



**HIAWASSEE**  
DOWNTOWN  
DEVELOPMENT  
AUTHORITY

**Request for Proposal (RFP)**  
**Public Art Master Plan Consultant Services**  
**RFP# - 0122**

Proposals Due: Friday, July 09, 2022, by 3:00 PM (EST)  
Electronic submissions: [DDA@hiawasseeega.gov](mailto:DDA@hiawasseeega.gov)

Hiwassee Downtown Development Authority  
50 River Street  
Hiwassee, GA 30546  
706.896.2202



REQUEST FOR PROPOSALS (RFP)  
CONSULTANT SERVICES – PUBLIC ART STRATEGIC PLAN

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The Downtown Development Authority of the City of Hiwassee, Georgia (“DDA”) is seeking the services of a qualified firm or individual(s) to develop a Public Art Strategic Plan for the City of Hiwassee, Georgia.

Proposals are due no later than 3:00 PM (EST) on Friday, July 15, 2022.

### **DESCRIPTION OF THE REQUEST FOR PROPOSALS**

#### **Project Purpose/Overview**

The DDA has a desire to implement public art in a cohesive, coordinated effort where the art aligns with its rural, lake, and mountain character, honors the Appalachian history, and traditions while embracing our future, celebrates our cultural resources, is easily accessible and creates rich experiences for residents and visitors. Thus, the DDA is seeking the services of a qualified firm or individual(s) to develop a Public Art Strategic Plan.

The Hiwassee DDA plans to work with an experienced consultant to create a Public Art Strategic Plan. It is the hope that with a clear and focused plan, the Hiwassee Public Art Strategic Plan will be representative of the values and identity of Hiwassee and the Appalachian region.

#### **Scope of Work**

The selected Proposer shall complete the execution of the items listed below, and as described throughout this RFP. This effort involves the creation of a Public Art Strategic Plan, the process and product of which is to include, but not be limited to the following:

- Produce a written Master Plan that is a detailed narrative and illustrative document that include:
  - A vision statement and 10-year strategic plan for Public Art in Hiwassee
  - Potential locations and opportunities for Public Art
  - Process for commissioning, selecting and acquiring artwork
  - Standards for donated artwork
  - Recommendations for administration, maintenance, and de-acquisition of artwork
  - Identify best practices for funding sources in cities of comparable size
- Plan, develop, and lead efforts to engage community cultural stakeholders in input sessions to influence the creation of the Master Plan. The selected Proposer will develop surveys and other tools to gather data; tools and responses will be provided as an appendix to the final document. DDA staff will assist in meeting coordination, invitations, and marketing of community input sessions.

- Perform an assessment of the DDA of Hiawassee’s assets and opportunities for Public Art, including potential locations.

### **Content of the Proposal**

Proposals shall adhere to the following criteria and limitations:

Proposers shall submit a written proposal that presents their qualifications and understanding of the work to be performed. Submittals shall be limited to a maximum of 20 pages (2-sided pages, excluding cover letter, front and back cover, and attachments). Proposals shall provide in detail all the information the Proposer considers pertinent to its qualifications for this project as requested in this RFP.

- Proposers shall submit one electronic version (PDF file) via email to [DDA@Hiawasseeega.gov](mailto:DDA@Hiawasseeega.gov) and/or an electronic version (PDF file) on a thumb drive with three printed copies to:  
Hiawassee DDA  
50 River Street,  
Hiawassee, GA 30546
- Each Proposer shall include in its proposal the following:
  - Cover Letter. On company letterhead, signed by a person with the corporate authority to enter into contracts in the amount of the cost proposal.
  - Business Information. Provide information about the Proposer’s firm, areas of expertise, length of time in business, and any other information that would be helpful in characterizing the Proposer’s experience.
  - Project Team. Provide professional information about the consulting team. Identify a proposed project manager responsible for day-to-day tasks and their experience with projects of a similar nature and scope.
  - Project Experience. Discuss three examples of projects reflective of the subject of this RFP that represent the project team’s experience, with at least one project of similar scale and complexity. Attach samples of these projects to be submitted with the proposal.
  - Public Engagement Experience. Discuss experience with projects that required significant public engagement. Identify the type of project, the specific public engagement elements and how the information gathered was used in a final report.
  - Project Approach. Outline the specific approach to a project of this nature, and the overall understanding of what, why and how a Public Art Master Plan can benefit a small DDA like Hiawassee DDA.

