

**PARKS BOND MANAGEMENT AND PROFESSIONAL SERVICES
AGREEMENT BY AND BETWEEN THE CITY OF JOHNS CREEK, GEORGIA
AND CH2M HILL ENGINEERS, INC.**

This Parks Bond Management and Professional Services Agreement ("Agreement") is entered into by and between the City of Johns Creek, Georgia, a Georgia municipal corporation ("Municipality") and CH2M Hill Engineers, Inc., a Delaware corporation, ("Consultant") as of _____ day of _____, 2017. ("Effective Date"). The Municipality and the Consultant shall be jointly referred to as the "Parties".

1. TABLE OF CONTENTS

2. Recitals	2
3. Definitions	2
4. Performance	2
5. Changes to the Scope of Services.....	4
6. Term	5
7. Fee	5
8. Invoice & Payment Structure	5
9. Equipment.....	6
10. Independent Contractor	7
11. Consultant Personnel	8
12. Indemnification.....	11
13. Insurance.....	11
14. Assignment.....	12
15. Conflicts of Interest.....	13
16. Third Party Reliance	13
17. Records	14
18. Ownership of Documents	14
19. Notices.....	15
20. Disputes.....	15
21. Default	16
22. Termination.....	17
23. Force Majeure.....	17
24. Authority to Execute.....	18
25. Governing Law.....	18
26. Counterparts	18
27. Entire Agreement.....	18
28. Signatures.....	19
29. Exhibit A – Parks Bond Projects	20
30. Exhibit B – Scope of Services.....	22
31. Exhibit C – Performance Measures and Workload Measures	31
32. Exhibit D – Fee for Services	33
33. Exhibit E – Immigration & Security Form	34
34. Exhibit F – O.C.G.A. § 50-36-1(e)(2) Affidavit	35

2. RECITALS

WHEREAS, the Municipality approved a parks bond project list as shown in Exhibit A – Parks Bond Projects; and

WHEREAS, the Municipality is seeking a consultant to perform the services listed in Exhibit B – Scope of Services, ("Services"); and

WHEREAS, Consultant has agreed to render to the Municipality the performance of the Services.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Municipality and the Consultant agree as follows:

3. DEFINITIONS

- 3.1. "City Manager" shall mean the City Manager or designee who shall act as the Municipality's primary representative and point of contact for all regular reports, work orders and adjustments to Services allowable under this Agreement in the agreed-upon format between the Municipality and the Consultant.
- 3.2. "City Council" shall mean the municipal body having legislative and administrative powers for the City of Johns Creek inclusive of the Mayor and six Councilmembers. The City Council has the authority to enter into this Agreement and authorize any Amendments to the Services as further described in Section 5.2 of this Agreement.
- 3.3. "City Equipment" shall have the meaning set forth in Section 9.4 of this Agreement.
- 3.4. "Consultant Personnel" shall mean all person(s) under the direct supervision and control of the Consultant who perform the Services provided for herein on behalf of the Consultant, whether employees or temporary employees.
- 3.5. "Consultant Subcontractor(s)" shall mean any subcontractor(s) hired, contracted with, or directly engaged by Contractor to perform Services.
- 3.6. "Due Date" shall have the meaning set forth in Section 8.2 of this Agreement.
- 3.7. "Fees" shall mean the amounts charged by Consultant to Municipality, including lump sum and time and materials amounts, for the performance of Services, as more fully described in Exhibit D - Fees for Services.
- 3.8. "Key Personnel" shall mean the Consultant Personnel with the title Parks Manager.
- 3.9. "Municipality Subcontractor(s)" shall mean any subcontractors hired, contracted with or directly engaged by the Municipality to perform services as delegated by the Municipality other than those set forth in this Agreement.
- 3.10. "Performance Measures" shall have the meaning set forth in Section 4.3.1 of this Agreement and more fully described in Exhibit C – Performance Measures and Workload Measures.
- 3.11. "Services" shall mean the scope of services and as more fully described in Exhibit B - Scope of Services.
- 3.12. "Term" shall have the meaning set forth in Section 6.1 of this Agreement.
- 3.13. "Workload Measures" shall have the meaning set forth in Section 4.3.2 of this Agreement and as more fully described in Exhibit C – Performance Measures and Workload Measures.

4. PERFORMANCE

- 4.1. Professionalism. In its performance of the Services, the Consultant shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession

- practicing or performing the substantially same or similar services and in accordance with the State of Georgia's adopted codes, the Municipality's adopted Code of Ordinances, and industry standards.
- 4.2. Performance Measures and Workload Measures. As provided in Exhibit C – Performance Measures and Workload Measures, the Parties have identified Performance Measures and Workload Measures for Services.
- 4.2.1. Performance Measures are performance-based measures that are designed to provide management an in-depth perspective on the Consultant's efficiency, effectiveness, and performance of the Services. The Consultant has direct influence over its performance on Performance Measures, each measure is tied to a component of the Services, and each measure is correlated with a specific performance target.
- 4.2.2. Workload Measures track and monitor the workload of the Consultant. The Consultant has little influence over the workload, so no specific targets are assigned to workload, but the Parties see benefit in tracking workload measures as important in identifying community trends and resource allocation.
- 4.2.3. Changing Performance and Workload Measures. The Parties recognize that over the term of the Agreement, flexibility will be necessary in order to meet the Municipality's evolving needs and priorities. The Performance and Workload Measures may be adjusted by mutual consent of the City Manager and the Consultant.
- 4.2.4. Relief to Performance Targets. The City Manager, in his or her sole discretion, may grant relief from the performance targets associated with Performance Measures due to changes in the Municipality's needs, priorities, or reallocations as deemed merited in the City Manager's sole discretion.
- 4.3. Reporting. Consultant will track, record, and report Performance Measures and Workload Measures in a timely and professional manner.
- 4.3.1. Beginning on October 1, 2017, the Consultant shall track the Performance Measures and Workload Measures on a monthly basis. The Parties agree that automation of data collection is ideal to reduce error in collection and reduce administrative burdens of tracking, however, the Parties acknowledge as of the Effective Date, few if any of the indicators and measures are automated. For the first year of the Agreement, the Consultant agrees to track all measures in Microsoft Excel, or alternate program(s) agreeable to both Parties. The Parties agree to work together through the term of the Agreement to identify reasonable opportunities to automate data collection.
- 4.3.2. Beginning in January 2018, the Consultant shall submit quarterly reports of the Performance Measures and Workload Measures by the fifth of the month following the end of the quarter in a format agreed upon between the Parties.
- 4.3.3. Annual reports to the Municipality detailing, at a minimum, the Consultant's performance for the previous fiscal year, including Performance Measures and Workload Measures shall be provided to the Municipality no later than October 31 of each year.
- 4.4. Customer Service. Both Parties have an interest in providing a high level of customer service and developing ways to evaluate the effectiveness of the Consultant's interactions with the public. The Consultant will work with the Municipality during the Term of the Agreement to identify both hard and soft metrics and methods to gauge customer service such as surveys, secret shoppers, and other more innovative efforts. The Municipality will be responsible for costs associated with additional efforts to gauge customer service not included in the Performance Measures. If the implementation of new efforts to gauge customer service results in an increased dedication of Consultant's time and personnel to manage

the effort, the Parties shall mutually agree, through good faith negotiations, to an equitable adjustment to the Fees for the Services.

- 4.5. Continuous Improvement. Both Parties have an interest in performing the Services in a manner that is highly efficient, effective, and utilizes innovation and continuous improvement. To that end, the Consultant in its normal course of delivery of the Services, shall form a committee ("Continuous Improvement Committee") which shall meet quarterly during the Term of the Agreement to review operations in key areas and identify processes and procedures that can be improved. On an annual basis, the Continuous Improvement Committee will report its finding to the City Manager for further review and consideration of implementation of new technologies or processes for the improved performance of the Services. If the implementation of new technologies or processes result in a change in the cost of providing the Services, the Parties shall mutually agree, through good faith negotiations, to an equitable adjustment to the Fees for the Services.
- 4.6. Third Party Failures. To the extent that the Consultant must cooperate and/or perform services in conjunction with third parties, including any Municipality Subcontractors, the Consultant is not responsible or liable for failures of third parties or Municipal Subcontractors to fulfill their obligations or duties nor any damages arising out of the failures of third parties or Municipality Subcontractors so long as the Consultant completes obligations and duties in accordance with Section 4.1. The Consultant is not responsible or liable for failures of third parties or Municipal Subcontractors to fulfill their obligations or duties nor any damages arising out of the failures of third parties or Municipality Subcontractors so long as the Consultant completes obligations and duties in accordance with Section 4.1. If the Municipality Subcontractors or third party fails to maintain project schedule (i.e. weather delays, etc.) or incurs project budget impacts (i.e. materials availability, unforeseen conditions, etc.) and said acts negatively impact the Consultant's ability to deliver the Services on time and within budget, the Consultant will notify the Municipality who shall grant relief from the performance targets associated with Performance Measures (including but not limited to budget and schedule) directly impacted by the third party's failure provided that notice of third party's failure is provided to the City Manager along with a plan to address the issues that have arisen within a reasonable time. For purposes of this section, "reasonable time" shall be fifteen (15) business days except when the failure affects the public health, safety or welfare, in which case reasonable time may be less than fifteen (15) business days. If the Municipality requests the Consultant take over obligations or duties of a third party the process outlined in the following Section 5 - Changes to Scope of Services section should be followed.

