

Attachment 32 – O&M Contract

TRANSIT OPERATIONS AND MAINTENANCE SERVICES CONTRACT

BETWEEN

THE ATLANTA-REGION TRANSIT LINK AUTHORITY

AND

TRANSDEV SERVICES, INC.

TRANSIT OPERATIONS AND MAINTENANCE SERVICES CONTRACT

THIS TRANSIT OPERATIONS AND MAINTENANCE SERVICES CONTRACT is made and entered into as of July 1, 2021 (“Effective Date”), by and between the Atlanta-region Transit Link Authority, a body corporate and politic and an instrumentality and public corporation of the State of Georgia (“ATL”), and TRANSDEV SERVICES, INC., a Maryland corporation authorized to do business in the state of Georgia (the “Contractor”) (“Contract”). ATL and Contractor may be referred to individually, as “Party” or collectively, as “Parties.”

WHEREAS, ATL desires to engage a qualified and experienced firm to provide transit operations and maintenance services, as more fully described in the Transit Operations and Maintenance Services RFP No. 21-083 and any addenda thereto and any documents referenced therein (the “RFP”) and this Contract; and

WHEREAS, the Contractor has represented to ATL that it is experienced and qualified and willing to provide all of the labor, materials, equipment, and expertise needed to successfully provide those deliverables described in the RFP, the Contractor’s Proposal and the Contract Documents (collectively, the “Services”); and

WHEREAS, ATL has relied upon such representations and selected the Contractor to furnish the Services.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated into the Contract.
2. **Definitions.** Certain capitalized terms used in this Contract shall have the meanings assigned to them as set forth in Exhibit A to this Contract. Other capitalized terms used but not defined in Exhibit A have the same meanings assigned in the RFP to that term.
3. **Inclusion and Priority of Documents.** The RFP is incorporated by reference as Exhibit B. The Contractor’s Proposal (and any documents referenced therein) which were submitted in response to the RFP, are incorporated by reference as Exhibit C (collectively the “Contractor’s Proposal”). This Contract (including all Amendments, and exhibits referenced in this Contract), the RFP and the Contractor’s Proposal shall be collectively referred to as the “Contract Documents.”

In the event of a conflict among the Contract Documents, the Contract Documents herein shall govern the contractual relationship between the Contractor and ATL, and shall control one over another in the following order:

- 1.) Amendments to the Contract;
- 2.) The Contract - excluding Exhibit B (RFP) and Exhibit C (Contractor’s Proposal);
- 4.) The RFP; and
- 5.) Contractor’s Proposal.

In the event of any conflict, ambiguity or inconsistency between or among any Contract Documents having the same order of precedence, the more stringent standard will prevail. However, where a lower priority document contains additional or supplemental details, those additional details shall take precedence except where the irreconcilably conflict with a higher priority document.

If Contractor’s Proposal includes statements, offers, terms, concepts or designs that can reasonably be interpreted as offers to (i) provide higher quality items than otherwise required by the other Contract Documents or (ii) perform services or meet standards in addition to or better than those otherwise required, or (iii) otherwise contains terms or designs which are more advantageous to ATL than the other requirements of the other Contractor Documents, as reasonably determined by ATL, then Contractor’s obligations under the Contract Documents include compliance with all such statements, offers, terms, concepts, and designs.

4. **Contract Term and Renewal.** This Contract begins on the Effective Date and continues until June 30, 2024, 11:59 pm (local Atlanta time) (the “Initial Term”). ATL may elect to renew this Contract on the same terms and conditions for up to two (2) additional renewal periods with a term of up to one (1) year each (each renewal a “Renewal Term”). The Initial Term and any and all Renewal Terms may be referred to collectively as the “Term.” The renewal of the Contract shall be at the sole discretion of ATL and evidenced by an Amendment signed by both Parties.