- Schedule. Provide a proposed schedule for the project, including a timeline of elements and final product delivery.
- References. Provide references from the last three projects completed, regardless of size and scope.
- Price Proposal. Provide a proposal of fees including specific breakdown of costs for each individual element, service and task. Include hourly billing rates for all team members. Total project cost cannot exceed \$10,000.
- Other Relevant Information.

### **Evaluation**

The DDA will set up a panel to review the submitted Proposals. The panel will be comprised of DDA Program Manager, the Director of Economic Development, and some members of the DDA Board of Directors. The panel will rank the qualified proposers based on the following criteria:

- Project Understanding and Approach – 30%
- Project Experience – 20%
- Public Engagement Experience and Proposal – 20%
- Price Proposal – 30%

### **Interview**

The evaluation panel may elect to conduct interviews of some or all proposers, at its sole discretion.

### **Selection**

The DDA Program Manager will negotiate a contract with the top-ranked proposer. If the DDA and proposer cannot reach terms on a contract, the DDA reserves the right to negotiate with the next ranked proposer, and so on.

### **Schedule**

The following is the anticipated timeline for receiving and evaluating proposals and awarding a contract to the most qualified proposer. This schedule is subject to change. Time identified is Eastern Time

Advertise Request for Proposals: Wednesday, June 15, 2022, 3:00 p.m.

RFP Question Submission Deadline: Monday, June 20, 2022, 2:00 p.m.

Addenda Issuance Deadline: Thursday, June 23, 2022, 2:00 p.m.

Proposals Due: Friday, July 15, 2022, 3:00 p.m.

Opening of Proposals: Tuesday, July 18, 2022, 1:30 p.m.

Potential Interview Date of Proposers: Tuesday, July 26, 2022

Evaluation Proposals Complete: Thursday, July 28, 2022

Notice of Award: Friday, July 29, 2022

### **DDA Project Managers**

The DDA's project managers are Denise McKay Director of Economic Development and Steven Harper, Program Manager of the Hiwassee DDA. The project managers will work closely with the selected proposer and respond with the provision of needed information and feedback as well as assist in the coordination of the delivery of any product as necessary. Contact information for Denise McKay is as follows: phone (706) 896-2202; email [dmckay@hiwasseeega.gov](mailto:dmckay@hiwasseeega.gov) and Steven Harper is as follows: phone (706) 896-2202; email [sharper@hiwasseeega.gov](mailto:sharper@hiwasseeega.gov)

### **Proposal Submittal**

The deadline and format for the submittal of proposals are specified above. Proposals will be accepted via email, personal delivery or U.S. mail as follows:

Address to: Hiwassee DDA  
50 River Street, Hiwassee, GA 30546

Deadline: 3:00 p.m., Friday, July 15, 2022

Electronically mailed: PDF file

Format: Email: Subject line to read: Request for Proposals – Public Art Strategic Plan

In person or mail: Secure thumb drive and three copies in an opaque sealed envelope, stating the name and address of the Proposer, and labeled: Request for Proposals - Public Art Master Plan

The entire submittal package must be received by or before the time and date indicated above. Delays due to mail and/or delivery handling, including but not limited to delays within the DDA's internal distribution systems, do not excuse the Proposer's responsibility for submitting the proposal to the correct location by the proposal due date. Late proposals will be returned unopened and without review. Time and date deadlines for submittal will not be waived; however, the DDA reserves the right to extend the submittal deadline by written addendum.