5. CHANGES TO SCOPE OF SERVICES

- 5.1. Adjustments. The Parties recognize that over the Term of the Agreement, flexibility will be necessary in order to meet the Municipality's evolving needs and priorities. With concurrence from the City Manager, the Consultant may temporarily (defined as a period not to exceed ninety (90) days) reallocate resources to meet shifts in the Municipality's needs and priorities so long as the reallocations do not adversely affect the cost of services (as measured in the fee for Services) or the quality of Services (as measured by the Performance Measures).
- 5.2. Amendments. Permanent (defined as a period exceeding ninety (90) days) reallocations or changes to Services must be mutually agreed upon between the Parties and shall be made in writing as an amendment to this Agreement. If the permanent change impacts the fee for the Services, an amendment to this Agreement shall specifically designate the change to fees for the Services.

6. TERM

- 6.1. Term. Notwithstanding fiscal non-appropriation as defined under O.C.G.A. § 36-60-13, the Effective Date of this Agreement shall be October 1, 2017, with a term of 5 years, and the expiration date ("Expiration Date") shall be September 30, 2022 ("Term").
- 6.2. Renewal. This Agreement shall renew for up to five, one-year options at the sole option of the Municipality upon written notice to the Consultant by July 1 of each year following the Term.

7. FEES

- 7.1. Fee. In consideration of the Consultant providing the Services, the Municipality shall pay the Consultant for the Services performed in accordance with Exhibit D – Fee for Services.
- 7.2. Increases. All inflationary costs and merit increases for Consultant Personnel are included within the cost listed within Exhibit D – Fee for Services. The Municipality shall not be obligated to renegotiate or increase any fee for the Services during the Term of the Agreement or renewal options to further address inflationary or merit increases for Consultant Personnel.
- 7.3. Fringe. All of the Consultant's overhead costs, including, but not limited to, costs of travel, training, and insurance coverage, are included within the costs listed within Exhibit D – Fee for Services.
- 7.4. Miscalculations. The Municipality shall not be obligated to renegotiate or increase any fee for the Services during the Term of the Agreement based on a Consultant's mistake or miscalculation of prices, underestimation of costs, or for any other reason.
- 7.5. Financial Considerations. Consultant does not warrant that the Municipality's project cost will not vary from the project costs set forth in Exhibit A and Exhibit B.

8. INVOICE & PAYMENT STRUCTURE

- 8.1. Invoicing. Each month the Consultant will invoice the Municipality the fees as set forth in Exhibit D – Fee for Services.
 - 8.1.1. With services commencing on October 1, 2017, the first invoice is anticipated between November 1, 2017 and November 5, 2017.
 - 8.1.2. The monthly invoice shall be accompanied with documentation of hours worked by the individuals providing the Services following the delivery of Services for such month.
- 8.2. Payments Due. Municipality shall pay all undisputed Fees according to the terms of this Agreement. Municipality shall compensate the Consultant within thirty (30) days of the Municipality's receipt of an invoice ("Due Date").
- 8.3. Disputed Charges. If the Municipality disputes any invoices (or portion thereof) issued by the Consultant, the Municipality shall notify the Consultant within five (5) business days of receipt of invoice detailing out the invoice charge(s) disputed and reasons why. The Consultant shall respond within five (5) business days to such notification. If such issue(s) is/are not resolved within fifteen (15) business days after notification such issue(s) shall be handled as in accordance with Section 20 Disputes. Valid disputes on invoices shall not accrue interest until the date of resolution, and applicable interest, if any, shall be calculated from the date of resolution of the dispute. In any case, Municipality shall pay any undisputed portion of any invoice by the Due Date.
- 8.4. Penalty for Delayed Payments. The Municipality shall pay interest at an annual rate equal to Wells Fargo Bank, N.A.'s prime rate plus one and one-half percent (1 ½%) (said amount of interest not to exceed any limitation provided by law) on Fees not paid and received within sixty (60) days from date of receipt by the

Consultant's monthly invoice, such interest being calculated from the due date of the payment, so long as said delay is not caused by the Consultant.

9. EQUIPMENT

- 9.1. Data. The Municipality shall provide all data, information, plans, specifications and other documentation within its possession reasonably requested by Consultant to perform Services.
- 9.2. Office Space. The Municipality shall provide dedicated office space within the City Hall, or such other location as agreed upon by the Parties, for all full-time office-based Consultant Personnel providing Services under this Agreement. The Municipality shall provide office space for temporary (such as interns), part-time, and field-based Consultant Personnel necessary to provide Services under this Agreement, however, that office space may be shared, flexible, or common work areas. The Consultant shall be solely responsible to provide for office space for other Consultant Personnel (those occasionally providing part-time assistance or supervision for Services under this Agreement and those not providing Services under this Agreement).
 - 9.2.1. The Consultant shall keep the provided office space free from accumulation of waste materials and other debris resulting from provision of the Services. At the completion of each work day, the Consultant shall place all waste materials and debris in waste bins.
 - 9.2.2. Should the Municipality decide to move the office space to a different location, the Municipality shall be responsible for its associated relocation expenses, including but not limited to transport, re-assembly of Municipality's furnishings and equipment, associated infrastructure, network cabling, internet, telephones, and computer equipment supplied by the Municipality.
- 9.3. Utilities. The Municipality shall provide a power supply, utility services, and a common-use (shared) printer for all Consultant Personnel necessary to provide Services under this Agreement. The Consultant shall be solely responsible to provide for a power supply, utilities, and printers for other Consultant Personnel (those occasionally providing part-time assistance or supervision for Services under this Agreement and those not providing Services under this Agreement).
- 9.4. City Equipment. The Municipality shall supply furniture, fixtures, and equipment for all City Hall offices and full-time office-based Consultant Personnel. Equipment includes those items customarily supplied to office staff such as chairs, computers, phones and office supplies ("City Equipment"). If the Municipality's failure to provide or maintain equipment impacts the Consultant's ability to deliver the Services, the Municipality shall grant relief from the performance targets associated with Performance Measures directly impacted by the Municipality's failure provided that notice of Municipality's failure is provided to the City Manager and a reasonable time to cure the failure is provided. For purposes of this section, "reasonable time" shall be fifteen (15) business days except when the failure affects the public health, safety or welfare, in which case reasonable time may be less than fifteen (15) business days.
 - 9.4.1. All City Equipment shall be used only for Municipality purposes in performance of this Agreement and pursuant to City policies, and shall not be used for any purely corporate, other municipality Consultant business, non-governmental Consultant business, or personal purpose. All City Equipment utilized by Consultant Personnel shall be kept clean, free of damages, and in safe operating condition.
 - 9.4.2. For Consultant Personnel performing Services in the field or those who regularly work on-call after hours, Municipality shall provide a phone, smart device, tablet, tools, and equipment, etc. necessary in order to accomplish the Services of this Agreement. If additional Consultant Personnel need phones, smart devices, tablets, etc. in order to accomplish the Services of this Agreement, the Consultant is expected to provide such equipment to the Consultant Personnel at its own expense.

The Consultant is required to comply with Municipality's open records and Information Technology Department security requirements associated with data and usage of such equipment, which such requirements shall be provided to Consultant Personnel.

- 9.5. Personal Protective Equipment. The Consultant shall provide all personal protective equipment necessary for Consultant Personnel operating in the field or other situations necessitating such equipment.
- 9.6. Vehicles. The Municipality shall supply vehicles necessary to perform the Services of the Agreement. The vehicles shall be pooled but the Municipality shall make reasonable efforts to ensure the quantity of the vehicles shall be sufficient to provide each person who routinely performs field work shall have access to a vehicle when needed. Notwithstanding fiscal non-appropriation as defined under O.C.G.A. 36-60-13, the Municipality shall make reasonable efforts to maintain and repair all provided vehicles. Notwithstanding fiscal non-appropriation as defined under O.C.G.A. 36-60-13, the Municipality shall make reasonable efforts to replace vehicles at Municipality's expense when the age of the vehicle reaches ten years or 150,000 miles. If the Municipality's failure to maintain or replace vehicles impacts the Consultant's ability to deliver the Services, the Municipality shall grant relief from the performance targets associated with Performance Measures directly impacted by the Municipality's failure.
 - 9.6.1. Any Consultant Personnel operating vehicles supplied by the Municipality must meet all driver qualifications and training requirements imposed on Municipality Employees and abide by all Municipality policies related to use of Municipality vehicles.
 - 9.6.2. In the event of an accident or damage to a vehicle supplied by the Municipality, in addition to following the Consultant's policies for health and safety of Consultant Personnel, the Consultant will notify the City Manager of the accident or damage to the vehicle.
 - 9.6.3. Vehicles supplied by the Municipality are to be used exclusively for the Services provided to the Municipality and shall not be utilized as take-home vehicles except as authorized by the City Manager.

10. INDEPENDENT CONTRACTOR

- 10.1. Independence. The Consultant is an independent contractor, and neither the Consultant, nor any employee or agent thereof, shall be deemed for any reason to be an employee or agent of the Municipality. As the Consultant is an independent contractor, the Municipality shall have no liability or responsibility for any direct payment of any salaries, wages, payroll taxes, or any and all other forms or types of compensation or benefits to any personnel performing services for the Municipality under this Agreement. The Consultant shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Consultant, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. Accordingly, Municipality shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers compensation benefits under O.C.G.A. § 34-9-1 *et seq.* or any other amenities of employment to any of the Consultant Personnel or any other liabilities whatsoever unless otherwise specifically provided herein.
- 10.2. Not Joint Employers. Nothing contained in this Agreement shall be construed to create a joint employer relationship between the Municipality and the Consultant with respect to any Consultant Personnel. Nothing in this Agreement shall be construed to create a joint employer relationship between the Municipality and the Consultant with respect to any Municipality employees.

