



# OPELIKA ROAD CORRIDOR PLAN

## REQUEST FOR PROPOSALS

Notice is hereby given that the City of Auburn is seeking a qualified consulting firm to provide professional planning, corridor design, and public meeting facilitation services in preparation of the Opelika Road Corridor Redevelopment Plan.

### RFP SCHEDULE

Proposals Submittal Deadline: March 2, 2012 @ 4:30 pm CST

Interviews for Selected Consultants: Week of March 19-23, 2012

City Council Approval of Consultant Contract: TBA

Proposals shall be submitted no later than 4:30 pm on the above date and addressed to:

**Justin Steinmann**  
**City of Auburn Planning Department**  
**171 North Ross Street, Suite 100**  
**Auburn, AL 36830**

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### CONTACT INFORMATION

Justin Steinmann, AICP | Principal Planner

334.501.3045 or [jsteinmann@auburnalabama.org](mailto:jsteinmann@auburnalabama.org)

The City of Auburn reserves the right to reject any or all proposals or portions thereof, to accept a proposal or portion thereof, and to waive any informality.

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## I. PROJECT BACKGROUND AND DESCRIPTION

The City of Auburn is seeking a qualified professional planning firm or consultant to facilitate a community planning process that culminates in the development of an urban design, future land use and transportation plan (as described under “Project Objective” below) for the Opelika Road Corridor. The selected consultant will facilitate the public outreach efforts, develop conceptual elements based on the input received through the public participation efforts, and prepare recommendations for the urban design, future land use and transportation plan.

### PROJECT AREA

Opelika Road is located in Auburn, Alabama. The street is approximately 2.67 miles long, aligned generally west to east from North Gay Street near downtown Auburn to the Opelika city limits. The roadway changes character several times throughout the project area and is bordered by a variety of land uses along its length, with the predominant feature being “strip” commercial development.

The western portion of Opelika Road begins at North Gay Street. It is characterized by smaller commercial uses, many built near the street; institutional uses including a recreation center and post office, and residential uses. The road profile in this area is 3 lanes, with two travel lanes and a continuous turn lane. Sidewalks are on both sides of the street, but are not continuous. The central portion of Opelika Road begins at North Dean Road and ends near East University Drive. It is characterized by larger commercial uses, several former and existing auto dealerships, and deep vacant lots with narrow frontages. The final portion of the study area begins around the East University Drive intersection and ends at the Opelika city limits. This area is characterized by big-box retail, including a regional mall. A map of the area is provided as Attachment C.

### TRANSPORTATION AND LAND USE CHARACTERISTICS

Opelika Road is designated as an arterial in Auburn’s Major Street Plan. The corridor contains various physical characteristics which include the following:

- Right-of-way widths: These vary from 60-65 feet in the western portion to 90-105 feet in the central and eastern portions.
- Traffic volumes: Traffic volumes vary between 12,000 ADT and 21,000 ADT.
- Vehicular Speed: Limits range from 25 mph to 45 mph.
- Street improvements: Conditions vary widely regarding landscaping, sidewalks, driveways, and parking.
- Current land use: The west end of the corridor includes a mix of commercial, residential, and commercial uses. Commercial uses predominate on the rest of the corridor.
- Block and parcel sizes: Block sizes are very large throughout the corridor, with smaller blocks on the western end of the corridor. Parcel sizes vary; a substantial number of deep parcels with relatively narrow street frontages that present development challenges.
- Development patterns: Where small lots predominate, buildings are typically close to the street sidewalk and access driveways are frequent. Where large lots predominate, the placement and orientation of buildings, as well as the placement of parking, driveways, and landscaping varies widely. An active rail line along the study area’s southern boundary limits connections to the south.

The Opelika Road corridor generally does not possess a character which reflects well on the community. In most areas, the street right-of-way is designed to focus on automobile travel to the exclusion of other considerations. The street design encourages high vehicle highway speeds, which is particularly true of the section between North Dean Road and the Opelika city limits. There are limited or no provisions for pedestrian or bicycle access and minimal amounts of landscaping with notable exceptions along certain roadway edges. Overhead wires are also prevalent in many areas. All of these factors present an unappealing aesthetic environment for residents, visitors and merchants.

The corridor serves as a connection between the nearby city of Opelika, downtown Auburn, Colonial Mall, and Auburn University. Along certain sections of Opelika Road, most notably along its commercial districts, the character of many developments reinforce this negative image. Buildings and parking areas are often designed and placed on individual parcels with little consideration to the character of adjacent developments or of an overall theme. Certain properties are undeveloped or contain vacant buildings and/or sites which are not well-maintained. Other properties are underdeveloped, but have significant development potential.