### **Rejection of Proposals**

The DDA reserves the right to reject any or all irregularities in proposals submitted in response to this RFP. Furthermore, the DDA reserves the right to reject any or all proposals, or portions thereof, submitted in response to this RFP. Proposals may be rejected for reasons including, but not limited to:

1. Failure of the Proposer to adhere to one or more of the provisions established in the RFP.
2. Failure of the Proposer to submit a proposal in the format specified herein.
3. Failure of the Proposer to submit a proposal within the time requirements established herein.
4. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the proposal process.
5. Failure to provide information that is specifically requested in this RFP.

The DDA may reject any proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all proposals upon a finding by the DDA that it is in the public interest to do so.

**Waiver**

The DDA reserves the right to waive minor informalities or discrepancies contained in any proposal.

**Disputes**

In case of any doubt or differences of opinion as to the items or services to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the DDA shall be final and binding upon all parties.

**Contract**

A copy of Hiawassee DDA's Standard Professional Services Contract is attached.

**Confidentiality and Public Records**

All information submitted by a Proposer shall become and remain the property of the DDA and is considered public information and subject to disclosure pursuant to the Georgia Public Records Law, except such portions of the proposal which are exempt from disclosure consistent with Georgia law. If a proposal contains any information that the Proposer believes is exempt from disclosure under the various grounds specified in the Georgia Public Records Law, the Proposer must clearly designate each such portion of its proposal as exempt at the time of proposal submission, along with a justification and citation to the legal authority relied upon. Identifying the proposal, in whole, as exempt from disclosure is not acceptable. Failure to identify specific portions of the proposal as exempt shall be deemed a waiver of any future claim of that information as exempt.

The DDA will make available to any person requesting information, through the DDA processes for disclosure of public records, any and all information submitted as a result of this RFP not exempted from disclosure, without obtaining permission from any Proposer to do so. DDA may also, in its sole discretion, elect to publish all such information at any time, regardless of whether or not a public records request has been received. However, if a public records request is made for material marked by the Proposer as exempt, the DDA will attempt to notify the impacted Proposer prior to any release of the material. Application of the Georgia Public Records Law by the DDA will determine whether any information is actually exempt from disclosure. The DDA accepts no liability for the release of any information submitted.

**Proposer Certifications and Acknowledgements**

By the act of submitting a proposal in response to this RFP, the Proposer certifies that:

Proposer has carefully examined all RFP documents, all addenda (if applicable), and all other attachments, fully understands the RFP intent, is able to perform all tasks as described, and its Proposal is made in accordance therewith. Except as otherwise noted as part of its Proposal, Proposer certifies as follows:

1. Proposer is familiar with the local conditions under which the work will be performed.
2. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the Proposal.
3. To the best of Proposer's knowledge and belief, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that, no elected official, employee, or person whose salary is payable in whole or part by the DDA has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof, other than as fully described in the Proposal.
4. Proposer has examined all parts (including addenda) of the RFP, including all requirements and contract terms and conditions thereof, and if its Proposal is accepted, Proposer shall accept contract documents conforming thereto.
5. Proposer, if an individual, is of lawful age, is the only one interested in this Proposal, and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
6. Proposer has quality experience providing the types of services and duties as described within the Scope of Services of this RFP.
7. Proposer shall also certify whether Proposer is a Georgia Proposer or a non-resident Proposer.

The Proposer must acknowledge in its proposal the following:

1. The Proposer agrees with all stipulations and requirements, as presented in this RFP.
2. The Proposer acknowledges that, if selected as the successful proposer, such selection is contingent upon successful negotiation of a contract with the DDA.

### **Nondiscrimination**

By the act of submitting a Proposal in response to this RFP, Proposer certifies, under penalty of perjury, that Proposer has not discriminated against minorities, women, or emerging small business enterprises in obtaining any required subcontracts.

### **Competition**

Prospective Proposers are encouraged to comment, in writing, on any specification or requirement within this RFP that the Proposer believes will inordinately limit competition. DDA will consider all Proposals equally and shall not favor any particular Proposer over another in analyzing the Proposals to encourage fair competition.