11. CONSULTANT PERSONNEL

- 11.1. Qualified Personnel. The Consultant represents and warrants to the Municipality that it will retain qualified professionals that possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement.
- 11.2. Certifications. The professionals employed by the Consultant will maintain certifications, certificates, and licenses as required for the Services that they individually and collectively provide to the Municipality.
- 11.3. Background Checks. Prior to assigning any individual to the Municipality, the Consultant shall subject said individual to a background check which shall include, at a minimum: motor vehicle records, criminal records, military records, and state licensing records (when applicable). Pursuant to the duties of the position, other applicable background checks may be requested by the Municipality and performed by the Consultant upon agreement by the Parties.
 - 11.3.1. The Consultant shall exclude any person from the performance of Services for the Municipality if that person's background check reveals behavior that demonstrates the person is not fit or would not meet industry standards in performing duties assigned under this Agreement.
 - 11.3.2. The Consultant shall subject current Consultant Personnel to a driver history check every two years unless relief from this requirement is waived by the City Manager.
 - 11.3.3. The City Manager shall have the right, with respect to any Consultant Personnel, to approve, deny, restrict, or remove access to a Municipality vehicle, City Equipment, or Municipality property.
- 11.4. Non-discrimination. The Consultant nor Municipality will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin or any other category protected by applicable federal or state law. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity laws.
- 11.5. ADA. The Consultant shall comply with the appropriate provisions of the Americans with Disabilities Act (the "ADA"), as enacted and as from time to time amended, and any other applicable federal regulations. A signed certificate confirming compliance with the ADA may be requested by the Municipality at any time during the term of this Agreement.
- 11.6. Drug Free Workplace. The Consultant shall maintain a Drug Free Workplace pursuant to the federal Drug Free Workplace Act, as amended from time to time, and shall further ensure that its agents and subcontractors maintain a Drug Free Workplace pursuant to other applicable state laws and regulations. By execution of this Agreement, Consultant certifies that a drug-free workplace will be provided for the Consultant's employees during the performance of this Agreement.
- 11.7. E-Verify. The Consultant is registered with and is authorized to use and uses the federal work authorization program commonly known as E-Verify. The Consultant's federal work authorization user identification number is 123606; authorization date of May 30, 2008.
- 11.8. Authorized Workers. Pursuant to O.C.G.A. § 13-10-91 and Rule 300-10-1-02, Consultant warrants, represents, acknowledges, and agrees that:
 - 11.8.1. The Consultant does not knowingly employ or contract with an illegal alien;
 - 11.8.2. The Consultant shall not enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien;

- 11.8.3. The Consultant shall execute an affidavit verifying that the Consultant has registered and participates in the federal work authorization program to verify information of all new employees, per O.C.G.A. § 13-10-90, et.seq., and Georgia Department of Labor Regulations Rule 300-10-1-02. The appropriate affidavit is attached hereto as "Exhibit E – Immigration & Security Form" and incorporated herein by reference and made a part of this Agreement.
- 11.9. Federal Immigration and Nationality Act. The Consultant shall execute an affidavit verifying status for city public benefit required pursuant to O.C.G.A. § 50-36-1, verifying United States citizenship or status as a permanent resident or qualified alien or non-immigrant under the Federal Immigration and Nationality Act. The appropriate affidavit is attached hereto as "Exhibit F – O.C.G.A § 50-36-1(e)(2) Affidavit" and incorporated herein by reference and made a part of this Agreement.
- 11.10. Unsatisfactory Personnel. In no event shall the Municipality be responsible for monitoring or assessing the suitability of any Consultant Personnel. However, the Consultant shall transfer promptly from the Municipality any Consultant Personnel that the City Manager advises are not satisfactory and replace such Consultant Personnel with individuals satisfactory to the Municipality.
- 11.11. Changes in Personnel. The Consultant shall promptly notify the Municipality prior to changes in Consultant Personnel. When practicable, the Consultant will provide the Municipality with at least a two week notice period prior to changes in Consultant Personnel.
 - 11.11.1. The Consultant will encourage Consultant Personnel choosing to voluntarily leave employment with the Consultant to provide a two week notice period prior to their departure.
 - 11.11.2. Consultant shall have the right to reassign Consultant Personnel from the Agreement provided that prior to approaching Consultant Personnel regarding potential reassignments (internal or external), the Consultant has discussed with the City Manager.
 - 11.11.2.1. Not including any transfers of unsatisfactory Consultant Personnel, the Consultant shall take reasonable actions, and collaborate with Municipality as needed, to encourage Consultant Personnel retention during the Term and utilize best efforts to limit reassignment of Consultant Personnel for reasons other than promotion or career advancement.
 - 11.11.3. For the purpose of this Agreement, the Parks Manager is considered a Key Personnel position.
 - 11.11.3.1. In the event of a vacancy of a Key Personnel position, the Consultant shall endeavor to fill such position within sixty (60) days from the date such position is vacated with a permanent replacement. For the avoidance of doubt, during any such vacancy of a Key Personnel position, Municipality shall be not billed for any time associated with such Key Personnel position.
 - 11.11.3.2. In the event of a vacancy for a Key Personnel position, the City Manager shall be provided an opportunity to review and interview Consultant's proposed candidates. No person shall be appointed to a Key Personnel position without the concurrence of both Parties. As part of the review process, the anticipated salary range for each proposed finalist shall be disclosed to the City Manager.
 - 11.11.4. In all Consultant Personnel additions, the Consultant shall provide notice of any addition in staff and information related to the level of education, qualifications, or experience for the additional Consultant Personnel with the City Manager prior to offering employment or assignment to the Agreement to existing or proposed Consultant Personnel. If required due to a change in price or scope, such addition in Consultant Personnel will be made in accordance with Section 5 of this Agreement.

- 11.11.5. In all Consultant Personnel replacements, the Consultant shall provide replacement Consultant Personnel with similar education, qualifications, or experiences to reasonably continue with the same degree of care, skill, and professionalism in performing the Services.
- 11.11.6. If removing Consultant Personnel without intent to replace, the Consultant shall take necessary steps to maintain performance for meeting all Services and Performance Measures.
- 11.12. Attire. Consultant Personnel shall wear neat-appearing appropriate attire for the Services rendered in applicable setting (either office, field, or some combination) including footwear of a style that complies with all legal and safety requirements, including and without limitation, the requirements of OSHA.
 - 11.12.1. Consultant Personnel are not required to wear attire with the Municipality's logo. However, if Consultant Personnel chooses to wear Municipality-approved attire with the logo of the Municipality, Consultant Personnel shall be performing Services for the Municipality.
 - 11.12.2. Consultant Personnel shall not wear attire with the logo of the Consultant when performing Services for the Municipality.
 - 11.12.3. Consultant Personnel shall wear or carry an identification card and access badge which will be issued by the Municipality. Each Consultant Personnel who is issued an identification card and access badge shall be required to sign personally for the card and badge. The Consultant shall be held accountable for the card and badge and must assure that they are returned to the Municipality upon termination of Consultant Personnel's employment with the Consultant or termination of the Agreement.
- 11.13. Subsequent Employment. In the event of partial termination, full termination, or expiration of this Agreement, the Municipality or a third party performing similar services under a subsequent agreement with the Municipality shall have the right to offer employment to any Consultant Personnel performing Services under this Agreement.
 - 11.13.1. The Consultant shall not enter into an arrangement, contractual or otherwise, with Consultant Personnel which would prohibit an individual's ability to accept an employment offer from the Municipality or a third party.
 - 11.13.2. For the avoidance of doubt, in the event of a partial termination, Municipality shall have the right to offer employment only to those Consultant Personnel performing Services effected by partial termination. Unless mutually agreed between the Parties, the Municipality shall not either directly or indirectly solicit, induce, recruit or encourage any of the Consultant Personnel to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or hire Consultant Personnel. Nothing contained in this provision shall prohibit the hiring of such Consultant Personnel if such hire was not induced and the employee independently and without notice of opportunity by the Municipality applied for the position and the position was both open to the public for application and the employee was subject to a competitive process.

12. INDEMNIFICATION

- 12.1. Consultant Indemnification. To the fullest extent permitted by law, Consultant shall be liable for and shall defend, save, indemnify, and hold harmless the Municipality, its elected and appointed officials, employees and volunteers and others working on behalf of the Municipality, from and against any and all claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities by reason of personal injury, including bodily injury or death and/or property damage to the extent that any such injury, loss or damage is caused by the negligence or breach of duty of Consultant or any officer, employee, representative, or agent of Consultant.

