



***REQUEST FOR PROPOSAL
RFP NO. 22-77-1512***

Financial Planning Program

***FORSYTH COUNTY BOARD OF COMMISSIONERS
CUMMING, GEORGIA***

Closing Date/Time:

August 4, 2022 @ 2:00 PM

***Forsyth County Procurement Department
514 West Maple Street, Suite 104
Cumming, GA 30040***

Phone: 770.888.8872

FORSYTH COUNTY, GEORGIA

Request for Proposal No. 22-77-1512

Financial Planning Program

PURPOSE OF THE REQUEST FOR PROPOSAL

The Forsyth County Board of Commissioner's is soliciting sealed Proposals from qualified firms interested in providing Financial Planning Program Services. The County is seeking a solution, as such the Proposals submitted will be evaluated based upon criteria formulated around the most important features of a product or service, of which quality, testing, references, availability or capability may be overriding factors, and price may not be the determining factor. The proposal evaluation criteria should be viewed as standards which measure how well a supplier's approach meets the desired requirements and needs of the County. The County will thoroughly review all valid proposals received. The County reserves the right to select, and subsequently recommend for award, the proposed service which best meets its required needs, quality levels, and budget constraints.

While every effort has been made to ensure the accuracy and completeness of information in the RFP, we recognize that the information may not be complete in every detail and that all work may not be expressly mentioned in these specifications. It is the responsibility of the proposing company to include in their proposal all pertinent information in accordance with the objectives of the County.

GENERAL INFORMATION

Proposals MUST be submitted in the format prescribed herein. Failure to comply with the directions listed in this RFP, or omission of requested information could result in disqualification of your firm's proposal. Proposals are to be submitted in a sealed envelope, clearly marked in the lower left-hand corner:

***"Proposal – RFP No. 22-77-1512 / Financial Planning Program
Date/Time: August 4, 2022/2:00 pm***

The proposals and pricing information will be received at the offices of the Forsyth County Procurement Department:

Forsyth County Procurement Department
514 West Maple Street, Suite 104
Cumming, GA 30040

One (1) original and one (1) digital format (flash drive) copy of the Proposal and Pricing Information must be received at the Procurement Department's office not later than 2:00 p.m. Local Time. Please do not include cost in your proposal. Absolutely no Proposals and Pricing Information will be accepted after 2:00 p.m. Faxed or e-mailed Proposals and Pricing Information are not acceptable. Proposals and Pricing Information received after the deadline will be returned to the sender unopened. Names of submitting firms will then be read aloud at 2:30 p.m., August 4, 2022. All interested parties and the general public are invited.

ALL QUESTIONS are to be directed to Tyra Little, Procurement Director, Forsyth County Procurement Department, tlittle2@forsythco.com. All questions are to be received not later than 2:00 p.m., Local Time July 22, 2022. Responses to substantive questions will be provided as written Addenda and will be posted upon the Forsyth County website, www.forsythco.com.

Proposals and Pricing Information received will become the property of Forsyth County and shall be used as the County sees fit. All information contained in the Proposals and Pricing Information will remain confidential until after the award and signing of the contract. Forsyth County reserves the right to cancel the Request for Proposal or to reject any and all responses received, to waive any technicalities or other minor informalities if it determines, in its sole discretion, that such cancellation or rejection is in the best interests of Forsyth County.

COST OF PROPOSAL

Forsyth County assumes no responsibility or liability for the costs incurred by the submitting firm to prepare and/or submit a proposal. The entire cost of preparing and submitting Proposals and Pricing Information, or any work in connection therewith will be borne by the submitting firm or team of firms.

RESPONSIBILITY OF PROPOSER

Proposals must be signed by an authorized official to bind the offeror and it shall contain a statement to the effect that the Proposal is firm for a period of at least ninety (90) days from the closing date for submission.

PROHIBITION OF GRATUITIES

Firms shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the Forsyth County Board of Commissioners for the purpose of influencing consideration of this qualification.

CONTACT

To insure all prospective respondents have the same level of knowledge relative to the project, as well as ensuring any additional data is made available to all proposers, No vendors shall contact or discuss any aspect of this Request for Proposal with any Forsyth County employee or elected official, selection committee member, or project team member, during the RFP process up until award has been made. If contact is made that vendor may be disqualified from the process. All questions regarding this Request for Proposal are to be submitted to the Forsyth County Procurement Department as detailed in the general information section of this document. Any information obtained about this solicitation through any means other than the solicitation itself or the addendums thereunto is not valid and should not be considered in any response to this solicitation.

OWNERSHIP OF MATERIAL

Ownership of all data, material, and documentation originated and prepared for the County pursuant to this contract shall belong exclusively to the County.

SELECTION AND NOTIFICATION

The selected firm will be given written notification of being selected by the County. The County will negotiate and execute a contract with the selected firm prior to the beginning of the actual services. Should contract negotiations fail, the County will negotiate with one of the highly ranked firms. In general, the contract will comply with applicable laws and standard provisions and shall contain the following terms: Detailed scope of services, schedule for providing services, and cost of services.

INDEMNIFICATION

The Firm shall indemnify, protect, defend and hold harmless Forsyth County, their agents, and employees, from and against any and all claims, demands, judgments, or causes of action, including costs and attorney's fees by any party or parties whatever for loss, damage, injury, fines or penalties of any kind of character either to persons or property directly or indirectly arising out of the operations performed under the Contract except such lost, damage, or injury as is caused by the sole negligence of the County.

TERMINATION

Termination for Cause – Forsyth County may terminate the Contract at any time the Contractor defaults in the performance of any term of the Contract or fails to make substantial progress under the terms specified in the Contract. Such termination shall be without prejudice to any of the County's rights or remedies provided by law.

- a) Forsyth County shall provide the Contractor with sixty (60) days' notice of conditions endangering performance. If, after such notice, the Contractor fails to remedy the condition contained in the notice, Forsyth County shall issue an order to stop work immediately.
- b) Forsyth County shall be obligated to reimburse the Contractor only for those services rendered prior to the date of notice of termination, less any liquidated damages that may be assessed for nonperformance.

Termination for Convenience – Forsyth County may terminate this Contract at any time by written ninety (90) day notice to the Contractor. The Contractor will be paid for those services actually performed.

Mutual Agreement – Forsyth County and the Contractor may, upon receipt and acceptance of not less than ninety (90) days' written notice, terminate the Contract on an agreed date prior to the end of the contract period without penalty to either part.

Lack of Funds – Notwithstanding any other provisions of the contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming, Forsyth County shall have the right to terminate the contract without penalty by giving not less than ninety (90) days' written notice documenting lack of funding.

MISCELLANEOUS

The proposer agrees that they presently have no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. The proposer further agrees that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in the Contract. All

respondents must provide a statement of disclosure, which will allow the Owner to evaluate possible conflicts of interest.

Proposals submitted are not publicly available until after award by the Forsyth County Board of Commissioners. All Proposals and supporting material, as well as correspondence relating to this RFP becomes the property of Forsyth County when received. Any proprietary information contained in the qualification should be so indicated. However, a general indication that the entire contents, or a major portion, of the qualification is proprietary will not be honored.