5. **Scope of Services.**

5.1. Services in General. The Contractor agrees to perform all of the Services set forth in the Contract Documents. All of the Services and each component thereof shall conform to each and every standard, specification, provision, criteria and requirement as applicable and as set forth in the Contract Documents.

5.2. Prohibited Uses. Unless expressly authorized in writing by the ATL, the Contractor shall not use any Revenue Vehicle, Non-revenue Vehicle or other ATL equipment other than in connection with the Services required to be performed under the Contract Documents. The Contractor shall not use any Revenue Vehicle, Non-revenue Vehicle or other ATL equipment for any private charters or any purpose other than as may be specifically permitted by the ATL and in the ATL’s sole discretion.

5.3. Notice to Proceed. Contractor’s performance of the Services will begin with the issuance of a written Notice to Proceed, which shall be in writing and signed by ATL’s Transit Operations Director

6. **Payment.**

6.1. General. For satisfactory performance of the Services, ATL hereby agrees to compensate the Contractor in accordance with the prices set forth in Exhibit D (Contractor Price Schedule). Rates on Exhibit D include labor, materials, equipment, software, taxes, insurance, bonds, benefits, ancillary costs, overhead, profit and any other monetary component whatsoever to which Contractor may be entitled. The Parties intend that the monies used to compensate Contractor for certain Services provided for herein and any other applicable expenses constitute eligible expenses under Title XII of Division B of Public Law No. 116-136, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) and any other applicable sources of funding of transit operation and maintenance services. Contractor must obtain advance written authorization from ATL prior to performing any Services for which reimbursement with CARES Act funding will be sought. The Contractor therefore agrees to provide support and assistance to ATL related to seeking reimbursement for such eligible expenses of this Contract at no cost to ATL. To the extent that eligibility for such additional applicable sources of funding requires changes to Services or related expenses, ATL’s Chief Transit Officer and the Contractor’s assigned Regional Vice President have the authority to mutually agree to subsequent changes as evidenced in writing via emails or by letter agreement, in either case showing each Party’s consent to the applicable changes. Contractor’s invoices to ATL shall reflect the agreed upon changes and ATL shall make payment to Contractor pursuant to the Contract, as amended. The Parties intend that subsequent changes and the memorialization of the agreement of such changes shall be documented in writing, but do not require a written Amendment to the Contract.

6.2. Maximum Not To Exceed. The maximum not to exceed amount for all Services performed during the Initial Term of this Contract is **\$41,409,223.63**. *(This NTE amount is inclusive of 1) additional cleaning costs due to COVID-19 and 2) miscellaneous/special activities for a period of one (1) year.)*

\$	41,350,223.63	Base service costs initial term
\$	50,000.00	Additional COVID cleaning
\$	9,000.00	Miscellaneous/special items
\$	41,409,223.63	TOTAL

6.3. Method of Compensation.

6.3.1. Vehicle Revenue Hours.

Vehicle Revenue Hours are the scheduled hours of service as set forth in the current Xpress schedules or any revisions thereto, plus or minus adjustments for schedule deviations, trippers or other service level changes as specifically authorized by ATL under this Contract. The Vehicle Revenue Hours operated shall be directly traceable by CAD/AVL system and Clever Reports. Vehicle Revenue Hours shall be compensated monthly at the rate provided in Exhibit D, Contractor's Price Schedule.

Vehicle Revenue Hours shall include the following types of services:

- The scheduled hours of Xpress transit service as set forth in the ATL's schedule, or any revisions thereto, plus or minus adjustments for schedule deviations, trippers, or other service level changes, as specifically authorized by the ATL.
- Standby Hours which are defined as the actual time that a driver and vehicle are ready for revenue service at a park and ride lot or midtown, downtown or Perimeter service staging area. In order to be compensated, Standby Hours must be preauthorized in writing by the ATL.
- Special events services which are defined as service other than scheduled Xpress transit service or standby hours. Contractor will be compensated during the time when a driver and vehicle are ready to provide service. In order to be compensated, Special event services must be preauthorized in writing by the ATL.
- Vehicle Revenue Hours shall exclude Deadhead Hours.