- 12.2. Municipality Indemnification. To the extent allowable by Georgia law, the Municipality shall be responsible for and shall defend, save, indemnify, and hold harmless Consultant, its officers, employees, representatives, Municipality Subcontractors and agents, from and against any and all claims, demands, suits, costs (including reasonable legal costs), expenses, and liabilities by reason of personal injury, including bodily injury or death and/or property damage to the extent that any such injury, loss or damage is caused by the negligence or breach of duty of the Municipality or any officer, employee, representative, Municipality Subcontractors or agent of the Municipality.
- 12.3. Incidents. If either of the Parties becomes aware of any incident likely to give rise to a claim under the above indemnities, it shall notify the other in writing within twenty-four (24) hours of the incident and both Parties shall cooperate fully in investigating the incident.
- 12.4. Consequential Damages. In disputes between Municipality and Consultant, in no event shall either party, its subcontractors or their officers or employees be liable to the other party for any special, indirect or consequential damages, whether such liability arises in breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action, provided, however, such limitation does not include any liability for which Consultant is obligated to indemnify Municipality based upon special, indirect or consequential damages suffered by any third parties.
- 12.5. Civil Penalties. The Parties agrees that Consultant shall be liable for fines or civil penalties to a maximum aggregate of One Hundred Fifty Thousand Dollars (\$150,000) per year, which may be imposed by any federal or state department or regulatory agency that are a result of Consultant's negligent operation. The Municipality will assist the Consultant to contest any such fines in administrative proceedings and/or in court prior to any payment by the Consultant. The Consultant shall pay the costs of contesting any such fines. The Consultant shall not be liable for such fines or civil penalties that result from violations that occurred prior to the effective date of this Agreement or for the effects of prior violations by the Municipality that have contributed to the assessment of any such fine or civil penalty caused by the Consultant's negligent operations.

13. INSURANCE

- 13.1. Insurance. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Consultant pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law. The minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Municipality. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
 - 13.1.1. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of one million dollars (\$1,000,000) bodily injury each accident, one million dollars (\$1,000,000) bodily injury by disease – policy limit, and one million dollars (\$1,000,000) bodily injury by disease – each employee.
 - 13.1.2. Commercial general liability insurance with minimum combined single limits of one million five hundred thousand dollars (\$1,500,000) each occurrence and five million dollars (\$5,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent Consultant's, and products. The

policy shall contain a severability of interest provision, and shall be endorsed to include the Municipality and the Municipality's officers, employees, and consultants as additional insureds.

- 13.1.3. Professional liability insurance with minimum limits of five million dollars (\$5,000,000) each claim and five million dollars (\$5,000,000) general aggregate. Consultant shall be responsible for maintaining professional liability insurance for a minimum of two (2) years from the date of expiration of this Agreement.
 - 13.1.4. Excess liability insurance with minimum limits of twenty five million dollars (\$25,000,000) each occurrence and twenty five million dollars (\$25,000,000) in general aggregate.
 - 13.1.5. Automobile Liability Coverage is required that shall cover all owned, non-owned, and hired automobiles with a limit of not less than two million dollars (\$2,000,000) combined single limit each accident.
 - 13.1.6. Pollution condition insurance with minimum limits of two million dollars (\$2,000,000) each pollution condition and two million dollars (\$2,000,000) aggregate.
- 13.2. Additional Insured. The Municipality shall be named as an additional insured on Consultant's insurance coverage for insurance policies noted in Sections 13.1.2, 13.1.5, and 13.1.6.
 - 13.3. Certificates of Insurance. Prior to commencement of the Services, Consultant shall submit certificates of insurance acceptable to the Municipality.
 - 13.4. Notice. Every policy of insurance shall provide that the Municipality will receive notice no less than thirty (30) calendar days prior to any cancellation, termination, or a material change in such policy.
 - 13.5. Failure to Maintain. The Consultant's failure to obtain and continuously maintain policies of insurance in accordance with this Section and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Consultant arising from performance or non-performance of this Agreement. Failure on the part of the Consultant to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the Municipality may immediately terminate this Agreement.

14. ASSIGNMENT

- 14.1. Assignment. Neither party shall assign all or part of its rights, duties, obligations, responsibilities, nor benefits set forth in this Agreement to another entity without the prior written approval of both Parties; consent shall not be unreasonably withheld.
- 14.2. Subcontracting. In the event Consultant wishes to directly engage a Consultant Subcontractor to perform certain Services under the Agreement, Consultant shall not subcontract portions of those Services without written approval of the Municipality, which approval shall not be unreasonably withheld. If the Consultant intends to subcontract portions of the Services, the Municipality must be provided with information detailing the skills, qualifications, and professionalism of the persons or entities with which Consultant intends to subcontract and the portion of the Services the subcontractor is proposed to perform.
 - 14.2.1. If the Parties agree to the use of Consultant Subcontractor, the Consultant remains responsible for the Consultant Subcontractor's performance or failure to perform. Consultant Subcontractors will be subject to the same performance criteria, applicable to the work performed, that would otherwise be expected of the Consultant. Performance clauses shall be included in agreements with all Consultant Subcontractors to assure quality levels and agreed upon schedules are met.

15. CONFLICTS OF INTEREST

- 15.1. Ineligible for Other Contracts. In the performance of this Agreement, the Consultant may have access to and use of the Municipality's sensitive financial and management data as well as to proprietary data from various Municipality contracts and contractors. As such, the Consultant shall be ineligible to perform any other contract for the Municipality without prior written authorization of the City Manager. This restriction shall remain in effect for the duration of the Agreement.
- 15.2. Other Clients. The Consultant will not review or perform any services regarding any application made to the Municipality by any other client of Consultant, unless the services Consultant performs for such client are unrelated to the Municipality. In such instance, Consultant shall disclose the relationship immediately to the City Manager, who may retain a third party or alternate service provider to Consultant for those services the performance of which by the Consultant would create a perceived or real conflict of interest. The fees for the alternate to Consultant shall be deducted from the fee paid to the Consultant.
- 15.3. Incompatible Relationships. Neither the Consultant nor any of its officers or employees shall have or hold any employment or contractual relationship that is antagonistic or incompatible with Consultant's loyal and conscientious exercise of judgment related to its performance under this Agreement.
- 15.4. No Kickbacks. Neither Consultants nor any of its directors, officers or Consultant Personnel shall obtain any kickbacks or benefits for itself, themselves or other clients as a result of any Municipality purchases or transactions.
- 15.5. No Collusion. Consultant shall not collude with other Municipality service providers regarding Municipality business or matters. Consultant shall not enter into any business relationships with other Municipality service providers regarding Municipal business or matters, without the approval of the City Manager, which approval may be withheld at the City Manager's sole discretion.
- 15.6. No Fees for Agreement. Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. Provided however, this provision does not encompass Consultant's ability to have hired or engaged consultants to assist in preparation of the proposal and delivery of the services hereunder. For the breach or violation of this provision, the Municipality shall have the right to terminate the Agreement without liability at its discretion, to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

16. THIRD PARTY RELIANCE

This Agreement is intended for the mutual benefit of the Parties hereto and no third party rights are intended or implied.

17. RECORDS

- 17.1. Public Access. The Consultant understands that the public shall have access, at all reasonable times, to all records, documents, notes, work product, other material, and information pertaining to the Municipality, subject to the provision of O.C.G.A. §50-14-1 *et seq.* and agrees to allow access by the Municipality and the public to all documents subject to disclosure under applicable law.
- 17.2. Compliance Required. Consultant's willful failure or refusal to comply with requests for access may result in the immediate termination of this Agreement by the Municipality.

18. OWNERSHIP OF DOCUMENTS

- 18.1. Intellectual Property Ownership. The Consultant shall own all rights to software code, processes, systems, chemical or mechanical representations not prepared exclusively for the Municipality with a non-exclusive non-transferable paid up royalty free license to the Municipality for the Term of this Agreement. No title or ownership of any intellectual property is transferred to the Municipality under this Agreement. All rights to intellectual property that is developed solely by Municipality personnel prior to or during this Agreement are owned solely by the Municipality. In instances where the Municipality brings forth intellectual property marked as confidential and requests Consultant development and assistance, the parties shall separately negotiate such ownership rights for each instance.
- 18.2. Work Product Ownership. The Municipality shall retain ownership of all records, documents, notes, data, work product, deliverables, and other materials created by Consultant in the performance of the Services hereunder this Agreement. All records, documents, notes, data and other materials required for or resulting from the performance of the Services hereunder shall not be used by the Consultant for any purpose other than the performance of the Services hereunder without the express prior written consent of the Municipality.
- 18.3. Transfer of Documents. If this Agreement expires or is terminated for any reason, all records, documents, notes, data and other materials maintained or stored by Consultant pertaining to the Services will be provided to and become property of the Municipality.
- 18.4. Documents for Audit. At reasonable times, and for a period of up to three (3) years following the termination or conclusion of this Agreement, the Municipality and its duly authorized representatives shall have access to any books, documents, papers and records of the Consultant that are related to this Agreement for the purposes of audit or examination, other than the Consultant's financial records, and may make excerpts and transcriptions of the same.
 - 18.4.1. Consultant agrees to maintain all such books and records at its place of business for a period of three (3) years after final payment is made under this Agreement. Consultant shall make all necessary books and records available for audit in Fulton County, Georgia.
- 18.5. Confidentiality by Municipality. Municipality will treat any information received under or through this Agreement in strictest confidence and will not disclose such information to third parties except where such information: (a) was part of the public domain when received, or becomes a part of the domain through no action or lack of action by Municipality, or (b) prior to disclosure was already in Municipality's possession and not subject to an obligation of confidence imposed in another relationship, or (c) subsequent to disclosure is obtained from a third party whom is lawfully in possession of such information and not subject to a contractual relationship to Consultant with respect to such information, or (d) must be disclosed as required by law or court order. Municipality will work with the Consultant to implement and maintain a policy and procedure designed to protect proprietary and confidential information, and will keep any employee receiving such information from unauthorized publication and disclosure of such information. Municipality agrees that access to and dissemination of such information shall be limited to its employees having a need to know. Municipality shall continue to maintain appropriate internal policies and procedures which in its judgment are reasonably sufficient to protect the confidential nature of such information.