TRADE SECRETS

Pursuant to Georgia law, any trade secrets that are required by law, regulation, bid, or request for proposal to be submitted to the County are exempt from disclosure under the Open Records Act. However, this exemption applies only in specific circumstances. If records containing trade secrets are submitted to the County, and the submitting company wants to protect the trade secrets contained in those records from disclosure, an affidavit must be attached to the records stating that specific information in the records is a trade secret. Please note, a company cannot merely mark otherwise open records with “confidential” or “proprietary” in order to protect such records from disclosure. The affidavit must be submitted with the records when they are first provided to the County, and the affidavit should affirmatively declare that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 of the Georgia Code. The submitted affidavit should clearly identify the information and/or records that constitute trade secrets and must provide the specific location of such trade secrets in the records submitted (i.e. page(s), section(s), etc.). If the County does not receive an affidavit identifying specific information as trade secrets, the trade secret exemption will not apply. Upon receiving a request for such records under the Open Records Act, the County will respond in accordance with O.C.G.A. 50-18-72(a)(34) and other applicable law.

PROTEST PROCEDURES

Right to Protest: any actual firm who is aggrieved in connection with the solicitation or award of a contract, may protest to the Procurement Director. The protest shall be submitted in writing within five (5) days after such aggrieved person knows or should have known of the facts giving rise thereto. The protest must be accompanied by a detailed statement, indicating the reasons for such protest.

The Procurement Director shall have authority to settle and resolve a protest of an aggrieved offeror concerning the solicitation or award of a contract. If the protest is not resolved by mutual agreement, the Procurement Director shall issue a decision in writing within ten (10) days. The decision shall state the reasons for the action taken. This decision shall be final and conclusive, unless the firm appeals administratively within five (5) days after receipt of decision to the Forsyth County Board of Commissioner’s. Any protest taken to the Board or court shall be subject to the protestant paying all administrative costs, attorney fees, and court costs when it is determined that the protest is without standing.

ASSIGNMENT OF CONTRACTUAL RIGHTS

It is agreed that the successful responder will not assign, transfer, convey, or otherwise dispose of a contract that results from this Request for Proposal or his right, title, or interest in or to the same, or any part thereof, without written consent by the County.

STANDARD TERMS AND CONDITIONS

Attached are the Forsyth County standard terms and conditions under which the selected firm will be expected to carry out the required professional services.

OPEN RECORDS

The contents of the proposals will not be made public until after an award and contract has been executed.

TITLE VI

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 Of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the successful firm agrees that, during performance of the Agreement, the firm, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, the firm agrees to comply with all applicable implementing regulations and shall include the provisions of this Section in every subcontract for services contemplated under the Agreement

E-VERIFY

It is the policy of the County that unauthorized aliens shall not be employed to perform work on contracts involving the physical performance of services. Therefore, Client shall not enter into a contract for the physical performance of services within the State of Georgia unless they provide an affidavit stating they comply with E-Verify (attached).

Financial Planning Program for Forsyth County Employees

Purpose:

Forsyth County is seeking a provider to offer financial planning services for Forsyth County employees. The financial planning service is for eligible County employees to assist the employees in setting and meeting financial goals and objectives, building a plan to meet the financial goals and objectives, and achieving their financial goals and objectives. The service will be a complimentary benefit to employees funded by the county. The metrics to evaluate program effectiveness will be through employee participation, employee retention, 401(k) and 457(b) participation, reduced financial insecurity, and overall employee job satisfaction, as measured by department supervisors.

The contract may be renewed for five (5) additional one (1) year periods provided fees are firm (or subject to a pre-approved increase), service is satisfactory, both parties are willing to renew, and renewal is approved by the Forsyth County Board of Commissioners. Prior to each period of renewal, any increases in renewal rates will be evaluated and compared to the actual rate of inflation experienced, and will thereby remain subject to negotiation

After Contract award, the Contractor shall furnish all materials, equipment, and services as required.

Specifications

About:

As of December 31, 2021, Forsyth County has 1,584 eligible employees for the requested service. For the same period, the participation in the retirement plan is 75.9%.

Essential Functions of Financial Planning provider:

- Schedule, as needed, onsite employee meetings in office space provided by the County. The plan is to engage all eligible employees in the use of financial planning services.
- Engage employees with a process for developing a comprehensive financial plan through a sequence of data gathering, strategy session, and plan presentation discussions.
- Use the CFP Board of Standards process for financial planning and include reviews of net worth and net worth projections, budgeting, retirement planning, college and education planning, insurance analysis, tax review, and wealth accumulation planning, and estate planning.
- Develop and monitor individualized financial plans for employees using employee provided financial data and reports, current financial market data, financial analysis, and financial reports.
- Provide strategic long- and short-term financial planning, goals, objectives, and expertise.
- Recommend strategies to improve effectiveness of employees plans, goals, and objectives.
- Meet with employees multiple times per year to review the progress and status of their individual financial plans.
- Conduct seminars and presentations for the purposes of financial education and wellness as needed.
- Chart employee's individualized financial plan annual and quarterly progress in subsequent meetings after plan has been delivered.
- Deliver program effectiveness and statistical information regarding participation rates, trends, and progress data to executive management.

Requirements:

- Certified Financial Planner (CFP®) designation
- Minimum 5 years of experience in developing financial plans
- Fluency in professional planning software and deliverables (*such as Emoney, moneyguidepro, Right Capital, Naviplan*)
- Additional financial tools/software to engage employees considered a plus.
- Registration with the State of GA and/or Securities Exchange Commission as a Registered Investment Advisor
- Errors & Omission Insurance coverage with a minimum of \$1,000,000 in coverage.

- Fiduciary Oath pledge and/or member of National Association of Personal Financial Advisors (NAPFA) or similar fiduciary organization
- Clean record with Financial Industry Regulatory Agency (FINRA) with no client legal actions or settlements

Overview:

- Proposal requests services with Forsyth County with a set fee per employee for a rolling twelve (12) month period or flat annual fee covering all employees.
- Financial Planner/Provider will be required to submit weekly list of employee meetings/engagements and dates to County’s Chief Financial Officer or designee.
- Financial Planner/Provider will meet with County Manager and Chief Financial Officer monthly to review metrics.
- Financial Planner/Provider will hold employee workshops to discuss the offered financial planning benefit, provide education on specific topics related to personal finance, and expand awareness of the advantages of improved financial wellness.
- Financial Planner/Provider will become fluent with FOCO employee benefits and offer non-biased counseling to employees during open enrollment season (outside of planning engagements)
- Financial Planner/Provider agrees to a non-solicitation clause and will not engage in any product selling.

Pricing Schedule

Forsyth County is requesting that each Financial Planner/Provider responding to this Request for Proposal provide either a flat fee for services to all employees (total annual fee) or a per employee planning fee. The invoice/payment structure will be on a monthly basis within a thirty (30) day period after the invoice is received from provider as determined by the number of employees that started the planning process that month or on a 1/12 annual flat fee structure. Please see the Pricing Schedule on Page 10.

This schedule is meant to allow vendors to address all costs of services. Please ensure that all costs associated with the systems described in this RFP are included. Any fee not fully documented in your proposal will not be allowed during the contract unless the scope of the contract is expanded to include additional services not requested herein.