6.3.2. Fixed Fees. The total annual fixed fee to be paid to the Contractor for each year of the Term is set forth in Exhibit D, Contractor's Price Schedule. The total annual fixed fee includes Annual General Administration Fixed Fee and the Annual Non-Vehicle Maintenance Fixed Fees as set forth in Exhibit D, Contractor's Price Schedule. The total annual fixed fee for a particular year of the Term shall be paid in equal monthly installments.

6.4. Fuel Reimbursement. The Contractor shall provide diesel fuel for the North Facility. The total annual fixed fee payable to Contractor for the Services does not include the cost of fuel and the cost of fuel is not included in Exhibit D, Contractor's Price Schedule. ATL shall pay Contractor for fuel it purchases for the North Facility on a reimbursement basis (i.e. as a pass through based on actual fuel costs). Contractor shall make a good faith effort to secure the best possible pricing for diesel exhaust fuel Prior to entering into an agreement with a third party to provide fuel for use under this Contract at the North Facility, the Contractor shall provide the ATL with copies of the fuel quotes that Contractor receives and Contractor shall select the best price unless there are factors that reasonably justify not selecting the best price. If Gwinnett County's fuel co-op becomes available at the North Facility, then the Contractor will be allowed to purchase fuel from Gwinnett County, potentially allowing for a lower fuel cost. The Contractor shall only invoice for fuel used when it is dispensed into a Revenue Vehicle.

6.5. North Facility Lease Payments. ATL's portion of the annual lease payments for the North Facility is based on ATL's proportional share of Revenue Vehicles being operated from the North Facility (e.g. 41 % for Year 1). ATL will determine and inform the Contractor of ATL's proportional share of Revenue Vehicles being operated from the North Facility for the next year of the Term no later than June 15. ATL's portion of the annual lease payments for the North Facility is included as part of the Annual General Administration Fixed Fee as set forth in Exhibit D, Contractor's Price Schedule, and will be included in the equal monthly installments paid to Contractor as set forth in Section 6.3.2.

6.6. Payment not Acceptance. Payment or use of any Services by ATL shall not constitute an acceptance of any Services not performed in accordance with the Contract Documents.

6.7. Invoicing. The Contractor shall deliver to the ATL an invoice on a monthly basis by the tenth (10th) day of each month following the month in which the Services were performed. The Contractor shall submit

invoices using ATL's invoice template. The Contractor shall provide all information requested in ATL's invoice template for Services performed during the previous calendar month, which includes but is not limited to the following information: the monthly portion of the annual fixed fee (general administrative and non-vehicle maintenance), the Vehicle Revenue Hours (separated by route), fuel usage at the North and South Facilities (separated by Revenue Vehicle), vehicle revenue miles (separated by route), Deadhead miles (separated by route) and total miles (separated by route), diesel fuel cost per gallon, and Revenue Vehicle average miles per gallon. The invoice shall include sufficient detail to allow the ATL to verify the itemized billing. Along with each invoice, the Contractor will provide any necessary backup documentation, certifications, and test results, as required in the Contract Documents. Contractor shall also provide with each invoice all other documents, records, correspondence and deliverables which Contractor is required to provide pursuant to the Contract or as otherwise requested by the ATL.