19. NOTICES

- 19.1. Written Notice. Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, hand delivered, addressed to

the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. Notice shall be deemed given upon receipt by any method of delivery authorized above. For the present, the Parties designate the following as the respective places for giving of notice:

	If to the Municipality:	If to the Consultant:
19.2. Elect ronic Cop y. A copy of	Warren Hutmacher, City Manager City of Johns Creek 12000 Findley Road, Suite 400 Johns Creek, GA 30097	Jonathan A. Mantay, Vice President CH2M 6600 Peachtree Dunwoody Road, Bldg 400, Suite 600 Atlanta, GA 30328

any notice sent in writing shall also be sent by e-mail. For the present, the Parties designate the following as the respective individuals for giving e-mail copy of notices:

If to the Municipality:
warren.hutmacher@johnscreekga.gov

If to the Consultant:
wp.wright@ch2m.com

- 19.3. Changes in Designee. Either party shall give written notice to the other party of any change in its designee and/or place for giving notice.

20. DISPUTES

- 20.1. Discussion. In the event that either party believe there is a dispute regarding this Agreement, or any of its terms, conditions, or obligations, a designated representative of the Consultant identified in Section 19 Notices and the City Manager shall meet and discuss in an attempt to reach resolution on such dispute within the timeframe for such meeting requested by the aggrieved party or as otherwise provided within this Agreement. If said dispute cannot be settled through discussion, the Parties agree first to try in good faith to settle the dispute by mediation, before resorting to arbitration, litigation, or some other dispute resolution procedure.
- 20.2. Mediation. If a resolution is not reached within thirty (30) calendar days, the Parties shall refer the matter to non-binding mediation. The mediator shall be selected by joint agreement of the Parties within thirty (30) calendar days of the date of the last meeting discussing the dispute and such mediation shall be scheduled to occur as soon as is reasonably possible, depending on the nature of the dispute. Each party shall pay fifty percent (50%) of the third party costs of mediation.
- 20.3. Litigation. In the event that the mediator is not able to resolve the dispute, either Party may file for litigation.
- 20.4. Venue. When federal jurisdiction is permitted, the Parties submit to the jurisdiction of federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue of any federal action to enforce this Agreement shall be in United States District Court, Northern District of Georgia, Atlanta Division. Otherwise, venue for any action brought hereunder shall be brought in the Superior Court of Fulton County, Georgia.
- 20.5. Attorney's Fees. If either party is required to enforce the terms of this Agreement by court proceedings or otherwise due to breach of this Agreement, whether or not formal legal action is required, the prevailing party shall recover its attorney's fees and costs incurred due to such.

20.6. Continued Performance. Unless otherwise agreed in writing, Consultant shall continue to provide services during any dispute resolution proceedings. If Consultant continues to perform, Municipality shall continue to make payments in accordance with this Agreement.

21. **DEFAULT**

21.1. Default. An event of default shall mean a material breach of this Agreement. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include the following:

21.1.1. The Consultant fails to perform the Services specified in the Agreement.

21.1.2. The Consultant has refused or failed, except in the case for which an extension of time is provided, to supply properly skilled personnel.

21.1.3. The Consultant has failed to obtain the approval of the Municipality where required by this Agreement.

21.1.4. The Consultant fails to perform any of the other provisions of this Agreement, subject to any right to cure.

21.1.5. The Consultant has been adjudged as bankrupt or the Consultant makes a general assignment for the benefit of creditors, appoints a receiver on account of insolvency, or files a petition to take advantage of any debtor's act.

21.1.6. Any representation or warranty of either party hereunder is found to be false or inaccurate in any material respect which materially and adversely affects the legality of this Agreement or the ability of either party to carry out its obligations hereunder.

21.1.7. The failure, refusal or other default by the Municipality in its duty to pay the amount required to be paid to the Consultant under this Agreement within thirty (30) days following the Due Date for such payment.

21.1.8. Either party hereunder fails to perform any material obligation under this Agreement (unless such default is excused by a Force Majeure and to the extent provided herein).

21.2. Reasonable Cure. In the event of a default, the Agreement may be terminated after written notice of the default, which shall specify the default, provide both a demand to cure the default and a reasonable time to cure the default and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the default. For purposes of this section, "reasonable time" shall be fifteen (15) business days except when the failure affects the public health, safety or welfare, in which case reasonable time may be less than fifteen (15) business days. A failure to cure a default within the specified time shall result in termination of the Agreement on the date set forth in the notice of default if such notice of default has not been removed in writing.

21.3. Damages. The Consultant shall be liable for all damages resulting from default by the Consultant. The compensation to the Consultant through termination shall be prorated for any completed Services minus any damages assessed pursuant to default liability.

21.4. Other Remedies. Subject to the dispute provisions contained in Section 20. Disputes, either party may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy specifically given or otherwise existing and may be exercised from time to time as often and in such order as may be deemed expedient by the party. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. The Parties' rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to either party in law or in equity.

22. TERMINATION

- 22.1. **Fiscal Non-Appropriation.** Financial obligations of the Municipality for the Agreement are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the Municipality. Pursuant to O.C.G.A § 36-60-13(a)(1), this Agreement shall terminate absolutely and without further obligation on the part of the Municipality upon the failure to appropriate funds for the Agreement. In the event of the Municipality's termination for fiscal non-appropriation, the Consultant shall be paid for those Services performed up unto the point of fiscal non-appropriation.
- 22.2. **Termination - Municipality.** The Municipality may partially or fully terminate this Agreement upon up to ninety (90) calendar days written notice, with or without cause and with no penalty or additional cost beyond the Fees stated in this Agreement. In case of such partial termination, Consultant shall be entitled to receive payment for work completed up to and including the date of termination within thirty (30) calendar days of the termination. Due to the lump sum price discount provided by the Consultant to the Municipality, in the event of partial or full termination of Services under this Agreement or termination of any other active service agreement between the Municipality and the Consultant, the Consultant will negotiate in good faith any modifications to said Scope and a commensurate increase or reduction in the fees in Exhibit D - Fee for Services to facilitate the partial termination in no more than ninety (90) calendar days of written notice.
- 22.3. **Termination - Consultant.** The Consultant may partially or fully terminate this Agreement upon one hundred and eighty (180) days written notice, with or without cause and with no penalty or additional cost beyond the Fees stated in this Agreement. In case of such termination, Consultant shall be entitled to receive payment for work completed up to and including the date of termination within thirty (30) calendar days of the termination. The Consultant will negotiate in good faith any modifications to said Services and a commensurate reduction in the fees in Exhibit D - Fee for Services to facilitate any partial termination of Services.
- 22.4. **Equipment and Property.** If this Agreement is terminated in whole or in part, the Consultant shall protect and preserve City Equipment and property in its possession in which the Municipality has an interest, until the Consultant has transitioned its Services to the Municipality or Municipality's designee.
- 22.5. **Continuation.** In the event of the full termination, or expiration of this Agreement, and in the further event that the Municipality is unable to provide the same level of services at the time of such termination or expiration, the then pending term of this Agreement may be extended by the Municipality for a period of ninety (90) days or until Municipality is capable, in its sole discretion, of rendering such services, whichever occurs sooner. The remuneration to be paid to Consultant will be negotiated by the Parties.

23. FORCE MAJEURE

Except as otherwise provided in Exhibit B – Scope of Services, neither party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if performance is made impractical, abnormally difficult, or abnormally costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, strike, acts of God, failure of a third party to cooperate in providing services, or other occurrences, beyond its reasonable control. The party invoking this Force Majeure clause shall notify the other party immediately by verbal communication and in writing of the nature and extent of the contingency within ten (10) working days after its occurrence, and shall take reasonable measures to mitigate any impact of Force Majeure, including but not limited to adjustment of project schedules, project budgets, performance measures, and fee for Services.

24. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the Consultant represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind the Consultant to the performance of its obligations hereunder.

25. GOVERNING LAW

This Agreement shall be construed under and governed by the laws of the State of Georgia and all services to be provided will be provided in accordance with applicable federal, state and local law. This Agreement constitutes the complete, entire and final agreement of the parties hereto with respect to the subject matter hereof, and shall supersede any and all previous communications, representations, whether oral or written, with respect to the subject matter hereof.

26. COUNTERPARTS

This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

27. ENTIRE AGREEMENT

This Agreement, along with attached exhibits, constitutes the complete, entire and final Agreement of the Parties hereto with respect to the subject matter hereof, and shall supersede any and all previous communications, representations, whether oral or written, with respect to the subject matter hereof. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.

[signatures on following page]

Parks Bond Professional Services Agreement
City of Johns Creek and CH2M
09/06/17 for Council Review

City of Johns Creek, Georgia

CH2M Hill Engineers, Inc.

Signature

Name: Michael E. Bodker

Title: Mayor

Date: _____

Attest

Signature

Name: Joan C. Jones

Title: City Clerk

Date: _____

Approved as to Form

Signature

Name: _____

Title: City Attorney

Date: _____

Signature

Name: _____

Title: _____

Date: _____

Attest

Signature

Name: _____

Title: _____

Date: _____

Approved as to Form

Signature

Name: _____

Title: _____

Date: _____

EXHIBIT A – PARKS BOND PROJECTS

as approved at the July 25, 2016 Council Meeting

The following text is excerpted from the Resolution calling for the Parks Bond Referendum:

“...shall be issued in the amount of up to \$40,000,000 to fund the acquisition, construction and installation of parkland, park improvements, park build-out, greenways and recreation trails, and an indoor recreation center, including as described below:

- Cauley Creek Park Build Out
- Technology Park Linear Park Build Out
- Morton Road Park Build Out
- Bell Boles Park Build Out
- State Bridge Park Build Out
- Rogers Bridge Trail Across the Chattahoochee River
- Recreational Trails and Greenways
- Parkland Acquisition
- Autrey Mill Park Improvements
- Newtown Park Improvements
- Ocee Park Improvements
- Shakerag Park Improvements
- Indoor Recreation Center

(the “Projects”), and paying the costs of such debt...”