### **RFP Questions**

Interested Proposers shall direct all questions regarding RFP documents by email to DDA's project managers at [dmckay@hiawasseega.gov](mailto:dmckay@hiawasseega.gov) and [sharper@hiawasseega.gov](mailto:sharper@hiawasseega.gov)

All questions shall include " Public Art Strategic Plan – RFP Questions" in the subject line and must be submitted by Monday, June 20, 2022, 2:00 p.m. ET. Questions and answers will be provided to all Proposers and public on the bid webpage. Questions submitted after the deadline will not be addressed.

For the sake of fairness, Proposers are not to contact any DDA Board Member or staff, other than the project managers, concerning this RFP. Contact with any other DDA Board Member or staff concerning this RFP will be grounds for disqualification.

Proposers are hereby notified that verbal communication may not be relied upon as official communication concerning the RFP. Only answers to those questions responded to by the DDA's project managers via email or posted on the DDA's website may be relied upon. Proposers should also check the City of Hiawasseega website frequently at [www.Hiawasseega.gov](http://www.Hiawasseega.gov) to look for any addenda to the RFP.

#### **DDA Requests for Clarification, Additional Research and Revisions**

The DDA reserves the right to obtain clarification of any portion of a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to timely respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The DDA may obtain information from any legal source for clarification of any Proposal. The DDA need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The DDA may perform, at its sole option, investigations of any Proposer. Information obtained may include, but shall not necessarily be limited to, current litigation and contracting references. All such information, if requested by the DDA, becomes part of the public record and may be disclosed accordingly.

The DDA reserves the right to request revisions of any Proposal after the date and time due and before award for the purpose of obtaining best and final offers.

#### **RFP Addenda**

The DDA reserves the right to make changes to the RFP by written addendum, which shall be issued by email to all those who have obtained the RFP documents by contacting the DDA, and will be made available for download at [www.Hiawasseega.gov](http://www.Hiawasseega.gov) under "Business & Bid Opportunities".

All addenda shall have the same binding effect as though contained in the main body of the RFP documents.

No addenda will be issued later than Monday, June 20, 2022, 2:00 p.m., except by an addendum, if necessary, postponing the date for receipt of proposals or canceling the RFP altogether.

Each Proposer is responsible for obtaining all addenda prior to submitting a proposal and shall acknowledge in the proposal receipt of each addendum as part of the proposal. Failure to acknowledge receipt of all addenda as part of the proposal may result in rejection of the proposal.

#### **Modification or Withdrawal of Proposal by Proposer**

Any Proposer may modify its Proposal at any time, in writing, prior to the scheduled closing time for receipt of proposals, provided communication of such is received by the DDA prior to the closing time. Any modification of a proposal must include a statement that the modification amends and supersedes the prior proposal. All such communication shall be so worded as not to reveal the contents of the original Proposal. Withdrawn Proposals may be resubmitted prior to the time and date the Proposals are due, provided that they are then fully in conformance with the RFP.

#### **Duration of Proposal**

Proposal prices, terms, and conditions shall be firm for a period of at least one-hundred eighty (180) days from June 15, 2022. Proposals shall not be subject to future price escalation or changes of terms during that period.

#### **Proposal Costs**

Proposers responding to this RFP do so solely at their expense, and the DDA is not responsible for any Proposer expenses associated with responding to the RFP. Proposers invited to participate in interviews are responsible for scheduling and paying for their own travel arrangements. The DDA is not liable for any cost incurred by a Proposer in protesting any portion of the RFP documents or the DDA's selection decision.

#### **Local and Federal Requirements**

The selected organization shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) all applicable state and federal wage and hour laws; (v) all regulations and administrative rules established pursuant to the foregoing laws; and (vi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

Proposer is subject to the Georgia Workers Compensation Law and shall fully comply with O.C.G.A. Title 34, Chapter 9, which requires the provision of Workers Compensation coverage for all employees working under this contract. The DDA's programs, services, employment opportunities, and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, disability, or political affiliation.