The City of Auburn's Future Land Use Plan designates the corridor as Corridor Redevelopment. The Corridor Redevelopment future land use designation is intended to encourage redevelopment through a variety of means, such as by offering incentives for redevelopment, reduced setbacks, shared parking, and/or possible City investments in infrastructure, such as streetscaping. The designation promotes limited mixed-use, with an average breakdown of uses across the entire area intended to be 85% commercial, 5% office, and 10% residential (12 du/ac). Preference should be given to projects that integrate residential with other use types. The City is interested in the possibilities offered by form-based codes in achieving a future vision for the corridor.

The City also currently has a commercial incentive program in place that offers sales tax relief for redevelopment projects that meet certain criteria and that agree to be subject to design review.

## PROJECT OBJECTIVE

In order to address the range of issues identified above, the City will develop a corridor design plan with emphasis on redevelopment, complimentary land uses, and urban design. The City of Auburn recently completed development of a new Comprehensive Plan. Several areas have been identified in the plan as candidates for neighborhood or corridor plans; Opelika Road is the first of these. The subject corridor design plan will address:

1. The distribution, location, and extent of land uses and transportation systems.
2. The distribution, location, extent and intensity of essential public and private project or opportunities needed to support these land uses.
3. A vision for the corridor, specifically the target area.
4. Recommended standards and criteria by which development and redevelopment of existing properties can proceed, natural resources will be conserved, and community identity can be enhanced.
5. A program of recommended implementation measures including regulations, policies, public works projects, and financing measures needed to carry out the plan.
6. Other subjects necessary or desirable to implement the plan.

A sample outline for the plan could be as follows:

- Urban design plan
  - Architectural themes
  - Land use arrangement
  - Siting and scale of buildings

- Parking
- Landscaping
- Transportation improvements (streetscaping)
- Other public improvements (i.e. parks)
- Cost estimates
- Future land use plan
  - Parcel-level future land use recommendations
  - Changes in existing patterns
  - Focal points
- Transportation plan
  - Connectivity
  - Interaction between modes
  - Access management

## PUBLIC PARTICIPATION

Public participation is a key element in this process. The City will identify potential members and solicit participation in a Project Steering Committee (PSC). The Steering Committee will represent a cross-section of community interests and concerns. Community-Based Organizations will be identified and will play a key role in this planning process. Workshops, community meetings, interviews and design charettes will be utilized to gain face-to-face, first-hand feedback on design elements. The process will have three overall phases:

1. Defining the Issues and Vision, which includes land use and site reconnaissance, inventory and analysis, defining of goals and objectives and creating a project vision.
2. Exploring Concepts and Thematic Alternatives, which includes translating the goals and objectives into broad conceptual plans and combining those concepts into a preferred theme and concept plan.
3. Preparing a Concept Plan which includes a refined land use and transportation plan and illustrative materials describing individual elements of the plan including recommended policies and standards.

Outreach activities will focus on including a variety of stakeholders, including property and business owners, residents, and the general population of the City.

The community outreach efforts may also include:

- Stakeholder interviews with local employers, property owners, etc.
- Stakeholder group meetings.
- Online survey
- Surveys to measure the public's reaction to the process and adjust the planning process as necessary.

## PROJECT IMPLEMENTATION

The Proposed Project will develop two separate outcomes:

1. A community participation process that includes meetings, workshops, interviews and public outreach materials. Planning Department staff will assist the selected consultant in the development and utilization of these public participation elements. To ensure these elements are conducted in an efficient and timely manner, meetings will be conducted at the outset of the project to refine the schedule, assign responsibilities, and ensure accountability is built into the process.

2. Public Participation Conceptual Elements developed by the selected consultant.

These are various design elements to be presented to the community to measure the receptivity to the design features under consideration. These conceptual elements will be modified as necessary, based on feedback from the stakeholders. In addition, data will be gathered and presented as needed to supplement the conceptual elements. As with item (1.) above, the schedule will be refined during the initial meetings with the selected consultant.

A final recommendation for a land use plan and schematic street design plan with associated improvements will be developed by the selected consultant with input from City staff at the conclusion of the public participation process. This plan will be presented to the Planning Commission and City Council. The timing for this final report will be determined (preliminarily) at the meetings with the selected consultant at the outset of the project, and may be adjusted during the course of the project. The process will increase the residents' knowledge of the issues that are present along the Opelika Road Corridor and provide a vehicle for eliciting public input for solutions to these issues. Ultimately, the project will gain public support and make it more likely that implementation of the Plan elements will occur.

A detailed project work scope that incorporates the above project objectives is attached (see Attachment A).