All invoices shall reference ATL Contract No. 22-004. The applicable invoice address for ATL is as follows:

ATLANTA-REGION TRANSIT LINK AUTHORITY

Attn: Accounts Payable

245 Peachtree Center Avenue NE, Suite 2200

Atlanta, Georgia 30303-1426

Email: einvoices@srta.ga.gov

- 6.8. Net 30 Days. Provided all of the conditions in this Section 6 have been met to ATL's satisfaction and Contractor is not otherwise in breach of the Contract, ATL agrees to pay Contractor in accordance with ATL's normal processes and procedures for all undisputed amounts with thirty (30) Days of the later of a review, if any, undertaken by ATL pursuant to **Section 14 (Review of Services)** or ATL's receipt of a valid invoice. If ATL objects to any invoice submitted by Contractor, ATL shall so advise Contractor in writing giving reasons therefor within fourteen (14) Business Days of receipt of such invoice. If any invoice submitted by Contractor is disputed by ATL, only that portion so disputed may be withheld from payment.
- 6.9. Reduction of Payment for Non-Conforming Services. If any defined action, duty or services or other item of Services required by the Contract Documents is not performed by Contractor in accordance with the requirements of the Contract Documents, the value of such action, duty or services or other item of Services will be determined by ATL and deducted from any invoice claiming such items for payment. If the Services or part thereof has been completed and is not in conformance with the Contract Documents, the Contractor will be notified.
- 6.10. Overpayment. In the event an overpayment is made to Contractor under this Contract, Contractor shall immediately refund to ATL the full amount of any such erroneous payment or overpayment following Contractor's written notice of such erroneous payment or overpayment, as issued by ATL. If Contractor fails to refund the erroneous payment or overpayment within a 30-Day period, ATL shall be entitled to interest at one percent (1%) per month on the amount not repaid from the date of overpayment. The provisions in this Section 6.10 shall survive the expiration or termination of this Contract.
- 6.11. No Disruption of Services. Under no circumstances whatsoever, shall Services to be provided by the Contractor be withheld, disrupted, or delayed due to non-payment by the ATL pursuant to any provision of **Section 6 (Payment)** or for any other reason. Contractor's failure to comply with this **Section 6.11** shall be considered an Event of Default as set forth in **Section 26.1.1 (Event of Default)**.
- 6.12. End of Fiscal Year. No later than the second Friday of July each year, Contractor must submit to ATL any outstanding invoices for Services successfully or rendered during the period of July 1st-June 30th of that year. Failure to adhere to this requirement may result in non-payment for the Services. ATL reserves its right to dispute part or all of an invoice and to withhold payment for Services that were not completed or supplied in accordance with the Contract Documents.
- 6.13. Late Fees. ATL shall not be liable for late fees, collection fees, attorney's fees, interest or other fees incurred by Contractor as a result of non-payment or a delay in payment by ATL.