PROPOSAL CONTENT

The Request for Proposals must be organized and provided in a clear concise format, it is desired that the information be provided in the order listed, should not be smaller than 12 pt. font. Sections should be divided by tabs for ease of reference, and pages should be consecutively numbered. Submittals are to be limited to 40 pages, covers, table of contents, divided tabs and resumes will not be counted towards the page count.

1. Transmittal Letter
 - a. Include firm name, address, contact name to include telephone and e-mail
 - b. If it is to be a team, all firms are to be listed with the respective services that will be providing
 - c. Acknowledgement of any addenda issued
 - d. State whether your firm has been involved in any litigation within the past five (5) years arising out of your performance (explain fully)
 - e. List any exceptions to this RFP
2. Cover Page
 - a. Proposal Addressed to Forsyth County
 - b. Project Reference being Pursued
 - c. Proposer Name
 - d. Date of Submittal
3. Proposer Qualifications/Experience
 - a. Overview of firm's qualifications, experience and ability to Perform Work
 - b. Describe the firm's role on the project
 - c. Identify the firm's project manager and key team members that were involved on the project
 - d. Provide a name and current telephone number of a reference contact person relative to each project
4. Project Approach
 - a. Provide how your firm approaches projects. Include a written description of the firm's view of important issues that need to be addressed in a typical Project.
 - b. What is your philosophy in working with your client?
 - c. Provide organizational chart
5. Quality Assurance/Quality Control Processes
 - a. Describe the firm's procedures for ensuring the accuracy and integrity of its services. Include, how issues and overall quality assurance/quality control of deliverable items will be addressed.

6. Staffing
 - a. Identify the key staff proposed to execute the work and provide their resumes
 - b. Describe for each key staff identified, the experience, certifications, and special qualifications to perform the work associated with this proposal.
 - c. If the firm uses outside support or subconsultants, provide details on how and when these services are utilized.

7. County Required Documents
 - a. Contractor Affidavit
 - b. Non-Collusion Affidavit
 - c. Sub-Contractor Affidavit (if applicable)

Evaluation Method and Criteria:

Forsyth County will evaluate the proposals and will select the proposal that best meets the interest of the County. The County shall be the sole judge of its own best interest, the proposals, and the resulting agreement.

Evaluation will be made by a Committee established for this purpose. Award will be based on a review of all information submitted. Finalist may be asked to appear before an Evaluation Committee, if required. The County will negotiate with the first ranked proposer; if negotiations are not satisfactory to the County, then the County reserves the right to negotiate with the next ranked proposer and so forth. Forsyth County at its sole discretion, may at any time during the evaluation process reinstate (bring back into the process) any bidder that has been removed from the process during any previous phase. The County reserves the right to accept or reject any or all proposals, or part(s) of proposals, to waive minor variations to specifications.

Forsyth County reserves the right to retain all proposals submitted and to use any idea in any proposal regardless of whether that proposal is selected. Failure of a vendor to provide any portion of the requested information may result in the vendor's proposal package being declared non-responsive. Forsyth County reserves the right to reject any and all of the vendors submitting.

The Selection Committee will review each proposal received utilizing the following criteria.

<u>Evaluation Criteria</u>	<u>Points</u>
Scoring Points Breakdown: 100 points total	
Experience	25
Project approach	25
Quality assurance	20
References	20
Staffing	10

Pricing Schedule

**Forsyth County Procurement
Financial Planning Program Cost Proposal**

Forsyth County is requesting that each Financial Planner/Provider responding to this Request for Proposal provide either a flat fee for services to all employees (total annual fee) or a per employee planning fee. The invoice/payment structure will be on a monthly basis within a 30-day period after the invoice is received from provider as determined by the number of employees that started the planning process that month or on a 1/12 annual flat fee structure.

Total Annual Flat Fee \$ _____

Total Per Employee planning fee \$ _____

Signature _____
Signed by authorized signatory

Printed Name and Title _____

Date _____

This document must be placed in a sealed separate envelope with the following placed on the front:

**Forsyth County Pricing Schedule
Financial Planning Program
RFP 22-77-1512**

NON-COLLUSION AFFIDAVIT
(This Affidavit is Part of the Bid Documents)

BID DATE:

PROJECT DESCRIPTION:

STATE OF _____ }

COUNTY OF _____ }

_____, being first duly sworn, deposes and says that (s)he is _____ (the sole owner, a partner, president, secretary, etc.) of _____ the party making the foregoing Proposal or Bid; that such Bid is genuine and not collusive or a sham; that said Bidder has not colluded, conspired, connived, or agreed, directly or indirectly, with any Bidder or person, to put in a sham Bid, or that such other person refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the Bid Price of affiant or any other Bidder, or to fix any overhead, profit or cost element of said Bid Price, or that of any other Bidder, or to secure any advantage against Forsyth County, or any person interested in the proposed Contract; and that all statements in said Proposal or Bid are true; and further, that such Bidder has not, directly or indirectly submitted this Bid, or the contents thereof, or divulged information or data relative thereto, to any association or to any member or agent thereof.

Affiant: _____ Date: _____

Signed and sworn to (or affirmed) before me on _____, 201____
by _____,
Printed name(s) of individual(s) making statement

who proved to me on the basis of satisfactory evidence to be the person who appeared before me.

_____ Personally Known
Or
_____ Produced Identification

Type and # of ID (last 4 digits) _____

ID Expiration Date _____

Notary Public

(SEAL)

My Commission Expires: _____

Contractor Affidavit under O.C.G.A. §13-10-91 (b)(1)

The undersigned contractor ("Contractor") executes this Affidavit to comply with O.C.G.A § 13-10-91 related to any contract to which Contractor is a party that is subject to O.C.G.A. § 13-10-91 and hereby verifies its compliance with O.C.G.A. § 13-10-91, attesting as follows:

- a) The Contractor has registered with, is authorized to use, and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program.
- b) The Contractor will continue to use the federal work authorization program throughout the contract period, including any renewal or extension thereof.
- c) The Contractor will notify the public employer in the event the Contractor ceases to utilize the federal work authorization program during the contract period, including renewals or extensions thereof.
- d) The Contractor understands that ceasing to utilize the federal work authorization program constitutes a material breach of Contract.
- e) The Contractor will contract for the performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the Contractor with the information required by O.C.G.A. § 13-10-91(a), (b), and (c).
- f) The Contractor acknowledges and agrees that this Affidavit shall be incorporated into any contract(s) subject to the provisions of O.C.G.A. § 13-10- 91 for the project listed below to which Contractor is a party after the date hereof without further action or consent by Contractor; and
- g) Contractor acknowledges its responsibility to submit copies of any affidavits, drivers' licenses, and identification cards required pursuant to O.C.G.A. § 13-10-91 to the public employer within five business days of receipt.

Federal Work Authorization User Identification
Number

Date of Authorization

Name of Contractor

Name of Project

_____Forsyth County
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, _____, 20____ in _____ (County), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____, 20_____.

Forsyth County, Georgia

Subcontractor Affidavit under O.C.G.A. § 13-10-91 (b)(3)

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with (_____) on behalf of Forsyth County Government has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Subcontractor

Name of Project

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 201__ in _____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

Signed and sworn to (or affirmed) before me on
_____, 201__.