## II. SUBMISSION REQUIREMENTS

The Proposal response should be fully self-contained, and display clearly and accurately the capabilities, knowledge, experience, and capacity of the Respondent to meet the requirements of the project and the RFP. Respondents are encouraged to utilize methods they consider appropriate in communicating the required information. At a minimum, this will include submission of the information requested below:

- Firm Description
- Relevant Experience
- Resumes of Project Team
- Approach to Completing Scope of Services
- Fee Schedule
- References (Minimum of three references within the last five years)
- Consultant and Professional Services Agreement/Insurance

The selected consultant will also be required to obtain a City of Auburn Business License and will be required to complete an E-Verify Affidavit (<http://www.auburnalabama.org/fi/Default.aspx?PageID=120>) assuring the City of Auburn, Alabama that they are compliant with the requirements of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535 (Code of Alabama (1975) § 31-13-9) regarding employment practices.

Five bound copies (one of which must be marked as original) of qualifications should be submitted to the Planning Department office at 171 North Ross Street, Suite 100, Auburn, AL 36830 no later than 4:30 pm by Friday, March 2, 2012. Interviews with the most qualified firms will be held on the week of March 19 - 23, 2012.

In order to be considered, all requested information requested below shall be submitted. All material shall be presented in a succinct manner in the same order as presented in this RFP. Facsimile, emailed or electronic format proposals are not acceptable. The City will not be responsible for proposals delivered to a person/location other than that specified above.

### A. FIRM DESCRIPTION AND EXPERIENCE

- a. Consultant: Name, address, telephone number, FAX number, e-mail address, website address (if available)
- b. Year the firm was established.
- c. Primary contacts within the company: Title, telephone number and e-mail address for each. Indicate which person will be the contact for the RFP process.
- d. Number of employees in firm and office locations
- e. Consultant Specialties: List of the type(s) of work the firm specializes in.
- f. List of Lead Professional Personnel by Area of Expertise: Provide an organization chart describing the staff available to handle the desired work. Provide a brief but detailed history of the number of years of experience with the current firm and other firms, education, professional registration/certifications, and qualified work experience relevant to the services requested. Use separate pages for each person.

- g. Current/Prior Experience with Municipal Projects: List up to five (5) projects, starting with the most recent, that the professional personnel of your firm have worked within the past 5 years. Provide the year the project was performed, the name of the municipality/jurisdiction and location (city), the owner's name, address, and contact name and phone number, e-mail address and the scope of work performed. Other related experience may be included.

## B. APPROACH TO COMPLETING SCOPE OF WORK

- a. Provide the tasks and narrative of how your firm will comply with the scope of work, and what special services and products your firm has to meet our needs and not exceed the agreement amount. **The methodology in the scope of work (see Attachment A) may be modified to reflect the firm's preferred methodology provided that final outcomes do not differ substantially from those in Section I, Project Objective.**
- b. A description of how the firm provides the desired services and quality control to assure adequate level of service and successful project completion and management.
- c. A statement indicating the firm is independent, properly licensed to practice in Alabama, and has no conflict of interest with regard to any other work performed by the firm for the City.

## C. RATE SCHEDULE

Provide an itemized rate schedule that reflects the work proposed in Item B, Approach to Completing Scope of Work. The rate schedule should include typical hourly charge rates for labor classifications anticipated.

## D. REFERENCES

Provide three (3) references (names, addresses, phone numbers, e-mail addresses and contact persons) for comparable work for your firm and for the team members. Provide a brief description and magnitude of services provided for each reference.

## E. CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT / INSURANCE

Brief statement acknowledging the Consultant's willingness to accept the attached City's standard Consultant and Professional Services Agreement as is, without modifications (see Attachment B).

The selected consultants/firm(s) shall demonstrate that they can meet the City of Auburn insurance requirements. Please refer to the attached City of Auburn Standard Consultant and Professional Services Agreement.



## F. CONDITIONS OF REQUEST AND REQUIREMENTS

The following conditions apply to this RFP:

1. The City of Auburn (City) reserves the right to withdraw this solicitation of a proposal at any time without prior notice. Further, the City makes no representations that any agreement will be awarded to any firm submitting a proposal.
2. The City reserves the right to reject any and all proposals submitted in response to this request and to reject any sub-consultant or individual working on a consulting team.
3. Any changes to the proposal requirements will be made by addendum.
4. In any event, the City shall not be liable for any pre-contractual expenses incurred by any proposal or Consultant. This shall include pre-contractual expenses such as preparing the Proposal, submitting the Proposal to the City, negotiating with the City on any matter related to the Proposal or other expenses incurred prior to the date of award for any agreement related to the services herein described.
5. No prior, current or post award verbal agreement(s) with any officer, agent or employees of the City shall affect or modify any terms or modifications of this RFP or any contract or option resulting from this process.
6. The City reserves the right to waive any minor irregularities, informalities or oversights at its sole discretion. The term "minor" as used herein means any proposer or City irregularities or oversights that does not materially affect or alter the intent and purpose of this RFP, and is not in violation of any State of Alabama or Federal Government rules, laws and regulations that may apply to this procurement.