Furthermore, the City advertised estimated ranges of funding for each the listed projects.

Figure 1: Bond Projects - Funding Ranges (as discussed on July 11, 2016 and July 25, 2016)

List of Projects	Est. Low	Est. High	Starting Point
Cauley Creek Park Build Out	\$12,000,000	\$16,000,000	\$16,000,000
Linear Park Build Out	\$5,000,000	\$7,500,000	\$6,250,000
Morton Road Park Build Out	\$1,000,000	\$1,125,000	\$1,000,000
Bell Boles Park Build Out	\$550,000	\$750,000	\$750,000
State Bridge Park Build Out	\$250,000	\$350,000	\$250,000
Rogers Bridge Trail Across the Chattahoochee	\$500,000	\$2,500,000	\$500,000
Recreational Trails and Greenways	\$1,500,000	\$5,000,000	\$2,250,000
Parkland Acquisition	\$4,000,000	\$25,000,000	\$4,000,000
Autrey Mill Park Improvements	\$985,500	\$1,750,000	\$1,250,000
Newtown Park Improvements	\$1,000,560	\$2,000,000	\$1,250,000
Ocee Park Improvements	\$625,900	\$1,000,000	\$750,000
Shakerag Park Improvements	\$1,556,200	\$2,000,000	\$1,750,000
Indoor Recreation Center	\$4,000,000	\$6,000,000	\$4,000,000
	\$32,968,160	\$70,975,000	\$40,000,000

Since the passage of the Parks Bond, Council has not fully programmed the \$40M, however, \$11,004,578 of the \$40M has been committed to certain projects or will be committed with the FY2018 Budget (anticipated for adoption in September 2017). Listed in order of occurrence, the commitments are as follows:

- State Bridge Pocket Park – Construction Documents – up to \$152,582 (approved 06/05/17)
- Morton Road Neighborhood Park – Construction Documents – up to \$122,066 (approved 06/05/17)
- Bell/Boles Pocket Park – Construction Documents – up to \$54,930 (approved 06/05/17)
- Linear Park – Construction Documents – up to \$425,000 (approved 06/05/17)
- Land Acquisition – Quail Hollow (59.29 acres on Bell Road) – up to \$8,200,000 (approved 06/19/17)
- Newtown Park – Synthetic Turf Field - Soccer Field – up to \$715,153 (approved 07/24/17)
- Newtown Park – Synthetic Turf Field – Lacrosse Field – up to \$502,949 (approved 07/24/17)
- Shakerag Park – Synthetic Turf Field – Track Field – up to \$786,504 (approved 07/24/17)
- Rogers Bridge – Construction – up to \$1,250,000 (anticipated with FY2018 adoption)
- Project Management – Professional Services – up to \$800,000 (anticipated with FY2018 adoption)

To program the balance of the \$40M, staff presented the following table at the July 10, 2017 Work Session based on the initial estimated ranges and the Recreation and Parks Strategic Plan (adopted in March 2016).

Figure 2: Proposed Bond Funding Allocation (as discussed on July 10, 2017)

Park Projects	Est. Project Total	Bond Funding	Total Funding Gap
Land Acquisition	\$20,000,000	\$12,420,900	\$7,579,100
Cauley Creek - Primary Implementation	\$13,590,900	\$10,000,000	\$3,590,900
Cauley Creek - Future Development	\$6,000,000	\$0	\$6,000,000
Johns Creek Linear Park	\$6,925,000	\$6,925,000	\$0
Indoor Recreation Facility	\$4,000,000	\$320,000	\$3,680,000
Autrey Mill Park	\$2,515,500	\$1,149,500	\$1,366,000
State Bridge Road Park	\$2,500,000	\$1,000,000	\$1,500,000
Recreation Trails & Greenways	\$2,250,000	\$750,000	\$1,500,000
Shakerag Park	\$2,206,000	\$910,000	\$1,296,000
Morton Road Neighborhood Park	\$2,000,000	\$2,000,000	\$0
Newtown Park	\$1,598,300	\$1,234,000	\$364,300
Rogers Bridge	\$1,250,000	\$1,250,000	\$0
Bell/Boles Park	\$900,000	\$900,000	\$0
Project Management	\$800,000	\$800,000	\$0
Ocee Park	\$650,900	\$340,600	\$310,300
Totals	\$67,186,600	\$40,000,000	\$27,186,600

Parks Bond Professional Services Agreement
City of Johns Creek and CH2M
09/06/17 for Council Review

As of the Effective Date of this Agreement, Council has not made further allocations or commitments of funds to fully program the balance of the Parks Bond funds.

EXHIBIT B – SCOPE OF SERVICES

The Scope of Services articulates the services to be provided to the Municipality by the Consultant during the Term of the Agreement. Where applicable, scope components are followed by italicized statements indicating anticipated workload and performance requirements. Successful performance of the services will meet or exceed the listed performance requirements unless superseded by more specific Performance Measures (found in Exhibit C – Performance Measures and Workload Measures), or specific relief is granted by the City Manager, in his or her sole discretion.

Parks Bond Implementation

Separate and distinct from the day-to-day workload and services of the Recreation and Parks Division, the \$40M Parks Bond was approved by the citizens of Johns Creek to fund a set list of projects (attached as Exhibit A – Parks Bond Project List). The named projects are in varying stages as further described in Exhibit B – Parks Bond Funding by Project).

In June 2017, the City Council reaffirmed its commitment to involving the community throughout the Parks Bond implementation and called for citizens to volunteer their services to a Recreation and Parks Advisory Committee. Although the community will be involved, the Parks Bond project team will be responsible for the administration, planning, community involvement, design, engineering, right-of-way, and construction of the Municipality's Parks Bond projects and all related support activities.

	Page
Administration	
1. Reporting Structure	23
2. Team Management	23
3. Municipality Departments	23
4. Budget Recommendations	23
5. Budget Administration.....	24
6. Parks Bond Procurements.....	24
7. Meetings.....	24
8. Community Education.....	25
9. Inquiries.....	25
10. Commendations and Complaints.....	25
11. Data Base Maintenance	25
12. Records Retention.....	25
13. Open Records Requests	25
14. Litigation	25
15. Performance and Workload Tracking	25
Project Implementation	
16. Community Involvement	25
17. Land Acquisition	26

18. Concept and Preliminary Design Projects	26
19. Engineering Projects	26
20. Right-of-Way Acquisition	27
21. Utility Coordination	27
22. Preconstruction.....	28
23. Construction – Management.....	28
24. Construction – Testing.....	29
25. Construction – Monitor Active Sites.....	29
26. Construction Engineering and Inspection (CEI).....	29
27. Inventory / Asset Management.....	29
28. Other Parks Bond Implementation Duties.....	30

Administration

(1) Reporting Structure

The Public Works Director manages the Parks Manager. The Public Works Director reports to the City Manager (or designee).

Workload: Regular communication with Public Works Director (or designee)

Workload: Bi-weekly meetings with Public Works Director (or designee)

Workload: Review of monthly activity/performance reports to ensure work is forwarding established priorities of the Municipality.

(2) Team Management

The Parks Manager manages all personnel working on Parks Bond projects so that all Parks Bond work requirements are performed effectively and efficiently.

Workload: Initial staffing is projected to be the Parks Manager. Over the life of the project, the staff is anticipated to increase to include others and taper off as projects conclude.

(3) Municipality Departments

Coordinate with Municipality departments such as Public Works related to transportation, traffic, and built environment and Community Development related to long-term planning, anticipated land development patterns, and community trends.

Workload: Weekly, if not daily, coordination/communication/collaboration with Municipality departments is necessary for the effective operation of the Parks Bond implementation.

(4) Budget Recommendations

Johns Creek's fiscal year matches the federal fiscal year (October 1 – September 30). All Parks Bond revenues and expenditures are included in a separate Fund and expenditures cannot be made without proper Council authorizations. For FY2018, to work with the Finance Director, City Clerk, and City Manager to bring a project plan and related Budget Amendment to the City Council for consideration and finalization. For FY2019 and throughout the Term of the Agreement, following the Budget schedule

promulgated by the Finance Director, identify and submit requests to forward the Parks Bond implementation for consideration by the City Council.

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Performance: Submit budget recommendations to Finance Director by deadlines for information

Performance: Submit any proposed budget amendments to Finance Director for review prior to distribution to Council for discussion.

(5) Budget Administration

Manage Parks Bond expenditures including entering, reviewing, and approving invoices for purchase orders and purchases as well as preparing information related to year end close out and audit.

Payments include processing those required to fulfill adopted Intergovernmental Agreements budgeted for within the Parks Bond projects. For multi-year projects, manage expenses across fiscal years in accordance with Municipality policies.

Workload: Roughly \$40M in bond funding.

Performance: Review and process invoices by due dates.

(6) Parks Bond Procurements

Manage Parks Bond procurements including drafting the scope of work for task orders and contracts, working with the City Purchasing Manager to establish procurement schedules, prepare advertisements, review, and make recommendations on consultants/contractors as well as entering, reviewing, and approving purchase orders based on the Municipality's Purchasing Policy.