Notary Public State of Georgia

My Commission Expires: _____

(SEAL)

**FORSYTH COUNTY
STANDARD TERMS AND CONDITIONS**

1. **CHANGES:** No change will be made to this invitation except by written modification by the County Procurement Office. Requests for interpretation or changes must be in writing and received at least seven (7) calendar days prior to the time set for opening of the bids.
2. **FOB POINT:** Bid price to include shipping, packing, crating and unloading at address in Bid Schedule. Title to remain with vendor until fully accepted by County. Goods damaged or not meeting specifications will be rejected and removed at vendor's expense. Concealed damaged goods to remain property of vendor until replaced or removed at County's direction.
3. **RISK OF LOSS:** Vendor agrees to bear all risk of loss, injury and destruction of goods and materials ordered herein which occur prior to delivery to include concealed damage; and such loss, injury or destruction shall not release vendor from any obligation.
4. **DELIVERY TIME:** Specify on Bid Schedule the delivery time you are able to meet for items listed in Bid Schedule. Failure to meet stated delivery times may be grounds for cancellation of order.
5. **BID ACCEPTANCE TIME:** Bids requiring acceptance by the County in less than sixty (60) calendar days could be rejected, unless so stated on "Bidder's Response Page" and accepted by the County.
6. **WITHDRAWAL OF BIDS:** Bids may be withdrawn by written request only, if the request is received prior to the time and date set for the opening of bids. Negligence on the part of the bidder in preparing his bid confers no right of withdrawal or modification of his bid after bid has been opened. No bid may be withdrawn for a period of sixty (60) days after time has been called on the date of opening.
7. **SUBSTITUTIONS:** When references are made in these documents to trade names or to the brand names of manufacturers, such references are made solely to designate and identify the quality of materials or equipment to be furnished and are not intended to restrict competitive bidding. If comparable materials or equipment of trade names or of manufacturers' names which are different from those mentioned in the bid specifications are offered, the burden of proving equality of a proposed substitution rest on the submitting party and must be provided with the bid.
8. **AWARD:** For all contracts established through a Bid/Proposal the award will be made to the lowest responsible bidder meeting all specifications and whose bid is responsive to the Bid/Proposal. This is the bidder who submits the lowest price, whose bid meets the specifications, who agrees to contract terms and conditions with Forsyth County, and who is clearly capable of performing the resulting contract. Therefore, the lowest responsible bidder will not always be the bidder who has submitted the lowest monetary bid.
 - 8.1 The vendor in accepting this Contract, attests that he is in compliance with the nondiscrimination clause contained in Section 202 of Executive Order 11246, as amended, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, which is incorporated herein by reference.
9. **EXCEPTIONS TO SPECIFICATIONS:** Any award resulting from this invitation shall bind the bidder to all terms, conditions and specifications set forth in this invitation. Bidders whose bids do not conform should so note on separate page if necessary and/or on the Bid Schedule. While the County reserves the right to make an award to a nonconforming bidder when in the best interest of the County, such awards will not be readily made, and bidders are urged to conform to the greatest extent possible. No exceptions will be considered to have been taken by a bidder unless it is properly set out as provided above. No exception will be deemed to have been taken by the County unless incorporated in an award resulting from this invitation and so stated.

10. **BID RESULTS:** No bid results will be issued by telephone. Interested parties may request in writing, bid tabulation by sending a self-addressed, stamped envelope with their request to: Forsyth County Procurement Department, 514 West Maple Street, Suite 104, Cumming, GA 30040.
11. **PAYMENT:** Upon inspection and acceptance of all items, amount due shall be paid within thirty (30) days of receipt of correct invoice, unless a shorter time is stated in the bid and accepted by the County (see #13 below). Submit invoice(s) with original signature of receiving County personnel to Forsyth County Commissioners, Attn: Accounts Payable, 110 E. Main Street, Suite 210, Cumming, GA 30040.
 - 11.1 Itemize all invoices in full. Show payment terms. Be sure our Purchase Order number is on your invoice. Mail the original and one copy of your invoice to the address above.
 - 11.2 Vendor must furnish delivery receipt with invoice identifying that this order has been delivered in accordance with specifications, quantities, and price as set forth on the purchase order. A Forsyth County employee's signature must appear on the delivery receipt or invoice.
 - 11.3 Items on this order are exempt from Federal Excise Tax and Georgia Sales and Use Tax. A certificate will be furnished, if requested. Forsyth County is exempt from taxes but the successful bidder shall pay all taxes required of him by law and Forsyth County cannot exempt others from tax.
 - 11.4 Payment terms and provisions herein or otherwise found within the Contract documents supersede all provisions of the Georgia Prompt Pay Act (House Bill 837; 13 O.C.G.A. Chapter 11 *et seq.*)
12. **COMMODITY STATUS:** It is understood and agreed that materials delivered shall be new, of latest design, and in first quality condition. That all bags, containers, etc., shall be new and suitable for storage, unless otherwise stated by Forsyth County.
13. **INQUIRIES REGARDING PAYMENT:** All inquiries regarding payment of invoices are to be directed to: Accounts Payable, 110 E. Main Street, Suite 210, Cumming, GA 30040.
14. **DISCOUNTS:** Prompt payment discounts offered for a period of less than fifteen (15) days will not be considered in determining the low bidder. However, such discounts, when offered, will be taken provided payment is made within the time specified. Time, in connection with discounts for prompt payment, will be computed from the date of final acceptance of all goods for which payment is claimed, or the date the correct invoice is received by the County, whichever is later.
15. **ANTI DISCRIMINATION CLAUSE:** "Forsyth County does not discriminate against any person because of race, color, religion, national origin, or disabilities in employment or service provided."
16. **TERMINATION:** Pursuant to O.C.G.A. 36 13, if applicable, any contract resulting from this Invitation to Bid, if not sooner terminated pursuant to the provisions of termination contained herein, is terminable by the Board of Commissioners of Forsyth County, Georgia on December 31st of each calendar year during the term of said contract, except that said contract shall be renewed automatically on such date, and without any lapse, unless positive action is taken to terminate said contract by the Board in a public meeting and such action entered in the Official Minutes of the Forsyth County Commission.
17. **APPROPRIATION OF FUNDS:** Initial Contract and any continuation Contract(s) will terminate immediately and absolutely at any such time as there are no appropriated and otherwise unobligated funds available to satisfy the County's obligations under said contract(s).
18. **REGULATORY AGENCIES:** Successful bidder will be responsible for all required permits or license required by any regulatory agency of the city, county, state or federal governments. Further, successful bidder will be responsible for meeting all requirements of any regulation(s) or guideline(s)

of any of the said governments or any independent agency recognized by said governments as publisher of any such regulation(s) or guideline(s).