### III. EVALUATION CRITERIA AND PROCEDURES

#### A. DISTRIBUTION AND OUTREACH

This RFP is being distributed to a list of consultants who have expertise in related areas.

#### B. SELECTION TEAM

The City will rate prospective consultants (firms) for this work using only objective criteria based upon the information obtained from the Proposals.

The City will appoint an ad-hoc selection team (City staff) to screen proposals. The firms with the highest ranking based on experience and qualifications as described in the Proposal to provide the required services will be invited for interviews. The proposed project manager and personnel will be requested to represent the firm at the interviews.

#### C. SELECTION CRITERIA

The Screening Panel Board evaluation will consist of a matrix of requirements, qualifications and experience. The following criteria will be used in evaluating the submittals received in response to this RFP:

- Background and experience of firm and personnel
- Past performance and service on similar assignments/projects
- Firm's quality assurance and control procedures
- Proposed approach to the Scope of Work and technical qualifications (staff who will actually work on the projects)

#### D. SELECTION PROCEDURE

Consideration of a prospective consultant's (firm's) proposal will be made only if the prospective consultant meets all the minimum requirements of this RFP. The City reserves the right to adjust, increase, limit, suspend or rescind the rating based on subsequently learned information. The City reserves the right to award a contract to the firm (or firms) that present the best qualifications and which will best accomplish the desired results for the City.

Any consultant (firm) deemed not qualified, or consultants (firms) who's rating changes sufficiently to disqualify them, will be notified in writing. No consultant shall have the right to an appeal based upon an incomplete or late submission of the proposal.

Request for Supplemental Information: The City reserves the right to require, from any or all consultants (firms), supplemental information that clarifies submitted materials.

Questions: All questions regarding this solicitation should be directed to the City representative listed in this RFP. Do not attempt to contact other City staff members regarding your submittal or any related proposal submittal.

Incomplete Proposals: Incomplete and/or unsigned submissions will not be considered. However, if a submission is incomplete, and if it appears that the omission can be corrected promptly, the affected firm may be contacted and offered the opportunity to complete the proposal and provide the required information within a prescribed period of time, which will not be extended. If a firm does not respond within the time stated, the Proposal will not be considered.

Rejection of Submitted RFP: Proposals that are not current, accurate, and/or completed accurately in accordance with the prescribed format shall be considered non-responsive and eliminated from further consideration.

Selection Process Termination: The City reserves the right to terminate the selection process, at any time, without making an award to any or all consultants.

Disqualification: Factors such as, but not limited to, any of the following may be considered just cause to disqualify a proposal without further consideration:

- Any attempt to improperly influence any member of the selection staff;
- Existence of any lawsuit, unresolved contractual claim or dispute between consultant and the City;
- Evidence of consultant's inability to successfully complete the responsibilities and obligations of the proposal; and
- Consultant's default under any agreement, which results in termination of the agreement.

Undue Influence: All firms submitting proposals declare and warrant, on a separate attachment, that no undue influence or pressure is used against or in concert with any officer or employee of the City of Auburn in connection with the award or terms of Agreement that will be executed as a result of award of this contract, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Auburn will receive compensation, directly or indirectly, from the consultant, or from any officer, employee or agent of the consultant, in connection with the award of the Agreement or any work to be conducted as a result of the Agreement.

## IV. ATTACHMENTS

- A. Scope of Work
- B. Sample Agreement
- C. Map of Project Area

## ATTACHMENT A: SCOPE OF WORK

### TASK 1: PROJECT STARTUP

**Task 1.1:** Conduct a kick-off meeting with the consultant to initiate project.

Deliverable	Responsible Party	Documentation
Conduct kick-off meeting	City staff and consultants	Meeting notes

### TASK 2: ONGOING COMMUNITY AND STAKEHOLDER OUTREACH

**Task 2.1:** Conduct charrettes to solicit public involvement and consensus building, and refine concepts to incorporate into the plan.

**Task 2.2:** Schedule and promote/advertise charrettes through a multi-media campaign (including use of newspaper and radio) and through the PSC and other stakeholders.

**Task 2.3:** Conduct PSC meetings to ensure community and stakeholder participation throughout the project, including document.

**Task 2.4:** Conduct one-on-one interviews with a sampling of stakeholders to receive feedback on the needs of the target area and to the plans as they are developed.