Workload: Anticipated average of 25 procurements on an annual basis.

(7) Meetings

Attend Municipality meetings to discuss Parks Bond projects (such as City Council meetings) and attend regional meetings (such as Atlanta Regional Commission meetings) to represent the Municipality. Attend meetings with neighboring jurisdictions (such as Alpharetta, Roswell, Gwinnett, Forsyth, Duluth, and Peachtree Corners) to coordinate projects that cross jurisdictional boundaries.

Workload: Anticipate updates quarterly at Council Meetings

Workload: Coordination anticipated for projects include Rogers Bridge, recreational trails and greenways, and park improvements near Municipality borders.

(8) Community Education

Provide information to the Communications Department for the dissemination of educational material about the Parks Bond projects (such as presentations, guides, and graphs for the website and town halls or community meetings).

Performance: Provide weekly updates for active Parks Bond projects to the Communication Department and provide community involvement opportunities for active projects.

See Scope Component 16. Community Involvement regarding meetings and community involvement.

(9) Inquiries

Respond to inquiries from citizens, boards and commissions, the development community, and elected officials regarding Parks Bond projects. Inquiries are received by various means including but not limited to phone, e-mail, fax, and office visit.

Workload: As visible, high-impact projects, inquiries are anticipated related to Parks Bond projects.

Performance: Respond to inquiries within 1 business day of receipt

(10) Commendations and Complaints

Investigate and address commendations and complaints related to the administration of Parks Bond projects received by the Municipality.

(11) Data Base Maintenance

Maintain an accurate and organized data base including records of decision-making process and original files of all Parks Bond projects.

Performance: Digitize/scan, and file all records at the completion of each document

(12) Records Retention

Maintain of all Municipality records related to Parks Bond in accordance to the Municipality's records retention policy including both archival and destruction.

(13) Open Records Requests

Coordinate with the City Clerk's Office to assess and fulfill any and all Open Records Requests related to the records of the Parks Bond projects.

Workload: As visible, high-impact projects, open records requests are anticipated related to Parks Bond projects.

Performance: Review request and determine timeframe for producing documents within three days of receipt by the City Clerk's Office

(14) Litigation

Provide support to the City Manager and City Attorney on all Parks Bond-related litigation. Reproduce all the applicable files and records. Consult with the City Attorney and any designated outside counsel regarding the history and facts of the case. Provide depositions on behalf of the Municipality/project team. As necessary, serve as Municipality representative in the case of trial.

(15) Performance and Workload Tracking

Track, maintain, and report performance measures and workload measures for Parks Bond projects established in coordination with the City Manager (or designee).

Performance: Remit data monthly by the 5th of the month following performance.

Project Implementation

(16) Community Involvement

Meet with organizations, homeowners associations, impacted property owners and community groups as related to Parks Bond projects both proactively and as requested.

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Workload: Anticipate monthly overall Parks Bond update meetings after-hours

Workload: Anticipate three after-hours meetings per month with neighborhoods impacted by Parks Bond projects

Performance: Provide information and meet with organizations as requested

Performance: Conduct proactive community involvement as part of each concept and preliminary design project.

Performance: Work with the Communications Department and provide technical support for community meetings related to Parks Bond projects.

(17) Land Acquisition

Work with the Public Works Department to conduct research and verifications for land acquisition and due diligence activities for land acquisitions (including Phase I Environmental Assessments, appraisals, surveys, and title research).

Performance: For each potential acquisition, investigate both land and uses as compared to needs identified in Recreation and Parks Strategic Plan and priorities identified by the City Council.

Performance: Complete projects on-time and in-budget.

(18) Concept and Preliminary Design Projects

Manage concept and preliminary design projects approved by the City Council. Completing concept and preliminary design projects shall include the preparation of preliminary geometric alignments, typical sections, pavement designs, a planning level of service analysis, and identification of right-of-way and utility relocations. If contracted out, managing concept and preliminary design projects shall include the preparation of scopes for procurement documents, evaluation of proposals, and recommendation for awards as well as the management of awarded concept contracts.

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Performance: As budgeted or otherwise authorized, complete concept and preliminary design works that readies each project for the engineering phase.

Performance: For each authorized project, investigate multiple solutions/concepts in the concept and preliminary design phase.

Performance: Complete projects on-time and in-budget.

(19) Engineering Projects

Within the resources approved in the Budget, manage engineering projects approved by the City Council. Managing engineering projects shall include the preparation of scopes for procurement documents, evaluation of proposals, and recommendation for awards. Manage awarded engineering contracts for physical investigation on site to develop details plans of the existing environment including

detailed planimetric surveys of the project area/corridor. Develop horizontal (curves) and vertical (grades) alignments. Determine specific types of soils on site and develop preliminary designs for containing runoff including storm drains, determining hydraulic and structural characteristics of the project's design, and developing a sediment control plan for use during the construction. Determine the amount of right-of-way necessary for the project. If applicable, determine intersection geometrics with other roads along the length of the project (including determining number of approach and receiving lanes, cross walks, exclusive left or right turn lanes, etc.). Develop final concepts for the design of the project at a more detailed scale than concept and preliminary design. Determine if special structures are necessary to mitigate noise impacts along the length of the project (walls, berms, etc.). Determine environmental impacts and any necessary mitigation measures necessary to comply with wetlands, forest conservation, and other regulations. Develop a construction sequence for phasing the different elements of construction activities including interim traffic control, phasing removal of existing paving/demolition, phasing of construction activities, etc. Itemize construction elements to develop cost estimates such as tons of asphalt at \$x/ton.

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Performance: As budgeted or otherwise authorized by Council, complete engineering work that readies each project for the right-of-way acquisition phase.

Performance: Complete engineering work on-time and in-budget.

(20) Right-of-Way Acquisition

Within guidelines established by the Municipality, Federal Highway Administration, the Georgia Department of Transportation, communicate and negotiate with property owners for acquisition of temporary easements, permanent easements, right-of-way and property needed. For right-of-way acquisition that is completed by sub-consultants, managing right-of-way projects shall include the preparation of scopes for procurement documents, evaluation of proposals, and recommendation for awards as well as the managing of right-of-way acquisition partners (negotiators, appraisers, attorneys) as they communicate and negotiate with property owners for acquisition of temporary easements, permanent easements, right-of-way and property needed. In both direct efforts and management of sub-consultants, managing right-of-way acquisitions includes ensuring all Federal Highway Administration and Georgia Department of Transportation procedures are followed, documented, and approved for audit.

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Performance: As budgeted or otherwise authorized by Council, complete right-of-way acquisition work that readies each project for the construction phase.

Performance: Complete right-of-way work on-time and in-budget.

(21) Utility Coordination

Work with the Public Works Department to coordinate with utility providers (including but not limited to communications, power, light, electricity, gas, water, pipeline, and sewer) for abandoning, altering,

deactivating, installing, modifying, moving, removing, and verifying locations of utilities as needed for construction projects. Coordination includes utility certification on Federal Highway Administration and Georgia Department of Transportation projects. Coordination includes managing subsurface utility engineering (SUE) and test holes on construction projects to field-verify locations of utilities.

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Performance: As budgeted or otherwise authorized by Council, complete utility coordination work that readies each project for the construction phase.

Performance: Complete projects on-time and in-budget

(22) Preconstruction

Coordinate all aspects of preconstruction including but not limited to the preparation of anticipated project budget and schedules, preparation of scopes for procurement documents, evaluation of proposals, recommendation for awards, communication with the public and City Council, design review, review of contractor's project schedule, and permitting. Provide capability to execute constructability reviews of construction documents.

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Performance: As budgeted or otherwise authorized by Council, complete preconstruction work that readies each project for the construction phase.

Performance: Complete project on-time and in-budget

(23) Construction – Management

Within the resources approved in the Budget, serve as the Municipality's representative on construction sites including the management all aspects of construction including serving as the point of contact for all communication between the Municipality, the contractor, Municipality Subcontractors, design engineer, material testing company, adjacent property owners, and other affected parties; perform all construction-related administrative activities including correspondence and document control; ensure compliance with contract documents and Municipality standards and specifications (including informing the Municipality of any observed errors, omissions, developments, or inconsistencies in information provided by contractor that impact the scope, schedule, or budget or defects in contractor performance); conduct project meetings throughout construction; review and process contractor progress payments as commensurate to monitored construction progress; evaluate and negotiate change orders and prepare for the Municipality's signature; conduct technical reviews of construction documents; document changes to the design and coordinate as-built drawings; provide coordination and review of contractor's staging and detour plans; coordinate communication to the public and Council with the Communications Department; review contractors safety plans and notify the Municipality of observed discrepancies between plans and practices; review contractors quality control plans and notify the Municipality of observed discrepancies between places and practices; prepare and periodically update the project schedule; supervise project closeout activities; complete final inspections; supervise post-construction services as needed for project closeout and warranty issues;

maintain production reports reflecting time and costs dedicated to individual construction projects; and collaborate with the Finance Department to financially close out each construction project as required for fiscal year end closeout. For projects with state and/or federal funding, acquire and maintain all documentation for audit and compliance. Municipality shall be responsible for timely acquisition and payment of any necessary approvals, easements, assessments, building permits and other charges of public agencies that may be required for the construction, use or occupancy of the permanent structures or for permanent changes in existing facilities with Consultant acting as the Municipality's representative in preparing the applications and coordinating the application process.