- 6.14. Right to Set Off. ATL may retain or set off any amount owed to it by Contractor.
- 6.15. Full Compensation. All Services performed by the Contractor in meeting the requirements of the Contract Documents shall be paid as set forth herein, which shall constitute full compensation for the, including but not limited to: (a) the cost of all insurance and bond premiums, home office, job site and other overhead, and profit relating to Consultant's performance of its obligations under this Contract; (b) the cost of performance of each and every portion of the Services (including all costs of all Services provided by subcontractors and suppliers); (c) the cost of obtaining all governmental approvals and all costs of compliance with and maintenance of such governmental approvals; (d) all risk of inflation, currency risk, interest and other costs of funds associated with the partial payment schedule for the Services as provided herein; and (e) payment of any taxes, duties, permits and other fees and/or royalties imposed with respect to the Services and any equipment, materials, supplies, documentation, labor or services included therein.
- 6.16. Overtime. Unless otherwise authorized in writing by ATL, no premium pay or overtime will be compensable and will not be paid by ATL.
- 6.17. Withholding Payments. If the Contractor fails to perform its duties and obligations, the ATL may withhold payment or portions of the payment, and the ATL shall have the right to deduct from payments to the Contractor any costs or damages incurred, or which may be incurred, by the ATL as a result of the Contractor's failure to perform, or any penalties that could be assessed against the Contractor pursuant to this Contract.
- 6.18. Acceptance of Payment. By acceptance of the ATL's payment of an invoice amount, the Contractor releases the ATL from any and all claims for service provided or work performed through the date of the invoice.
- 6.19. Firm Fixed Price. The prices for the Services set forth in Exhibit D, Contractor's Price Schedule, shall be firm throughout the Term.
7. **Service Changes.** The Parties anticipate that the ATL shall modify or adjust the Services provided under this Contract at any time in accordance with the procedures in the Contract Documents, and in particular this Section 7. Service changes shall be set forth in a written notice from ATL. ATL anticipates conducting service changes throughout the term of the Contract. The Contractor does not have the authority to make service changes without the written authorization of the ATL except in the case of non-recurring events and emergencies which may have an impact on public safety, and in such circumstances service changes may be made by Contractor, but strictly as set forth in Section 7.7.
- 7.1. Allowable Service Changes. Service changes are changes to Xpress routes and schedules. Allowable service changes may include, but are not limited to, extending, deleting from, or adding to the service area and a corresponding revision of Services; increasing routes; decreasing routes; and reallocating, decreasing or increasing Vehicle Revenue Hours or the frequency of service. Changes in Revenue Vehicle fleet mix do not constitute a service change.
- 7.2. Process for Service Changes. During the Contract Term, ATL and the Contractor will evaluate ridership changes, changes in hours of service demand, passenger Trips per run, capacity constraints, and on-time performance to determine if a service change is appropriate. If the current level of services no longer meets ATL's service standards, ATL may request, in writing, that the Contractor prepare for a service change. The written request will outline whether there will be any change to the Fixed Monthly Rate or Vehicle Revenue Hour Rate, Revenue Vehicle deployment requirements, and other resources necessary to accommodate the service change.
- 7.3. Contractor Response to a Service Change Request. Within ten (10) Days of receipt of a request for a service change, Contractor shall provide ATL, in writing, with (a) a timeline for implementation of the service change; (b) an estimate of the cost or savings of the proposed service change; (c) the anticipated impact of the service change on existing operations; (d) the necessity for any additional capital equipment to implement the service change; and (e) the feasibility of the service change. Contractor may also propose service changes for ATL review and may suggest alternatives or modifications to the Service proposed by

ATL.