19. **INDEPENDENT CONTRACTORS:** The bidder represents to Forsyth County that he is fully experienced and properly qualified to perform the functions provided for herein and that he is properly equipped, organized and financed to perform such functions. The bidder shall finance his own operations hereunder, shall operate as an independent contractor and not as the agent of Forsyth County and nothing contained in this Invitation to Bid or a contract resulting from same shall be construed to constitute the bidder or any of his employees, servants or agents or subcontractors as a partner, employee, servant or agent of the County nor shall either party have any authority to bind the other in any respect, it being intended that each shall remain an independent contractor.
20. **ASSIGNMENT OF CONTRACTUAL RIGHTS:** It is agreed that successful bidder will not assign, transfer, convey or otherwise dispose of a contract that results from this invitation or his right, title, or interest in or to the same, or any part thereof, without written consent of the County.
21. **QUESTIONS:** All questions concerning this invitation should be directed to the Procurement agent whose name appears on the cover page unless otherwise directed.
22. **REJECTION OF BIDS/PROPOSALS:** The Forsyth County Board of Commissioners reserves the right to reject any and all bids/proposals submitted in response to any solicitation, to reject any portion thereof, or to waive any minor irregularity or administrative requirement.
23. **PAYMENT ON CONTRACTS:** Payment for work completed will be made on monthly invoices at the contract price for units in place and accepted by the County. Except that a 5% retainer will be withheld from each payment. Upon completion of all work and acceptance by the County, any retainer due the contract will be paid within thirty (30) days of final acceptance or receipt of correct invoice, whichever is later.
24. **SITE INSPECTION:** Bidders should inspect the site to ascertain the nature and location of the work and the general conditions, which could affect the work or the cost thereof. The County will assume no responsibility for representations or understandings concerning conditions made by any of its Officers or Employees unless included in the Invitation to Bid/Proposal.
25. **AFFIDAVIT:** The bidder will be required to execute an Affidavit of Non-Collusion and submit it with Bid Documents.
26. **EXECUTION OF CONTRACT:** Subsequent to the award, the successful bidder will be presented with a Contract and other applicable forms. The successful bidder shall execute and return the Contract and forms within ten (10) days of presentation together with the Payment Bond, Performance Bond, and Certificate of Insurance. If said documents are mailed to the successful bidder, the date of presentation shall be deemed the postmark date. The bid of the successful bidder and the Invitation to Bid shall be incorporated into the Contract, except to the extent that this Invitation to Bid conflicts with the Contract. In case, the provisions of the Contract differ from the Invitation, the Contract shall have precedence. A copy of the Contract is attached to Bid Documents for review.
27. **COMPLETION TIME:** Project is to be completed within the time frame established in the Invitation to Bid and accepted by the County. Work shall be completed as bid, in the manner with the specifications bid. In the event that the Contract is not completed within the time provided, bidder shall pay to the County, not as a penalty, but as liquidated damages, a set sum per day as stated in the Contract, for each and every day beyond said completion day.
28. **CERTIFICATATE OF INSURANCE:** Successful bidder will be required to furnish a certificate of liability insurance in an amount of not less than \$1,000,000.00 per occurrence to protect the County. Certificate is to be submitted at the time the Contract is executed.
29. **BONDS:** Bonds are required for construction ("Public Works") contracts. They are required only

occasionally for non-construction contracts. The requirement will be stated clearly in the solicitation document in all cases, and the bid bond must accompany the bid/proposal. Any bid or proposal submitted without the required bid bond will not be considered for award. Requirement of Bonds will be stated in the Advertisement.

BID BOND: The bid must be accompanied by a bid guarantee of not less than five (5) percent of the amount of the bid. The guarantee may be in the form of a Cashier's Check, Certified Check made payable to the Forsyth County Board of Commissioners, or a Bid Bond issued by a surety company. The guarantee shall insure the execution of the contract document and the furnishing of a Payment and Performance Bond. Bid Bonds will be returned to all bidders upon award of the contract.

PERFORMANCE BOND: The successful bidder will be required to furnish a guarantee of the performance in the amount of the contract, if the contract is more than: \$5,000 for *ROAD PROJECTS*, and \$40,000 for all other projects, prior to commencing work. This guarantee of performance may be in the form of a Cashier's Check, Certified Check made payable to Forsyth County Board of Commissioners, Performance Bond, or an irrevocable Letter of Credit issued by a Bank or Savings and Loan Association as defined in O.C.G.A., Section 7-1-4. Irrevocable letters of credit will not be accepted on contracts of more than \$300,000.00. Performance Bonds will be returned to the contractor within thirty (30) days after the work is completed and accepted by the County.

PAYMENT BOND: The success bidder will be required to furnish a guarantee of payment for the protection of all subcontractors, and all persons supplying labor, material, machinery and equipment provided for in the contract in the amount of the contract awarded prior to commencing work. This bond is required for *ROAD PROJECTS* only if the contract is more than \$20,000.00; all other projects require a Payment Bond no matter the contract amount. This guarantee may be in the form of a Payment Bond, Cashier's Check, Certified Check made payable to the Forsyth County Board of Commissioners, or by an irrevocable Letter of Credit issued by a Bank or a Savings and Loan Association as defined in O.C.G.A., Section 7-1-4. Irrevocable Letters of Credit will not be accepted on contracts of more than \$300,000.00.

30. **INSPECTION OF RECORDS:** The records of the Procurement Office are open and accessible to the public in accordance with the provisions of the Georgia Open Records Act. Requests for inspection of records, must be in writing, must be reasonable, must contain sufficient information to facilitate retrieval, and must not interfere with the orderly operation of the Procurement Office.
31. Bidders/offerors are cautioned that any documentation submitted with or in support of a bid or proposal will become subject to public inspection under the Georgia Open Records Act. Labeling such information "Confidential," "Proprietary," or in any other manner will not protect this material from public inspection upon request.
32. There will be a charge assessed to any vendor requesting copies of records.
33. **TRADE SECRETS:** Pursuant to Georgia law, any trade secrets that are required by law, regulation, bid, or request for proposal to be submitted to the County are exempt from disclosure under the Open Records Act. However, this exemption applies only in specific circumstances. If records containing trade secrets are submitted to the County, and the submitting company wants to protect the trade secrets contained in those records from disclosure, an affidavit must be attached to the records stating that specific information in the records is a trade secret. Please note, a company cannot merely mark otherwise open records with "confidential" or "proprietary" in order to protect such records from disclosure. The affidavit must be submitted with the records when they are first provided to the County, and the affidavit should affirmatively declare that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 of the Georgia Code. The submitted affidavit should clearly identify the information and/or records that constitute trade secrets, and must provide the specific location of such trade secrets in the records submitted (i.e. page(s), section(s), etc.). If the County does not receive an affidavit identifying specific information as trade secrets, the trade secret

exemption will not apply. Upon receiving a request for such records under the Open Records Act, the County will respond in accordance with O.C.G.A. 50-18-72(a)(34) and other applicable law.

34. Forsyth County does not discriminate against any person because of race, color, religion, national origin, sex, age, or handicapped individuals in employment, services provided, or contracts awarded.

PROFESSIONAL SERVICES AGREEMENT

Financial Planning Program 22-77-1512

THIS "AGREEMENT" effective as of the date last signed by both parties below ("Effective Date"), is by and between **FORSYTH COUNTY, GEORGIA**, a political subdivision of the State of Georgia, acting by and through its governing authority, the Forsyth County Board of Commissioners ("County"), and _____ ("Contractor"), collectively the County and the Contractor may be referred to as the "Parties."