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Performance: Complete projects on-time and in-budget

(24) Construction – Testing

Utilize materials and soil testing to manage project feasibility and avoid future change orders. Managing contracted material testing companies including any necessary project-related meetings, construction site monitoring of testing, technical reviews of testing results, and monitoring the materials testing company's work to enforce all requirements of applicable codes, contract documents, and Municipality standards and specifications.

Workload: Required testing includes concrete tests, asphalt density tests, and compaction tests

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Performance: Complete projects on-time and in-budget

(25) Construction – Monitor Active Sites

Maintain a daily presence on active construction sites to monitor (including representative photography) the contractor's progress and enforce all requirements of applicable codes, contract documents, and Municipality standards and specifications; review and monitor the construction schedule.

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Performance: Maintain a daily presence on active construction sites to ensure projects are completed on-time and in-budget and maintain records of daily inspections.

(26) Construction Engineering and Inspection (CEI)

Manage Construction Engineering and Inspection (CEI) services provided by sub-consultants. Managing CEI services shall include the preparation of scopes for procurement documents, evaluation of proposals, and recommendation for awards. Managing the CEI services shall include all aspects of construction and all construction-related administrative activities including measure quantities; provide utility coordination; conduct preconstruction meeting; maintain certified log of all materials and suppliers; assure testing is performed per standards; ensure materials are from GDOT approved supplier; submit contractor progress payments as commensurate to monitored construction progress; perform periodic NPDES inspections; provide digital photos; review traffic control procedures of contractor; communicate with

business and homeowners along the project; inspect all work to meet or exceed GDOT standards; complete final inspections; supervise post-construction services as needed for project closeout and warranty issues; maintain production reports reflecting time and costs dedicated to individual construction projects. For projects with state and/or federal funding, acquire and maintain all documentation for audit and compliance.

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Performance: Complete projects on-time and in-budget

(27) Inventory / Asset Management Program

As Parks Bond projects are designed and built, coordinate with the Geographic Information Systems division to oversee the updating of an inventory of all built-environment assets including but not limited to roads, bike lanes, sidewalks, trails, traffic signals, street signs, streetlights, pedestrian lights, guard rails, traffic calming devices, bridges, curbs, gutters, stormwater catch basins, and inlet structures.

Anticipated Workload: Over the course of the Parks Bond implementation, efforts to forward each of the projects listed in Exhibit A – Parks Bond Projects are anticipated.

Performance: Coordinate with GIS within 5 business days following action necessitating inventory/map updates

(28) Other Parks Bond Implementation Duties

Identify and perform other duties and functions reasonable and customarily associated with the delivery of Parks Bond projects in accordance with local, state, and federal laws including, but not limited to, the City Charter, City Ordinances, and the laws of the United States and the State of Georgia where the need could be reasonably anticipated, but not specifically set forth above.

Performance: Offer assistance and guidance throughout each Parks Bond project's lifecycle to minimize cost to the Municipality and accelerate project delivery.

[Remainder of page intentionally left blank]

EXHIBIT C – PERFORMANCE MEASURES AND WORKLOAD MEASURES

Performance Measures are designed to provide management an in-depth perspective on the Consultant's efficiency, effectiveness, and performance of the Services. The Consultant has direct influence over its performance on Performance Measures, each measure is tied to a component of the Services, and each measure is correlated with a specific performance target.

Workload Measures track and monitor the workload of the Consultant. The Consultant has little influence over the workload, so no specific targets are assigned to workload, but the Parties see benefit in tracking workload measures as important in identifying community trends and resource allocation.

The Parties recognize that over the term of the Agreement, flexibility will be necessary in order to meet the Municipality's evolving needs and priorities. The Performance and Workload Measures may be adjusted by mutual consent of the City Manager and the Consultant. The City Manager, in his or her sole discretion, may grant relief from the performance targets associated with Performance Measures due to changes in the Municipality's needs, priorities, or reallocations as deemed merited in the City Manager's sole discretion.

Performance Measures

1. **Inquiries:** Contact 97% of parties (providing contact information) within 1 business day of an inquiry or report of an issue related to Parks Bond.
2. **Community Education:** 95% of weeks, provide information to the Communications Department regarding the status of Parks Bond projects.
3. **Community Involvement:** 95% of weeks, provide information to the Communications Department that can be utilized to plan for community involvement or solicit community involvement in Parks Bond projects in the concept/design stage.
4. **Utility Coordination:** Coordinate with utility providers to protect the Municipality's utilities and ensure 95% of project-related utility issues are completed on-time and in-budget (based on approved schedule and approved budget).
5. **Engineering:** Complete 95% of engineering projects on-time and in-budget (based on approved schedule and approved budget).
6. **Right-of-Way Acquisitions:** Complete 95% of acquisitions on-time and in-budget (based on approved schedule and approved budget).
7. **Pre-construction:** Complete 95% of all aspects of preconstruction projects on-time and in-budget (based on approved schedule and approved budget).
8. **Construction Monitoring:** Maintain a daily presence on 95% of active construction sites.
9. **Construction Testing:** Complete 95% of construction testing on-time and in-budget (based on approved schedule and approved budget) in an effort to manage project feasibility and avoid change orders.
10. **Grants/Outside Funding:** Maintain a 50% success rate in applying for grants and outside funding.

Workload Measures

1. **Projects** – by type, phase, and budget (type: widening, capacity, safety/operational, etc. and phases: concept, engineering, right-of-way, construction)
2. **Construction Sites** – number of active construction sites, size of active construction sites (acres or linear feet) and construction cost/budget
3. **Meetings** – number of community and neighborhood meetings and town halls attended to represent the Parks Bond project.
4. **Meetings** – number of City Council Meetings (including Work Sessions and Retreats) to present Parks Bond project material items.
5. **Meetings** – number of meetings with regional groups, outside agencies and entities (such as Gwinnett County, ARC, task forces, regional planning) attended to represent the Municipality.
6. **Open Records Requests** – number of requests filled.
7. **Data Base Maintenance** – number of records digitized/scanned and filed.

[Remainder of page intentionally left blank]

EXHIBIT D – FEE FOR SERVICES

In consideration of the Consultant providing the Services, the Municipality shall pay the Consultant for the Services. The fees shall be billed based on the time worked to provide the Services.

Multiplier

Each member of the Parks Bond project team shall track his or her time and the Municipality shall pay for the hours worked providing the Services billed at a 2.0 multiplier times the salary or hourly wage, whichever applies.

Salary or hourly wage shall be defined as the amount the Parks Bond project team members receive each pay period and shall not include the following, without limitation: any compensation or wage paid as a commission or bonus; employment benefits, such as premiums paid by health, dental or disability insurance, retirement plan or pension contributions, or the payment of FICA or payroll taxes; any lump sum payment for accumulated unused sick leave, vacation leave or other paid leave; any severance payment or accelerated payment of an employment contract for a future period or advance against future wages; any retirement incentive, retirement bonus or retirement gratuitous payment; any payment made on account of death; or any other additional potential compensation paid by the Consultant.

Annual Minimum

The Municipality agrees to pay the Consultant an annual minimum of \$150,000.

Invoicing

Monthly invoicing will be submitted based on the annual minimum of \$150,000 and be submitted as one-twelfth of the amount or \$12,500.

Quarterly Audit

The Parties will work together to complete a quarterly audit of time worked by Parks Bond project team members and provide for any adjustments that are necessary. If actual time worked over the course of the quarter is more than the quarterly portion of the annual minimum (\$37,500 of the \$150,000), the Municipality will compensate the Consultant for the additional work using the same 2.0 multiplier. After each fourth quarter audit, should the total value of the amounts paid by the Municipality to the Consultant during the preceding contract year exceed the total documented cost of time worked by Parks Bond project team members, the Consultant shall transfer back to the Municipality the overpaid portion within thirty (30) days following completion of the audit.

[Remainder of page intentionally left blank]

EXHIBIT E – IMMIGRATION & SECURITY FORM
CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Johns Creek has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 989-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91. The [Consultant] further certifies that at the time of the execution of this contract, the [Consultant] employs _____ employees.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Johns Creek, contractor will secure from such subcontractors(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Johns Creek at the time the subcontractor(s) is retained to perform such service.

EEV / Basic Pilot Program* User Identification Number

BY: Authorized Officer or Agent
(Consultant Name)

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

Subscribed and sworn to before me on this the _____ day of _____ 2017

Notary Public

My commission expires:

*As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

EXHIBIT F – O.C.G.A. § 50-36-1(e)(2) Affidavit

Verifying Lawful Presence in the United States

By executing this affidavit under oath, as an applicant for the execution of a contract or other public benefit, as referenced in O.C.G.A. § 50-36-1, from the City of Johns Creek, a municipal corporation of the State of Georgia, the undersigned applicant verifies one of the following with respect to my application for a public benefit:

- I am a United States citizen.
- I am a legal permanent resident of the United States.
- I am a qualified alien or non-immigrant under the Federal Immigration and Nationality Act with an alien number issued by the Department of Homeland Security or other federal immigration agency.

My alien number issued by the Department of Homeland Security or other federal immigration agency is: _____.

The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least one secure and verifiable document, as required by O.C.G.A. § 50-36-1(e)(1), with this affidavit.

The secure and verifiable document provided with this affidavit can best be classified as:

_____.
In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in this affidavit shall be guilty of a violation of O.C.G.A. § 16-10-20, and face criminal penalties as allowed by such criminal statute.

Executed in _____ (city), _____ (state).

Signature of Applicant

Printed Name of Applicant and Title

Subscribed and sworn to before me on this the _____ day of _____, 2017.

(Notary Public)

My commission expires: _____