#### APPENDIX A

## MINIMUM INSURANCE REQUIREMENTS

### Indemnity - Standard of Care

#### Contractor

1.1. Contractor acknowledges responsibility for liability arising out of the performance of this Contract and shall defend, indemnify, and hold harmless DDA and its officers, agents, volunteers, and employees against any and all liability, settlements, loss, damage, costs, and expenses arising from or in connection with any action, suit, demand, or claim resulting or allegedly resulting from, attributable in whole or in part to, or in any way connected with Contractor's and Contractor's officers', agents', volunteers', and employees' acts, omissions, activities, or services in the course of performing this Contract. Contractor's activities are deemed to include those of Contractor's subcontractors. This section will survive the termination or revocation of this Contract, regardless of cause.



CITY OF HIAWASSEE DOWNTOWN DEVELOPMENT AUTHORITY APPROVALS

CHAIRPERSON: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

TREASURER:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

EXECUTIVE DIRECTOR:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

STANDARD CONTRACT PROVISIONS

(These provisions not to be altered without approval of the DDA Attorney.)

1) Access to Records

The Consultant shall maintain, and the DDA and its duly authorized representatives shall have access during normal business hours to, the books, documents, papers, and records of the Consultant which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon reasonable request. Payment for the cost of copies is reimbursable by the DDA.

2) Audits

a) The DDA, either directly or through a designated representative, at DDA's expense except as provided in subsection 2(b), may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by section 1, Access to Records. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

b) If an audit discloses that payments to the Consultant were in excess of the amount to which the Consultant was entitled, then the Consultant shall repay the amount of the excess to the DDA. If the payments to the Consultant were in excess of the amount to which the Consultant was entitled by five percent (5%) or more, then Consultant shall additionally repay to the DDA the reasonable costs of the audit performed under subsection 2(a).

- c) If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the DDA may pursue remedies provided under section 5, Early Termination of Contract and section 7, Remedies.

3) Effective Date and Duration

The passage of the Contract expiration date, or early termination of this Contract, shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance that has not been cured.

4) Payments

DDA agrees to pay Consultant based on the fee schedule in Exhibit B, attached hereto and incorporated herein by reference, in a total sum not to exceed the amount indicated on the cover page of this Contract, for the scope of work identified in Exhibit A, attached hereto and incorporated herein by reference. Consultant shall submit detailed written invoices to DDA for work performed, referencing the work performed and the fee schedule in Exhibit B, at a frequency not to exceed one invoice per calendar month, and no later than sixty (60) calendar days after performance of the work referenced in the invoice. Within thirty (30) calendar days of receipt of each invoice, DDA shall submit payment to Consultant or shall notify Consultant in writing of any dispute with regard to such invoice.

5) Early Termination of Contract

a) The DDA and the Consultant, by mutual written agreement, may terminate this Contract at any time.

(b) The DDA, by written notice to the Consultant, may terminate this Contract for any reason deemed appropriate in its sole discretion, such termination to be effective thirty (30) calendar days after the effective date of such notice or at such later date as specified in such notice.

(c) DDA may terminate this Contract by written notice to Consultant, such termination to be effective immediately upon the effective date of such notice or at such later date as specified in such notice, upon the occurrence of any of the following events:

- (1) DDA fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient to pay for Consultant's work;
- (2) Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under this Contract is prohibited or DDA is prohibited from paying for such work from the planned funding source;
- (3) Consultant no longer holds any license or certificate that is required to perform the work, or any license or certificate required by statute, rule, regulation, or other law to be held by the Consultant to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed, or changed in such a way that Consultant no longer meets requirements for such license or certificate.
- (4) DDA determines, in its sole discretion, that Consultant has violated section 25, Information Technology.