WITNESSETH THAT:

WHEREAS, the County desires to retain Contractor to provide certain services generally described as Financial Planning Program; and

WHEREAS, the Contractor has represented that it is qualified by training and/or experience to perform the Work; and

WHEREAS, the Contractor desires to perform the Work under the terms and conditions set forth in this Agreement; and

WHEREAS, the public interest will be served by this Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein, together with other good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES AND TERMINATION DATE

A. Agreement. The Agreement shall consist of this Professional Services Agreement and each of the Exhibits hereto, including:

- Exhibit A – County Solicitation Documents
- Exhibit B – Contractor Response
- Exhibit C – Contractor Affidavit
- Exhibit D – Subcontractor Affidavit

B. Project Description. The Project is described in Exhibits A and B, attached hereto and incorporated herein by reference.

C. The Work. The Work to be completed under this Agreement (the "Work") consists of the services described in Exhibits A and B, attached hereto and incorporated herein by reference.

D. Term of Agreement.

- (1) Contractor warrants and represents that it will perform its services in a

prompt and timely manner, which shall not impose delays on the progress of the Work. The Work shall begin on the Effective Date, and the Work shall be completed on or before December 31, 2023 (“Initial Term”). As required by O.C.G.A. § 36-60-13, this Agreement shall terminate absolutely and without further obligation on the part of the County on December 31 each calendar year of the Initial Term and any Renewal Term (defined below), and further, that this Agreement shall renew on January 1 of each subsequent calendar year during such term absent the County’s provision of written notice of non-renewal to Contractor at least five (5) days prior to the end of the then current calendar year. Further, this Agreement shall terminate immediately and absolutely at any such time as there is no appropriate and otherwise unobligated funds available to satisfy the County’s obligations under this Agreement. Title to any supplies, materials, equipment, or other personal property shall remain in Contractor until fully paid for by the County.

- (2) The pricing provided in this Agreement must remain firm for the Initial Term. This Agreement may be renewed for an additional Five (5) one (1) year period(s) (each a “Renewal Term”), as specified and authorized in Exhibit A (attached hereto and incorporated herein by reference); provided that fees must remain firm (or be subject to a pre-approved increase not to exceed the annual cost price index (CPI-U)), service is satisfactory, both Parties are willing to renew, and renewal is approved by the Forsyth County Board of Commissioners. Prior to each Renewal Term, any increases in renewal rates will be evaluated and compared to the actual rate of inflation experienced and will thereby remain subject to negotiation.

II. WORK CHANGES

The County reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written change orders executed by the County authorizing and directing a change in services. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time and shall be delivered to Contractor. Contractor must submit any claim regarding such adjustment in price or completion time in writing within thirty (30) days of receiving notice of the change order. If the Parties cannot reach an agreement on the terms for performing the changed work within a reasonable time to avoid delay or other unfavorable impacts as determined by the County in its sole discretion, the County shall have the right to determine reasonable terms, and the Contractor shall proceed with the changed work. No claim for additional compensation or extension of time shall be recognized, unless contained in a written change order duly executed on behalf of the County.

III. COMPENSATION AND METHOD OF PAYMENT

A. County agrees to pay the Contractor for the Work performed and costs incurred by Contractor upon certification by the County that the Work was actually performed and costs actually incurred in accordance with the Agreement. Compensation for Work performed (and reimbursement for costs incurred, where such reimbursement is specifically authorized in Exhibits A and B) shall be paid to the Contractor upon receipt and

approval of the County of invoices, setting forth in detail the services performed and costs incurred, along with all supporting documents requested by the County to process the invoice. Invoices must include the Purchase Order Number provided above and an itemized statement of the Work completed (including a breakdown of labor hours and material used, as applicable). (**NOTE:** The County is exempt from Federal Excise Tax and Georgia Sales and Use Tax.) No payment will be made for Work performed until the Contractor furnishes the County with an invoice meeting these requirements.

Invoices shall be submitted on a monthly basis, and such invoices shall reflect costs incurred versus costs budgeted. Any material deviations from the Work described in this Agreement shall be clearly communicated to the County *before charges are incurred* and shall be handled through change orders as described in Section II above. The County shall pay the Contractor within thirty (30) days after approval of the invoice by County staff.

B. The total annual amount paid under this Agreement as compensation for Work performed and reimbursement for costs incurred shall not, in any case, exceed **(\$,000.00)**, except as outlined in Section II above, and the Contractor represents that this amount is sufficient to perform all of the Work set forth in and contemplated by this Agreement. The compensation for Work performed (and reimbursement for costs incurred, if specifically, authorized) shall be as specified in Exhibits A and B, attached hereto and incorporated herein by reference.

C. The compensation, as set forth in Exhibits A and B, shall be received by Contractor as payment in full for Work done. All labor, materials, and equipment will be paid as bid. There will be no percentage mark-up other than as stated in the Bid Pricing Schedule, and only for goods/services applicable to the Work.

IV. COVENANTS OF CONTRACTOR

A. Expertise of Contractor; Licenses, Certification and Permits. Contractor accepts the relationship of trust and confidence established between it and the County, recognizing that the County's intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and skill and judgment to provide the Work in pursuit of the timely and competent completion of the Work undertaken by Contractor under this Agreement. The Contractor shall employ only persons duly qualified in the appropriate area of expertise (as applicable) to perform the Work described in this Agreement.

The Contractor covenants and declares that it is properly equipped, organized and financed to perform the Work and that it has obtained all diplomas, certificates, licenses, permits or the like (if any) required of the Contractor by any and all national, state, regional, county, or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Work contracted for under this Agreement. All Work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of care and quality ordinarily expected of an entity performing the type of Work contemplated herein. Any additional work or costs incurred as a result of error and/or omission by Contractor as a result of not meeting any applicable standard of care or quality (if any) will be provided by Contractor at no additional cost to the County. This provision shall survive termination of this Agreement.

B. County's Reliance on the Work. The Contractor acknowledges and agrees that the County does not undertake to approve or pass upon matters of expertise of the Contractor and that, therefore, the County bears no responsibility for Contractor's Work performed under this Agreement. The Contractor acknowledges and agrees that the acceptance of designs, plans, specifications or other work product by the County (if any) is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. The County will not, and need not, inquire into adequacy, fitness, suitability or correctness of Contractor's performance. Contractor further agrees that no approval of designs, plans, specifications or other work product (if any) by any person, body or agency shall relieve Contractor of the responsibility for adequacy, fitness, suitability, and correctness of Contractor's Work under professional and/or industry standards, or for performing services under this Agreement in accordance with sound and accepted professional and/or industry principals.

C. Assignment of Agreement. The Contractor covenants and agrees not to assign or transfer any interest in, or delegate any duties of this Agreement, without the prior express written consent of the County. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them, and the County shall have no obligation to them.