**Task 2.5:** Conduct surveys (online and print) for general public input as well as to measure the public's reaction to the process and adjust the planning process as necessary.

**Task 2.6:** Conduct meetings with stakeholder focus groups as needed.

Deliverable	Responsible Party	Documentation
Promote and advertise charrettes	City staff and consultants	Copies of advertisements and promotional materials
Conduct PSC meetings	City staff and consultants	Meeting notes
Conduct charrettes, one-on-one interviews, and other meetings	City staff and consultants	Meeting notes and/or summary of outcomes
Conduct surveys	City staff and consultants	Summary of results

### TASK 3: DEVELOPMENT OF PUBLIC PARTICIPATION LAND USE AND TRANSPORTATION

## CONCEPTUAL ELEMENTS

**Task 3.1:** Develop an Existing Conditions Analysis that involves the following:

- a. Conduct a site visit and land use reconnaissance
- b. Develop a base map illustrating existing conditions diagram that contains:
  1. Existing land use and zoning
  2. Land ownership patterns
  3. Building/lot condition, including
    - i. Age
    - ii. Condition
    - iii. Occupancy (Vacant or not)
    - iv. Development Potential (based on existing lot size/accessibility and zoning)
    - v. Property value
  4. Approved and proposed projects, if any
  5. Transportation facilities (sidewalks and street widths, parking areas, bicycle access, curb cut locations)

**Task 3.2:** Prepare a Market Analysis of the area focusing on existing and projected business trends, area economics, and other factors.

**Task 3.3:** Prepare a Transportation Study which includes a Circulation, Traffic and Parking Assessment considering both local and regional context.

**Task 3.4:** Develop Corridor Vision: Define corridor goals and objectives

**Task 3.5:** Develop Land Use Alternatives

**Task 3.6:** Develop Transportation and Traffic Improvement Alternatives

**Task 3.7:** Prepare a Preferred Conceptual Streetscape Design and Recommended Improvements

**Task 3.8:** Based on the various studies conducted above and the recommendations of the PSC and other target area stakeholders, develop a draft land use and transportation plan for the target area.

**Task 3.9:** Develop a Funding Strategy

- a. Develop basic preliminary cost estimates for recommended improvements.
- b. Identify potential funding sources for recommended improvements.
- c. Recommend strategy for obtaining funding.

**Task 3.10:** Present these recommendations to the Planning Commission and City Council.

Deliverable	Responsible Party	Documentation
Complete Existing Conditions Site Map and Diagram	City staff and consultants	Copy of Draft Reconnaissance, Base Map and Diagram
Complete a Market Analysis	City staff and consultants	Copy of Draft Market Analysis
Conduct a Transportation Study; Circulation, Parking, Bike/Ped Analysis	City staff and consultants	Copy of draft Transportation Study
Develop Corridor Vision	City Staff and consultants	Copy of Vision Report

Develop Land Use Alternatives	City staff and consultants	Copy of alternatives
Develop Transportation and Traffic Improvement Alternatives	City staff and consultants	Copy of alternatives
Develop Streetscape Plan	City staff and consultants	Copy of draft Streetscape Plan
Develop Funding Strategy	City staff and consultants	Copy of draft Funding Strategy (may be incorporated into other plan components)
Develop Draft Corridor Design Plan	City staff and consultants	Copy of Draft Corridor Design Plan
Present draft plans to Planning Commission and City Council for approval	City staff and consultants	Meeting notes and City Council recommendations
Adopt Final Corridor Design Plan	City staff and consultants	Copy of Final Corridor Design Plan

## ATTACHMENT B: CITY OF AUBURN PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between XYZ **Consultants**, hereinafter called the CONSULTANT and the **City of Auburn, Alabama**, hereinafter called the City;

WHEREAS, the City desires to engage the Consultant to provide professional services for the

### OPELIKA ROAD CORRIDOR PLAN

WHEREAS, the Consultant desires to accept such engagement, upon and subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and the Consultant hereby agree as follows:

#### ARTICLE 1 - ENGAGEMENT AND SCOPE

1.1 The City hereby engages the Consultant to provide professional services in accordance with the Contract Documents (defined in Section 4.1 hereof), including the Consultant's "Proposal", which is attached hereto and made a part hereof, with respect to Consulting Services for the project named above, and the tasks described in Section 1.2 hereof (the "Work"), and the Consultant hereby accepts such engagement, upon the terms and conditions hereinafter set forth.