(d) Either the DDA or the Consultant may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) calendar days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

(e) Upon receiving a written notice of termination of this Contract, Consultant shall immediately cease all activities under this Contract, unless DDA expressly directs otherwise in such notice. Upon termination of this Contract, Consultant shall deliver to DDA all documents, information, works in progress, and other property that are or would be deliverables had the Contract been completed.

#### 6) Payment on Early Termination

a) In the event of termination under subsection 5(a) or 5(b), Early Termination of Contract hereof, the DDA shall pay the Consultant for work performed in accordance with the Contract prior to the termination date.

b) In the event of termination under subsection 5(d), Early Termination of Contract hereof, by the Consultant due to a breach by the DDA, the DDA shall pay the Consultant as provided in subsection (a) of this section.

c) In the event of termination under subsection 5(d), Early Termination of Contract hereof, by the DDA due to a breach by the Consultant, the DDA shall pay the Consultant as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), Remedies.

(d) In the event of early termination, all of the Consultant's work product will become and remain property of the DDA.

#### 7) Remedies

a) In the event of termination under subsection 5(d), Early Termination of Contract, hereof, by the DDA due to a breach by the Consultant, the DDA may complete the work itself, by contract with another consultant, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Consultant shall pay to the DDA the amount of the reasonable excess.

b) The remedies provided to the DDA under section 5, Early Termination of Contract and section 7, Remedies for a breach by the Consultant shall not be exclusive. The DDA also shall be entitled to any other equitable and legal remedies that are available.

c) In the event of breach of this Contract by the DDA, the Consultant's remedy shall be limited to termination of the Contract and receipt of payment as provided in section 5(d), Early Termination of Contract and section 6(b), Payment on Early Termination hereof.

#### 8) Subcontracts and Assignment

Consultant shall not subcontract, assign or transfer any of the work scheduled under this Contract, without the prior written consent of the DDA. Notwithstanding DDA approval of a

sub-consultant, the Consultant shall remain obligated for full performance hereunder, and the DDA shall incur no obligation other than its obligations to the Consultant hereunder. The Consultant agrees that if sub-consultants are employed in the performance of this Contract, the Consultant and its sub-consultants are subject to the requirements and sanctions of O.C.G.A. Title 34, Chapter 9, Workers' Compensation (hereinafter referred to as the "Georgia Workers Comp Law"). Consultant further agrees that Consultant will be solely responsible for ensuring any sub-consultants fully comply with the terms of this Contract, and that Consultant will be solely liable for actions or omissions of sub-consultants under this Contract.

9) Compliance with Applicable Law

In connection with its activities under this Contract, Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws and regulations.

10) Indemnity - Standard of Care

If Consultant's services involve engineering or planning consulting, the standard of care applicable to Consultant's service will be the degree of skill and diligence normally employed by professional engineers or planning consultants performing the same or similar services at the time such services are performed. Consultant will re-perform any services not meeting this standard without additional compensation. Consultant acknowledges responsibility for liability arising out of the performance of this Contract and shall defend, indemnify, and hold harmless DDA and its officers, agents, volunteers, and employees against any and all liability, settlements, loss, damage, costs, and expenses arising from or in connection with any action, suit, demand, or claim resulting or allegedly resulting from, attributable in whole or in part to, or in any way connected with Consultant's and Consultant's officers', agents', volunteers', and employees' acts, omissions, activities, or services in the course of performing this Contract. Consultant's activities are deemed to include those of subcontractors. This section will survive the termination or revocation of this Contract, regardless of cause.