D. Responsibility of Contractor and Indemnification of County. The Contractor covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. The Contractor shall bear all losses and damages directly or indirectly resulting to it and/or the County on account of the performance or character of the Work rendered pursuant to this Agreement but only to the extent caused by Contractor's and/or Contractor's employees, agents, or its subcontractor's negligent performance of its services under this Agreement. Contractor shall, indemnify and hold harmless the County and the County's elected and appointed officials, officers, boards, commissions, and employees (individually an "Indemnified Party" and collectively the "Indemnified Parties") from and against claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability, including but not limited to reasonable attorney's fees and costs of defense ("Liabilities"), to the extent caused by Contractor's negligent acts or omissions in performance of the Work, performance of contracted services, or operations by the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor or anyone for whose acts the Contractor or subcontractor may be liable. This indemnity obligation does not include Liabilities caused by or resulting from the negligent acts and/or omissions of an Indemnified Party or of any Indemnified Parties, or an act or omission by the County contrary to a specific written directive or consultation by the Contractor. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision. In any and all claims against an Indemnified Party, by any employee of the Contractor, its subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor or anyone for whose acts the Contractor or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify and hold harmless the Indemnified Party(ies) shall survive expiration or termination of this Agreement, provided that the claims result from Contractor's negligent actions or omissions that occurred during the performance of this Agreement.

Notwithstanding any other provision of this agreement, neither party shall have liability to the other for contingent, consequential, or other indirect damages including, without limitation, damages for loss of use, revenue or profit; operating costs and facility downtime, however the same may be caused. The limitations and exclusions of liability set forth in this Article shall apply regardless of the fault, breach of contract, tort (including negligence), strict liability or otherwise of either party.

E. Independent Contractor. Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as the agent or employee of the County. Nothing in this Agreement shall be construed to make the Contractor or any of its employees, servants, or subcontractors an employee, servant or agent of the County for any purpose. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Work is performed and the method used to perform such Work; the instrumentalities, tools, supplies and/or materials necessary to complete the Work; hiring of consultants, agents or employees to complete the Work; and the payment of employees, including benefits and compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement. There shall be no contractual relationship between any subcontractor or supplier and the County by virtue of this Agreement with Contractor. Any provisions of this Agreement that may appear to give the County the right to direct Contractor as to the details of the services to be performed by Contractor or to exercise a measure of control over such services will be deemed to mean that Contractor shall follow the directions of the County with regard to the results of such services only. It is further understood that this Agreement is not exclusive, and the County may hire additional entities to perform the Work related to this Agreement.

F. Insurance. The Contractor shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property of third parties to the extent caused by the negligent performance of the Work by the Contractor, its agents, representatives, employees or subcontractors, including but not limited to commercial general liability coverage and workers' compensation coverage. Contractor shall maintain insurance policies with coverage and limits no less than that specified in Exhibits A and B, attached hereto and incorporated herein by reference. All policies shall be subject to approval by the County to form and content.

The County shall be named as an additional insured and loss payee as it related to Contractor's performance under this Agreement on all policies required by this Agreement, except the County need not be named as an additional insured and loss payee on any Professional Liability policy or Workers' Compensation policy. Any liability insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the County to the extent of Contractor's performance under this Agreement. The insurer providing Workers' Compensation Coverage will agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by the Contractor for the County. Further, each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled or materially reduced in coverage except after thirty (30) days prior written notice has been given to the County. The County reserves the right to accept alternate notice terms and provisions, provided they

meet the minimum requirements under Georgia law.

Contractor shall furnish the County with certificates of insurance and endorsements to the policies evidencing all coverage required by this Agreement. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf, unless alternate sufficient evidence of their validity and incorporation into the policy is provided. The certificates of insurance and required endorsements shall be furnished on a form utilized by Contractor's insurer in its normal course of business. The Contractor shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

G. Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit.

Pursuant to O.C.G.A. § 13-10-91, the County shall not enter into a contract for the physical performance of services unless:

- (1) the Contractor shall provide evidence on County-provided forms, attached hereto as Exhibits "C" and "D" (affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71), that it and Contractor's subcontractors have registered with, are authorized to use and use the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91, and that they will continue to use the federal work authorization program throughout the contract period, **or**
- (2) the Contractor provides evidence that it is not required to provide an affidavit because it is an *individual* (not a company) licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing.

The Contractor hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in Exhibit "C", and submitted such affidavit to County or provided the County with evidence that it is an *individual* not required to provide such an affidavit because it is licensed and in good standing as noted in subsection (2) above. Further, Contractor hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Rule 300-10-1-.02.

In the event the Contractor employs or contracts with any subcontractor(s) in connection with the covered contract, the Contractor agrees to secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit, the form of which is attached hereto as Exhibit "D", which subcontractor affidavit shall become part of the contractor/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is an *individual* licensed and in good standing as noted in subsection (2) above. If a subcontractor affidavit is obtained, Contractor agrees to provide a completed copy to the County within five (5) business days of receipt from any subcontractor.

Where Contractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the County Manager or his/her designee shall be authorized to conduct an inspection of the Contractor's and Contractor's subcontractors' verification process at any time to determine

that the verification was correct and complete. The Contractor and Contractor's subcontractors shall retain all documents and records of their respective verification process for a period of five (5) years following completion of the contract. Further, where Contractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the County Manager or his/her designee shall further be authorized to conduct periodic inspections to ensure that no County Contractor or Contractor's subcontractors employ unauthorized aliens on County contracts. By entering into a contract with the County, the Contractor and Contractor's subcontractors agree to cooperate with any such investigation by making their records and personnel available upon reasonable notice for inspection and questioning. Where a Contractor or Contractor's subcontractors are found to have employed an unauthorized alien, the County Manager or his/her designee may report same to the Department of Homeland Security. The Contractor's failure to cooperate with the investigation may be sanctioned by termination of the contract, and the Contractor shall be liable for all damages and delays occasioned by the County thereby.

Contractor agrees that the employee-number category designated below is applicable to the Contractor. [Information only required if a contractor affidavit is required pursuant to O.C.G.A. § 13-10-91.]

- 500 or more employees.
- 100 or more employees.
- Fewer than 100 employees.

Contractor hereby agrees that, in the event Contractor employs or contracts with any subcontractor(s) in connection with this Agreement and where the subcontractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the Contractor will secure from the subcontractor(s) such subcontractor(s)' indication of the above employee-number category that is applicable to the subcontractor.

The above requirements shall be in addition to the requirements of State and federal law, and shall be construed to be in conformity with those laws.

H. Records, Reports and Audits

(1) Records:

- (a) Books, records, documents, account ledgers, data bases, and similar materials relating to the Work performed for the County under this Agreement ("Records") shall be established and maintained by the Contractor in accordance with requirements prescribed by the County and applicable law with respect to all matters covered by this Agreement. Except as otherwise authorized or required, such Records shall be maintained for at least three (3) years from the date that final payment is made to Contractor by County under this Agreement. Furthermore, Records that are the subject of audit findings shall be retained for three (3) years or until such audit findings have been resolved, whichever is later.
- (b) All costs claimed or anticipated to be incurred in the performance of this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official

documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

- (2) **Reports and Information:** Upon request, the Contractor shall furnish to the County any and all Records related to matters covered by this Agreement in the form requested by the County. All Records stored on a computer database must be in a format compatible with the County's computer systems and software.
- (3) **Audits and Inspections:** At any time during normal business hours and as often as the County may deem necessary, Contractor shall make available to the County or County's representative(s) for examination all Records with respect to all matters covered by this Agreement. The Contractor will permit the County or County's representative(s) to audit, examine, and make excerpts or transcripts from such Records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and/or data relating to all matters covered by this Agreement.