1.2 The Consultant shall provide, furnish and perform all necessary labor and services and provide and furnish all necessary supplies, materials and equipment required to complete the Work in accordance with the Contract Documents. The **Work** to be done shall include the following:

#### AS OUTLINED IN ATTACHED PROPOSAL.

1.3 If the Consultant is of the opinion that any services requested hereunder are beyond the scope of the Work as provided in the Contract Documents, the Consultant shall promptly notify the City in writing of such opinion and the reasons for the same, with specific references to the Contract Documents.

1.4 No additional services beyond the scope of the Work as provided in the Contract Documents shall be performed by the Consultant unless the City shall, in writing, have specifically directed such services to be performed, and a Change Order (hereafter defined) shall have been signed by the City and the Consultant. In the event of noncompliance with the foregoing, the Consultant shall neither have nor make any claim for additional compensation by reason of a claim for additional services.

1.5 The term "**Change Order**" as used herein is a written order to the Consultant, issued and signed by the City after execution of this Agreement, authorizing a change in the Work. Unless the Consultant requests a modification in such Change Order, the Consultant shall sign the Change Order and return a copy thereof to the City within ten (10) business days after it has received the same. The Consultant shall have ten (10) business days from its receipt of a Change Order within which to request a modification thereto. Failure of Consultant to respond to a Change Order within such ten (10) day period shall be deemed to signify Consultant's acceptance of such Change Order as if Consultant had signed the same without modification. If Consultant requests a modification of a Change Order, the City shall have ten (10) business days from receipt of such request to accept such modification in writing. If not so accepted, such request is deemed to be rejected.

#### ARTICLE 2 - TERM AND FORCE MAJEURE



2.1 Subject only to Change Order(s) or the provisions for termination set forth in Article 12 below, the Consultant shall commence the work within **XX days** after the date of this Agreement and shall complete the same within **XX months** thereof, unless extended by the project manager.

2.2 If the Consultant is delayed at any time in the progress of the Work by labor disputes, fire, adverse weather conditions not reasonably anticipated, unavoidable casualties, or any other causes beyond the Consultant's control and without the fault or negligence of Consultant, the Consultant shall prepare and submit to the City within five (5) calendar days of the occurrence a written report of its assessment of the occurrence and any proposed amendment to the Term. The Consultant shall proceed with due diligence to alleviate any such delay and shall continue in the performance of its obligations hereunder. The City may determine, in its sole discretion, after the receipt of such notice of delay from the Consultant, whether to terminate this Agreement in accordance with Article 12 hereof or extend the Term by Change Order for such time as the City may determine.

### **ARTICLE 3 - COMPENSATION AND METHOD OF PAYMENT**

3.1 The City shall pay the Consultant a fee for completion of the work determined in accordance with the Cost Proposal. The fee payable to the Consultant hereunder shall not exceed the "Contract Price" of **Enter Amount in dollars (\$XX,000.00)** unless the Consultant has requested, and the City has authorized in writing, an increased amount. Should the Consultant anticipate exceeding the Contract Price, the consultant shall notify the City in writing and request a Change Order stating in detail the reasons why the Contract Price will be exceeded and the Consultant's best estimate of the number of hours and additional expenses the Consultant will require to complete the Work. If a request to increase the Contract Price is made but not accepted, the Consultant shall still be obligated to continue providing services until the work is completed. If the City and the Consultant agree upon a modification to the Contract Price, a Change Order shall be issued with respect thereto.

3.2 The Consultant shall submit an invoice monthly to the City for the Work performed and the charges in the preceding month based upon the percentage of work completed. The invoice shall identify the percentage of project tasks completed and delivered and will be calculated based on the contract price set forth above. Each such invoice shall also contain the Consultant's certification that the task or portion of the Work described in the invoice has been completed in accordance with the Contract Documents, that the amount of all items due to third parties has been paid, and that the amount of such invoice is due to the Consultant.

3.3 The City shall pay the full amount of an invoice within thirty (30) days after receipt of the invoice and accompanying financial report, prepared as described herein. If, however, the City objects to all or any portion of any invoice, the City shall so notify the Consultant of the same, stating the reasons for the objection. The City shall be entitled to withhold payment of any amounts in dispute, but shall make payments on amounts not in dispute. The parties shall immediately make every effort to settle any disputed portion of the invoice.

### **ARTICLE 4 - CONTRACT DOCUMENTS**

4.1 The Contract Documents consist of this Agreement, Consultant's proposal, attached Exhibit(s), all Amendments and all accepted Change Orders. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by anyone shall be deemed to be required by all. In the event of any conflict between the terms of this Agreement and the other Contract Documents, the terms of this Agreement shall control.