11) Insurance

Consultant shall obtain at its expense, and maintain for the term of this contract, occurrence form commercial general liability and commercial automobile liability insurance, including coverage for all owned, hired, and non-owned automobiles, for the protection of Consultant, the DDA, its councilors, officers, agents, volunteers, and employees. Such coverage shall be primary and non-contributory. Coverage shall include personal injury, bodily injury, including death, and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Consultant's operations, in an amount not less than \$2,000,000 combined single limit per occurrence and \$2,000,000 aggregate. Such insurance shall name the DDA as an additional insured. Consultant, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract, who are subject employers under the Georgia Workers' Comp Law, shall comply with such subsection of Georgia Workers' Comp Law which requires them to provide

workers compensation coverage that satisfies Georgia law for all their subject workers. Out-of-state employers must provide workers' compensation coverage for their workers that complies with the Georgia Worker's Comp Law. Employers' Liability Insurance with coverage limits of not less than \$1,000,000 each accident shall be included. Consultant shall obtain at its expense and maintain for the term of this contract, professional errors and omissions liability insurance for the protection of Consultant and its employees, insuring against bodily injury and property damage and arising out of or resulting from Consultant's errors, negligent acts, omissions, activities or services, in an amount not less than \$2,000,000 combined single limit per occurrence, with an annual aggregate limit not less than \$2,000,000. Such insurance shall be endorsed to include contractual liability. If Consultant obtains professional errors and omissions liability insurance on a claims made form, Consultant shall maintain three (3) years of tail coverage for the three (3) years after the accepted completion of the Contract by the DDA. All policies will provide for not less than thirty (30) calendar days' written notice to the DDA before they may be canceled. Prior to commencing work under this Contract, and thereafter upon request, Consultant shall furnish the DDA certificates of insurance and necessary endorsements evidencing the effective dates, amounts, and types of insurance required by this Contract. Additionally, if Consultant is subject to the professional errors and omissions liability insurance tail coverage requirement under this section, Consultant shall furnish the DDA, upon the accepted completion of the Contract by the DDA, a certificate of insurance and necessary endorsements evidencing the effective dates, amounts, and types of insurance meeting said requirement.

12) Ownership of Work Product

All work products of the Consultant, which result from this Contract, are the exclusive property of the DDA; provided, that Consultant is hereby granted an irrevocable, royalty free, worldwide, perpetual license to use, reproduce, copy, distribute and make derivatives of its work product, regardless of whether Consultant has resigned, this Contract has been terminated, Consultant's scope of services has been modified, or Consultant's services under this Contract have been completed.

13) Nondiscrimination

Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Consultant also shall comply with the Americans With Disabilities Act of 1990 (Pub No. 101-336) including Title II of that Act, the Georgia Fair Employment Practices Act of 1978, and all regulations and administrative rules established pursuant to those laws.

14) Successors in Interest

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

15) Severability

The parties agree that if any term or provision of this Contract is declared by a court of

competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

16) Waiver

The failure of the DDA to enforce any provision of this Contract shall not constitute a waiver by the DDA of that or any other provision.

17) Errors

The Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost.

18) Governing Law; Forum

The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Georgia, without regard to conflicts of law principles. Any action or suits involving any question arising under this Contract must be brought in the appropriate court in Towns County, Georgia or, only if there is no Georgia state court jurisdiction, the United States District Court for the Northern District of Georgia, and each party hereby submits to the exclusive jurisdiction of those courts for purposes of any such proceeding. Any trial will be to the court without a jury.

19) Amendments

The DDA and the Consultant may amend this Contract at any time only by written amendment executed by the DDA and the Consultant.

20) License

Prior to beginning work under this Contract, the Consultant shall provide a professional registration number in the space provided on page one of this Contract, if required by the DDA.

21) Payment to Vendors and Sub-consultants

Consultant must promptly pay any persons supplying services, material, or equipment to Consultant in its performance of the work under this Contract. Consultant shall not take or fail to take any action in a manner that causes the DDA or any materials that the Consultant provides hereunder to be subject to any claim or lien of any person without the DDA's prior written consent.

22) Exhibits

Each document that is attached to this Contract as an Exhibit shall be labeled with an Exhibit letter and listed below. Provisions and covenants contained in Exhibits are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein. If any item in an Exhibit contradicts this Contract, this Contract shall take precedence over the conflicting item in the Exhibit.