I. Conflicts of Interest. Contractor agrees that it shall not engage in any activity or conduct that would result in a violation of the Forsyth County Code of Ethics.

J. Information Received from County; Confidentiality. Contractor shall be required to provide immediate written notice to the County if Contractor knows or reasonably should know that any information provided by the County is erroneous, inconsistent, or otherwise problematic. Contractor acknowledges that it may learn or receive confidential information of the County and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, consultants, and/or staff to likewise protect such confidential information. Contractor personnel shall be instructed that they shall not remove any County documents or materials and that they shall not disclose any confidential information to any persons other than County personnel, unless County provides written authorization. The Contractor agrees that confidential information it learns or receives or such reports, information, opinions or conclusions that Contractor creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of the County. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of County information whether specifically deemed confidential or not.

Contractor acknowledges that the County's disclosure of documentation is governed by Georgia's Open Records Act, and Contractor further acknowledges that if Contractor submits records containing trade secret information, and if Contractor wishes to keep such records confidential, Contractor must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

K. Key Personnel. All of the individuals identified in Exhibit "B" are necessary for the successful completion of the Work due to their unique expertise and depth and breadth

of experience. There shall be no change in Contractor's Project Manager or members of the project team, as listed in Exhibit "E", without written approval of the County. Contractor recognizes that the composition of this team was instrumental in the County's decision to award the Work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the County's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Agreement and shall be grounds for termination. Contractor shall not subcontract with any third party for the performance of any portion of the Work without the prior written consent of the County. Contractor shall be solely responsible for any such subcontractors in terms of performance and compensation.

L. Authority to Contract. The Contractor and individual signing on behalf of Contractor below covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Contractor to the terms of this Agreement, if applicable.

M. Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the Work to be performed by the Contractor ("Materials") shall be the property of the County, and the County shall be entitled to full access and copies of all such Materials. The County shall have the unrestricted authorization to publicize, disclose, distribute, and otherwise use, in whole or in part, any Materials prepared under this Agreement without according credit of authorship. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the Work shall be delivered immediately to the County; provided that Contractor may retain a copy of any deliverables for its records. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the County, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to the County, and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

N. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Contractor agrees that, during performance of this Agreement, Contractor, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Contractor agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

V. PERFORMANCE STANDARDS; TERMINATION

A. The County may evaluate Contractor's performance on a monthly basis. If requirements are not being met, Forsyth County Procurement Department will notify the Contractor, in writing, identifying deficiencies (including but not limited to improper substitutions, inadequate delivery schedule, or poor workmanship). Contractor must promptly provide a written response to the County detailing how the identified deficiencies

will be remedied, and such deficiencies must be remedied within thirty (30) days of County's notice of deficiencies, unless such cure period is extended in writing by the County. If the deficiencies are not remedied within the thirty (30) day cure period, the County may immediately terminate this Agreement with no further obligation or liability to the Contractor.

B. If the County determines, under any circumstance, that Contractor has acted in a grossly negligent manner in the performance of its obligations hereunder, said determination being at the sole discretion of the County, then, and in that event, the County may immediately terminate this Agreement with no further obligation or liability to the Contractor.

C. The County shall have the right to terminate this Agreement for convenience by providing written notice thereof at least five (5) calendar days in advance of the termination date. The Contractor shall have no right to terminate this Agreement prior to completion of the Work, except in the event of the County's failure to pay the Contractor within thirty (30) days of Contractor providing the County with a proper notice of a delinquent payment and an opportunity to cure.

D. Upon termination, the County shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination date.

E. Upon termination, the Contractor shall: (1) promptly discontinue all services, cancel as many outstanding obligations as possible, and not incur any new obligations, unless the notice directs otherwise; and (2) promptly deliver to the County all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Agreement, whether completed or in process, in the form specified by the County.

F. The rights and remedies of the County and the Contractor provided in this Article are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

VI. MISCELLANEOUS

A. Entire Agreement. This Agreement, including all exhibits hereto, constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. In the event of a conflict in the terms of this Agreement and/or the exhibits attached hereto, the terms most beneficial to the County shall govern. This Agreement may be modified or amended only by a written change order (as provided in Section II above) or other document signed by representatives of both Parties with appropriate authorization.

B. Successors and Assigns. Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties, provided that no Party may assign this Agreement without prior written approval of the other Party.

C. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of Forsyth County, Georgia, and Contractor submits to the jurisdiction and venue of such court.

D. Captions and Severability. The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed illegal, invalid or unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible, as the Parties declare they would have agreed to the remaining parts of this Agreement if they had known that the severed provisions or portions thereof would be determined illegal, invalid or unenforceable.

E. Business License. Prior to commencement of the services to be provided hereunder, Contractor shall apply to the County for a business license, pay the applicable business license fee, and maintain said business license during the term of this Agreement, unless Contractor provides evidence that no such license is required.

F. Notices. All other notices, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered to the individual identified below where a signed receipt is given, or (2) on the third day after the postmark date when mailed by registered mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the party at the address given below, or at a substitute address previously furnished to the other party by written notice in accordance herewith:

NOTICE TO THE COUNTY shall be sent to:

Attn: Tyra Little, **Procurement Director**
Forsyth County, Georgia
514 West Maple Street, Suite 104
Cumming, GA 30040
(770) 888-8872

NOTICE TO THE CONTRACTOR shall be sent to:

G. Waiver of Agreement. No failure by the County to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Contractor with this Agreement, and no custom or practice of the County at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect the County's right to demand exact and strict compliance by Contractor with the terms and conditions of this Agreement. Further, no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.

H. No Third-Party Rights. This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.

I. Sovereign Immunity. Nothing contained in this Agreement shall be construed to be a waiver of the County's sovereign immunity or any individual's qualified good faith or official immunities.

J. Counterparts; Agreement Construction and Interpretation. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A signature on a copy of this Agreement received by either party by facsimile is binding upon the other party as an original. The Parties shall treat a photocopy of such facsimile as a duplicate original. Contractor represents that it has reviewed and become familiar with this Agreement and has notified the County of any discrepancies, conflicts or errors herein. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement.

K. Force Majeure. Neither the County nor Contractor shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (a) any cause beyond their respective reasonable control; (b) any act of God; (c) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (d) earthquake, fire, explosion or flood; (e) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of CONTRACTOR; (f) delay or failure to act by any governmental or military authority; or (g) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.

L. Material Condition. Each term of this Agreement is material, and Contractor's breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other remedies available to the County at law or in equity.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF the County and the Contractor have executed this Agreement, which is effective as of last signature below.

CONTRACTOR:

_____ **Date:**
By: _____
Its: _____ (circle one)
President/Vice President (Corporation)

Date: _____

Attest: _____

By: _____
Its: _____
Corporate Secretary (required if corporation)

[CORPORATE SEAL]
(required if corporation)

COUNTY: FORSYTH COUNTY, GEORGIA, by and through its Board of Commissioners

By: Kevin Tanner
Its: County Manager
Date: _____

Attest: _____
By: Rhonda Hansard
Its: County Clerk

[COUNTY SEAL]