### **ARTICLE 5 - CITY RESPONSIBILITIES**

5.1 The City shall direct its officers, agents, other consultants and employees to render all reasonable assistance and provide available data to the Consultant in connection with its performance of the Work under this Agreement. The City agrees to furnish to the Consultant copies of any previous reports, data and drawings which may be available and are pertinent to the Work. All such data provided shall remain the property of the City and shall be returned to the City promptly.

## **ARTICLE 6 - CONSULTANT'S REPRESENTATIONS, WARRANTIES AND RESPONSIBILITIES**

6.1 The Consultant represents and warrants to the City that it has the authority to enter into this Agreement and to perform the Work, and that it is licensed to do business within the City of Auburn and authorized to conduct business in the State of Alabama. The Consultant further represents and warrants that all Work performed by it hereunder (a) will be in conformance with the terms of the Contract Documents; (b) will be performed in a skillful and workmanlike manner; (c) will be performed by the proper number of experienced, skilled and licensed personnel, qualified by education and experience to perform their assigned tasks; and (d) will conform to the standard of care, skill and diligence exercised by professional planners performing the same or similar services.

Consultant is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation applicable federal, state, and local laws and regulations, and all other contingencies or considerations.

Consultant's responsibilities under this section shall not be delegated. Consultant shall be responsible to City for acts, errors, or omissions of Consultant's subcontractors.

Consultant is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work and shall prepare plans, reports, and/or other work products in such a way that additional costs will not be incurred beyond a project budget approved or amended by the City Manager or his or her designee.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Agreement and determining whether the Consultant is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the Consultant of responsibility for complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Consultant.

6.2 The Consultant shall at all times enforce strict discipline and good order among its employees and any subcontractors and shall not employ for the Work (a) any person, firm or corporation not skilled and licensed, if required, in the task assigned to him, or (b) anyone who might endanger himself, others or the project. The Consultant shall be responsible to the City for the acts and omissions of its employees, agents, subcontractors and other persons performing any of the Work for the Consultant. The City reserves the absolute right to require the immediate removal of any such unskilled, untrained or unfit person, firm or corporation from participation in the Work.

## **ARTICLE 7 - SUBCONTRACTS**

7.1 A subcontractor is a person or entity who provides services or performs Work for the Consultant or for a subcontractor of Consultant. The Consultant shall not employ any subcontractor without the prior written consent of the City and shall obtain a written agreement with each subcontractor. As between the City and the Consultant, the Consultant shall be responsible for the acts and omissions of its subcontractors and any portion of the Work performed by a subcontractor. The City may make reasonable requests for information and data concerning any and all subcontractors under this Agreement, and any other matter deemed by the City to be pertinent hereto, and the Consultant hereby agrees to submit such information and data promptly upon request.

## **ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY**

8.1 The Consultant agrees to advise fully all of its employees, subcontractors and others working for the Consultant concerning environmental, safety and health procedures required by applicable state or federal law, regulation or order or required by the City; and to take the steps necessary to assure that such procedures are complied with.

## **ARTICLE 9 - INSURANCE AND HOLD HARMLESS AGREEMENT**

The Consultant will be required to provide certificates of insurance showing that it carries, or has in force, automobile liability insurance, general liability insurance, professional liability insurance, and workers' compensation insurance. Limits of liability for automobile liability insurance shall be, at a minimum, \$1,000,000.00 combined single limit. Limits of liability for general liability insurance shall be, at a minimum, \$1,000,000.00 per occurrence, \$1,000,000.00 personal and advertising injury, \$1,000,000.00 general aggregate and \$1,000,000.00 products/completed operations aggregate. General liability insurance will include coverage for contractually assumed liability. Limits of liability for professional liability insurance shall be, at a minimum, \$1,000,000.00 per occurrence/claim and \$1,000,000.00 aggregate. If the general liability insurance and/or the professional liability insurance is on a claims-made basis, the Consultant will maintain coverage in force for a period of two (2) years following completion of the work specified in the Agreement at the limits of coverage specified in this paragraph. Workers' compensation insurance shall provide statutory workers' compensation coverage and employers' liability coverage with limits of, at a minimum, \$500,000.00 each accident, \$500,000.00 disease – each employee and \$500,000.00 accident, \$500,000.00 disease – policy limit. The Consultant is responsible for the payment of any deductibles or self-insured retentions.

The certificate of insurance shall provide the City with thirty (30) days written notice of cancellation of any of the coverage named in said certificate.

The City will be named as an additional insured under the Consultant's general liability insurance and automobile liability insurance policies.

The Consultant shall require certificates of insurance from subcontractors. Subcontractors will carry limits of insurance equal to or greater than those carried by the Consultant. These certificates shall evidence waivers of subrogation in favor of the Consultant and the City, and shall be made available to the City upon request.