- 7.4. Service Change Implementation. ATL will review the information provided by the Contractor pursuant to Section 7.3, and may (a) instruct Contractor to proceed with the development and implementation timeline for the service change as originally proposed by ATL; (b) instruct Contractor to implement the service change with modifications; or (c) notify Contractor that the proposed service change will not be implemented. Only those service changes directed and approved by ATL, in writing, shall be implemented by Contractor.
- 7.5. Rate Adjustments. In the event of a Major Service Change Contractor may request a renegotiation of the then-applicable Fixed Monthly Rate or Vehicle Revenue Hour Rate. Any rate adjustment requested under this Section 7.5 must be submitted to ATL in writing and include detailed quantitative documentation that the proposed Major Service Change has resulted, or will result, in additional costs to the Contractor in the operation or maintenance of the Revenue Vehicles under this Contract. ATL is not obligated to agree to such request, but will review and consider such request in good faith. If ATL does not agree to a rate adjustment after a Major Service Change then the current Fixed Monthly Rate and Vehicle Revenue Hour Rate will continue to apply. The then-applicable Fixed Monthly Rate or Vehicle Revenue Hour Rate shall not be adjusted for Minor Service Changes.
- 7.6. Temporary Service Modifications. Notwithstanding **Sections 7.2 (Process for Service Changes), 7.3 (Contractor Response to a Service Change Request) and 7.4 (Service Change Implementation)**, ATL may direct the Contractor to make temporary modifications in the Services provided or the schedules in order to address short term operating problems or issues. The Contractor may not request a renegotiation of the then applicable Fixed Monthly Rate or Vehicle Revenue Hour Rate for temporary service modifications unless such temporary service modification reaches the level of a Major Service Change.
- 7.7. Other Route and Service Modifications. The Contractor is responsible for making service changes to schedules and routes caused by non-recurring events, such as traffic accidents and inclement weather. The Contractor, subject to ATL approval, is also responsible for making service changes to schedules and routes due to recurring events, such as street closures for special events. In case of emergencies, the Contractor shall immediately make modifications to schedules and routes to protect public safety and as may be directed by ATL. In the event of service changes pursuant to this Section 7.7, Contractor shall still be paid based on scheduled Revenue Hours.
- 7.8. State, Regional or County-wide Emergencies. Upon the declaration of an emergency (by the Governor of Georgia, for example), the Contractor may become responsible for a number of transportation-related activities, including the implementation of emergency travel routes and coordination with other agencies supplying common carrier services. In the event of a declared emergency, the Contractor shall deploy vehicles in a manner described by ATL as part of any transportation emergency operations plan. In the case of a declared medical emergency (such as a pandemic), the Contractor will implement the applicable approved SOPs to mitigate and protect their staff, ATL staff, and the customers. The Contractor will comply with State and Federal health guidelines as issued. ATL will adjust service levels as needed for the duration of the emergency. Any Services provided by Contractor during an emergency pursuant to this Section 7.8 shall be invoiced separately from scheduled Vehicle Revenue Hours. Contractor shall be paid at the current Vehicle Revenue Hour rate for Services provided pursuant to this Section 7.8. Total compensable time for Services provided pursuant to this Section 7.8 for each Revenue Vehicle utilized will be calculated starting from the time a Revenue Vehicle arrives at the assigned pick up location to the time the Revenue Vehicle departs from the assigned drop-off location or is released to return to the North Facility or South Facility, whichever occurs first.
- 7.9. Other Service. If ATL determines that other services or routes should be added to the Xpress system, ATL reserves the right, in its sole discretion, to implement such other services or routes though the Process for Service Changes set forth in this Section 7, or to separately procure and contract for the other services or other routes with an alternate provider.
8. **Performance Standards.** Contractor shall perform all Services required by this Contract in accordance with the Performance Standards for Xpress transit service set forth in the Contract Documents and in particular, **Appendix**

1 (Performance Standards Chart) and Section 10 of the RFP. Failure by the Contractor to meet these Performance Standards will result in ATL assessing Liquidated Damages for each incident of non-compliance as specified in **Section 9 (Liquidated Damages)**. The Contractor shall receive incentive payments for meeting certain Performance Standards as detailed in **Appendix 1 (Performance Standards Chart)**. Incentives will be determined and paid monthly, except as specifically noted in **Appendix 1 (Performance Standards Chart)**.

ATL reserves the right to monitor Contractor's performance of the Contract to ensure adherence to all Performance Standards. ATL or its representative(s) may, without prior notice, ride in Contractor-operated vehicles and monitor transit services to ensure compliance with the Contract. Contractor shall fully cooperate in the measurement of Contractor's adherence to the Performance Standards, which includes but is not limited to accurate self-reporting.

Performance Standards are metrics developed by ATL to measure the Contractor's performance. Contractor is required to meet or exceed the Performance Standards set forth in **Appendix 1 (Performance Standards Chart)**.

9. Liquidated Damages

9.1. Basis of Assessment. Liquidated Damages for failure to meet the Performance Standards as detailed in Appendix 1 (Performance Standards Chart) shall be calculated, assessed and reported by ATL to the Contractor on a monthly basis, in accordance with this subsection. Liquidated Damages shall be assessed on the basis of the information provided on the Contractor's invoices, reports and other documentation as required under the Contract and verified, as applicable, through various reporting mechanisms available to ATL including, but not limited to CAD/AVL, visual observations, third-party inspections, ride checks, data surveys, and passenger comments.

