provide the names and business addresses of each of the Contractor's officers, director's, affiliates and other employees, agents or representative of this form, the subject project, **FC-6006007909, Wireless Atlanta Broadband Initiative.**

For the purposes of this form, the term "affiliate" of any Contractor shall mean any person or entity which directly or indirectly controls or is controlled by, or is under common control with such Contractor. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by entreat, or otherwise.

Describe accurately, fully and completely, their respective relationships with said Contractor, including their ownership interests and their anticipated role in the management and operations of said Contractor.

2. Please describe the general development of said Contractor's business during the past five (5) years, or such shorter period of time that said Contractor has been in business.
3. Please state whether any of the following events have occurred in the last five (5) years with respect to said Contractor. If any answer is yes, explain fully the following:
 - (a) Whether a petition under the federal bankruptcy laws or state insolvency laws was filed by or against said Contractor, or a receiver fiscal agent or similar officer was appointed by a court for the business or property of said Contractor;
 - (b) Whether Contractor was subject of any order, judgment, or decree not subsequently reversed, suspended or vacated by any court of competent jurisdiction, permanently enjoining said Contractor from engaging in any type of business practice, or otherwise eliminating any type of business practice; and
 - (c) Whether said Contractor's business was the subject of any civil or criminal proceeding in which there was a final adjudication adverse to said Contractor which directly arose from activities conducted by the business unit or corporate division of said Contractor which submitted a bid or proposal for the subject project, if so please explain.
4. Please state whether any employee, agent or representative of said Contractor who is or will be directly involved in the subject project has or had within the last five (5) years; (i) directly or indirectly had a business relationship with the City of Atlanta (the "**City**"), (ii) directly or indirectly received revenues from the City or (iii) directly or indirectly receives revenues from the result of conducting business on City property or pursuant to any contract with the City. Please describe any such relationship.
5. Please state whether any employee, agent or representative of said Contractor who is or will be directly involved in the subject project has or had within the last five (5) years a direct or indirect business relationship (to the best of your knowledge and belief) with any elected or appointed City official or with any City employee, and fully describe such business relationship.

**Contractor's Disclosure Form and Questionnaire
FC-6006007909 Wireless Atlanta Broadband Initiative
Page Two**

NOTE: If any response to any question set forth in this questionnaire has been disclosed in any other document, a response may be made by attaching a copy of such disclosure. (For example, said Contractor's most recent filings with the Securities and Exchange Commission (SEC) may be provided if they are responsive to certain items within the questionnaire). However, for purposes of clarity, Contractor should correlate its responses with the exhibits by identifying the exhibit and its relevant text.

Disclosures must specifically address, completely respond and comply with all information requested and fully answer all questions requested by the City. Such disclosure must be submitted at the time of the bid or proposal submission and included as a part of the bid/proposal submitted for this project. Disclosure is required for Contractors, joint venture partners and first-tier Subcontractors and/or Sub-consultants.

Failure to provide required disclosure, submit officially signed and notarized documents or respond to any and all information requested/required by the City can result in the bid/proposal declared as non-responsive. This document must be completed and included as a part of the bid/proposal package along with other required documents.

Under penalty or perjury, I declare that I have examined this questionnaire and all attachments hereto, if applicable, to the best of my knowledge and belief, and all statements contained hereto are true, correct, and complete.

On this _____ day of _____, 200____

(Legal Name of Proponent)

(Signature of Authorized Representative)

(Title)

(Date)

Sworn to and subscribed before me,

this _____ day of _____, 200____

(Notary Public) (Seal)

Commission Expires _____
(Date)

EXHIBIT A

DRAFT CITY-CONTRACTOR AGREEMENT

EXHIBIT A

CITY OF ATLANTA

DRAFT CITY-CONTRACTOR AGREEMENT

Contractor:

Contract No. **FC-6006007909 Wireless Atlanta Broadband Initiative**

Address: _____

Telephone: _____

Contact: _____

Facsimile: _____

This Agreement is entered into the _____ day of _____, 200__, by and between the City of Atlanta ("**City**"), a Georgia Municipal Corporation and _____ ("**Contractor**"), an entity authorized to do business in the State of Georgia.

BACKGROUND

This Agreement will provide a wireless network infrastructure for the City of Atlanta. The Contractor must implement a low-cost wireless broadband network that will achieve the City's long term goals.

The City solicited proposals on behalf of the Department of Information Technology ("**DIT**") from proponents to provide a wireless broadband network.. _____ was determined to be the most qualified Contractor responding to the City's solicitation.

Consistent with terms and conditions of this Agreement, the Contractor will provide the specified equipment and professional services for DIT as requested in the Request for Proposals. This service will generally consist of performing services ("**Services**") as more fully set forth in Exhibit B, that is attached hereto and made a part thereof;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

Contractor and City agree that Services specified under this Agreement must be performed by Contractor in accordance with this Agreement, consisting of the following documents as hereinafter defined as "Agreement Documents."

- I. Contract Agreement;
- II. Exhibit A General Conditions;
- III. Exhibit B Scope of Services;
- IV. Exhibit C Proposal Submittals;
- V. Exhibit D Cost Proposal;
- VI. Exhibit E Legislation;
- VII. Appendix A Office of Contract Compliance;

- | | | |
|-------|------------|------------------------------------|
| VIII. | Appendix B | Insurance/Bonding Requirements; |
| IX. | Appendix C | Contractor's Disclosure Forms; and |
| X. | Appendix D | Addenda. |

PROJECT SUMMARY

The Services to be provided include, but not limited to:

The design, deployment and management of a city-wide wireless network. Additionally, ongoing operation and upgrades of the city-wide network, marketing, and providing customer service.

LEGISLATION

This Agreement is authorized by legislation adopted by the Council of City and approved by the Mayor of the City attached as Exhibit E, which is attached hereto and made a part of hereof.

TERM

This term of this Agreement is for five (5) years with four (4) one (1) year renewal options at the City's sole discretion.

This Agreement embodies the entire Agreement between the City and the Contractor and supersedes all other writings, statements and representations. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding not contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials or officers, to be attested or witnessed and notarized, and their corporate seals to be hereunto affixed as of the day and year date first above written.

Owner:
CITY OF ATLANTA

Contractor:

MAYOR (Seal)

PRESIDENT/VICE PRESIDENT

ATTEST:

MUNICIPAL CLERK

SECRETARY/ASST. SECRETARY
(affix corporate seal)

RECOMMENDED:

**CHIEF, DEPARTMENT
OF INFORMATION TECHNOLOGY**

APPROVED:

CHIEF FINANCIAL OFFICER

CHIEF PROCUREMENT OFFICER

CHIEF OPERATING OFFICER

APPROVED TO FORM:

CITY ATTORNEY