The Consultant agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless the City, its officials, representatives, agents, servants, and employees (collectively, City) from and against any and all claims, actions, lawsuits, damages, judgments, liability and expense, including reasonable attorneys' fees and litigation expenses, to the extent caused by the Consultant's negligent performance of the work under this Agreement and that of its sub-consultants or anyone for whom the Consultant is legally liable. This obligation will survive the payment of any losses by the Consultant's insurance company.

## **ARTICLE 10 - TERMINATION**

10.1 If either party is of the opinion that the other party has breached the terms of Agreement, it may give the other party thirty (30) days written notice of such breach. The other party shall have thirty (30) days to cure such breach and if it fails to do so, and it has in fact breached the Agreement, then the party giving such notice may terminate this Agreement. Upon completion of the Work, as accepted by the City, or upon receipt of the aforesaid notice of termination, Consultant shall deliver to the City all of the following:

(a) All drawings, documents, reports and all other work relating in any way to any portion of the Work. The work product, including without limitation, all writings, work sheets, reports, recordings, drawings, files, detailed calculations and other work products, whether complete or incomplete, of Consultant resulting from services rendered pursuant to this Agreement, shall become the property of City. Consultant agrees that all copyrights which arise from creation of the work under this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or other intellectual property rights in favor of the City. City acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

Documents submitted to the City in electronic format shall be formatted according to specifications provided by the City, or if not otherwise specified, in Microsoft Word, Excel, PowerPoint or other Microsoft Office Suite (2010) format as appropriate for the particular work product or, if directed by the City Representative in Adobe Acrobat PDF format.

(b) Executed Release of Liens and Claims by stating that all bills have been paid and no claims exist against the City.

(c) Final itemized invoice for payment. Consultant shall be paid for services performed in accordance with the Contract Documents to the date of termination less any setoffs which the City may have.

#### **ARTICLE 11 - MISCELLANEOUS**

11.1 Consultant shall only take instructions from the person or persons who are authorized in writing by the City to give the same.

11.2 The Work shall be performed by Consultant in such a manner and at such times so as to not interfere or interrupt the City's operations.

11.3 This Agreement does not and shall not be construed to create any partnership or agency whatsoever.

11.4 This Agreement shall be subject to and governed by the laws of the State of Alabama. The Work and performance of same shall comply with all applicable city, county, state and federal codes, rules, regulations and orders.

11.5 Failure to insist upon strict compliance with any provision hereof shall not be deemed a waiver of such provision or any other provision hereof.

11.6 This Agreement may not be modified except by Change Order or written Amendment executed by the parties hereto.

11.7 The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.

11.8 Claims or lawsuits arising from this agreement will be filed in the Circuit Court of Lee County, Alabama, located in Opelika, Alabama or the Federal District Court for the Middle District of Alabama – Eastern Division located in Opelika, Alabama.

11.9 Consultant may not assign this agreement without the written permission of the City.

11.10 During the performance of services under this Agreement, Consultant may gain access to and use City information regarding, but not limited to, procedures, policies, training, operational practices, and other vital information (hereafter collectively referred to as "City Information") which are valuable, special and unique assets of the City. Consultant agrees that it will not use any information obtained as a consequence of the performance of services under this Agreement for any purpose other than fulfillment of Consultant's scope of work, to protect all City Information and treat it as strictly confidential and proprietary to City, and that it will not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party, other than its own employees, agents or subcontractors who have a need for the City Information for the performance of services under this Agreement, without the prior written consent of City, or as required by law. Consultant shall treat all records and work product prepared or maintained by Consultant in the performance of this Agreement as confidential.

A violation by Consultant of this section shall be a material violation of this Agreement and will justify legal and/or equitable relief.

Consultant's obligations under this section shall survive the completion of services, expiration or termination of this Agreement.

**IN WITNESS, THEREOF** the parties hereto have executed this agreement on the day and date written above in two (2) counterparts, each of which shall, without proof or accounting for the other counterpart, be deemed an original contract.

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
PRINTED NAME

WITNESS TO CONTRACTORS SIGNATURE: \_\_\_\_\_  
TITLE

\_\_\_\_\_  
CONSULTANT'S NAME

\_\_\_\_\_  
STREET ADDRESS

\_\_\_\_\_  
CITY, STATE

SEAL

\_\_\_\_\_  
TELEPHONE NUMBER

ATTEST:

\_\_\_\_\_  
FAX NUMBER (Optional)

THE CITY OF AUBURN, ALABAMA  
A Municipal Corporation

\_\_\_\_\_  
ITS CITY MANAGER

BY: \_\_\_\_\_  
ITS MAYOR

PLANNING DEPARTMENT USE ONLY:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