### **List of Exhibits**

Exhibit A – Scope of Work

Exhibit B – Fee Schedule

#### **23) Amendments**

This Contract and attached exhibits constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Consultant, by the signature of its authorized representative, hereby acknowledges that he or she has read this Contract, understands it and agrees to be bound by its terms and conditions.

#### **24) Mediation**

- a) Should any dispute arise between the parties to this Contract it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation.
- b) The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Hiawassee, Georgia, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) calendar days, or if the parties fail to agree on a mediator within ten (10) calendar days, a mediator shall be appointed by the presiding judge of the Towns County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

#### **25) Information Technology**

If Consultant access to DDA's information technology systems is necessary for the performance of this Contract:

- a) Consultant agrees to sign and be bound by the terms of the DDA's then-current Contractor Security Policy, as it may be amended by DDA from time to time during the course of this Contract.
- b) Consultant shall use the standard of care in its profession to safeguard any and all usernames, passwords, and other confidential information relating to accessing said systems; will limit access to such information to the smallest number of Consultant's employees and/or subcontractors as is reasonably practical; and will provide DDA with the names of all such employees and/or subcontractors who will be provided such information;
- c) Consultant will not attempt to access any DDA information technology resources

- beyond those necessary for performance of this Contract; and
- d) Consultant will be solely liable for any damages to DDA's information technology systems, data breaches, and any other losses or damages relating to Consultant's access to DDA's information technology systems.

## 26) Notice

Any notice required to be provided to DDA under this Contract shall be provided to the DDA Project Manager specified on the cover page of this Contract at the address for the DDA specified on the cover page of this Contract. Any notices required to be provided to Consultant under this Contract shall be provided to the Consultant Contact specified on the cover page of this Contract at the address for the Consultant specified on the cover page of this Contract. Notices shall be made by personal service, in which case they are effective on the date of service, or by certified mail, in which case they are effective on the date of delivery, or if delivery is refused, upon the date of delivery refusal. Either party may alter the person designated for receipt of notices under this Contract by written notice to the other party.

## 27) Miscellaneous Terms

- a) Consultant Identification. Consultant shall furnish to DDA Consultant's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Consultant's Social Security number.
- b) Duty to Inform. Consultant shall give prompt written notice to DDA if, at any time during the performance of this Contract, Consultant becomes aware of actual or potential problems, faults, or defects in the project, any nonconformance with the Contract, or with any federal, state, or local law, rule, or regulation, or has any objection to any decision or order made by DDA. Any delay or failure on the part of DDA to provide a written response to Consultant shall constitute neither agreement with nor acquiescence in Consultant's statement or claim, and shall not constitute a waiver of any of DDA's rights.
- c) Independent Contractor. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Contract.
- d) Time is of the Essence. Time is of the essence under this Contract.
- e) Authority. The parties signing this Contract are authorized to sign and to bind their respective contracting parties to the terms of the Contract.
- f) Conflict of Interest. Except with DDA's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Consultant's professional judgment with respect to this Contract, including, without limitation, concurrent employment on any project in direct competition with the subject of this Contract.
- g) No Third-Party Beneficiaries. DDA and Consultant are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether

directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

## 28) Statutory Provisions

- a) Make payment promptly, as due, to all persons supplying to Consultant labor or material for the performance of the work provided for in this Contract.
- b) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- c) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- d) As provided by ORS 279B.230, Consultant shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums that Consultant agrees to pay for the services and all moneys and sums that Consultant collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services. It is a condition of this Contract that all employers working under this Contract are either subject employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- e) As provided by ORS 279A.110, Consultant may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women, or an emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225. If Consultant violates this subsection, DDA may regard the violation as a breach of contract that permits the DDA to: (1) terminate this Contract; or (2) exercise any remedies for breach of contract that are reserved in this Contract.
- f) As provided by ORS 279B.235, Consultant's employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime. Consultant must give notice in writing to employees who work on this Contract, either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

## 29) [SIGNATURES ON COVER PAGE TO CONTRACT]