9.2. Difficulty of Ascertaining Certain Damages. The amount of Liquidated Damages as set forth in **Appendix 1 (Performance Standards Chart)** is fixed and agreed to by and between the Contractor and ATL because both Parties agree and acknowledge the impracticability and extreme difficulty of fixing and ascertaining the true value of the damages which ATL will sustain by failure of the Contractor to failure to meet Performance Standards referenced in **Appendix 1 (Performance Standards Chart)**, such as loss of revenue, service charges, interest charges, harm and inconvenience to the public, delays caused to other activities of ATL by failure to perform this Contract, increase of inspection and administrative costs, and other damages, some of which are indefinite and not susceptible of easy proof, said amounts were actively negotiated between the Parties, and are in each instance agreed by both Parties to be a reasonable estimate of the amount of damages which ATL will sustain in each instance and said amount shall be deducted from any monies due or that may become due to the Contractor. Both Parties hereto acknowledge that any Liquidated Damages assessed by ATL and paid by Contractor to ATL shall constitute Contractor's sole liability and ATL's sole remedy with respect to the failure to meet the Performance Standards for which Liquidated Damages are assessed as enumerated in **Appendix 1 (Performance Standards Chart)**.

Liquidated Damages that are assessed by ATL will be deducted from any money due the Contractor, not as a penalty, but as a reasonable estimate of ATL's damages; provided however, that ATL reserves the right, at their sole discretion, to allow extenuating circumstances to excuse the imposition of Liquidated Damages.

9.3. Notice of Liquidated Damages. ATL will provide Contractor with a listing of Liquidated Damages assessed each month, itemized by performance category and dollar amount. ATL will establish appropriate forms for such notification and assessment.

9.4. Cure Periods. **Appendix 1 (Performance Standards Chart)** sets forth whether or not a cure period will be afforded to the Contractor in the event the Contractor fails to meet the applicable Performance Standard. If a cure period is afforded to the Contractor, then **Appendix 1 (Performance Standards Chart)** will note the length of the cure period and how often the cure period may be afforded during the term of the Contract. If no cure period is afforded to the Contractor for a particular Performance Standard, then **Appendix 1 (Performance Standards Chart)** will note "No cure period". If applicable, a cure period for failure to meet a Performance Standard will begin on the date the Contractor first failed to meet the applicable Performance Standard. During the cure period the Liquidated Damages for failure to meet

the applicable Performance Standard will not be accrued or assessed. If the Contractor does not successfully cure the failure to meet the Performance Standard during cure period then Liquidated Damages may accrue and be assessed by the ATL or County, as applicable, beginning from the Day immediately following the end of the applicable cure period.

- 9.5. Response by Contractor to Notice of Liquidated Damages. Contractor has the opportunity to respond to the notice of assessment of Liquidated Damages. If Contractor chooses to respond, then Contractor must provide a written response to ATL Director of Transit Operations in writing within seven (7) Business Days of receipt of the notice of assessment of Liquidated Damages. If Contractor does not timely respond to ATL's notice of assessment of Liquidated Damages, then Contractor waives the right to dispute that assessment of Liquidated Damages. As part of Contractor's response to a notice of assessment of Liquidated Damages, Contractor may provide evidence to ATL that it complied with the applicable Performance Standards or that Contractor made all reasonable efforts to comply with its contractual obligations and that extenuating circumstances excuse the imposition of Liquidated Damages. Extenuating circumstances that could justify an excuse of imposition of Liquidated Damages do not include delays which may be reasonably anticipated on a daily basis on any given roadway or in any given area. Within seven (7) Business Days of receipt of Contractor's response to the notice of assessment of Liquidated Damages, ATL shall respond in writing to Contractor with either its final determination regarding the notice of assessment of Liquidated Damages or ATL may request that the Contractor provide additional information within a period of time set by ATL. ATL reserves the right, at its sole discretion, to allow extenuating circumstances to excuse the imposition of Liquidated Damages. If Contractor timely responded to the notice of assessment of Liquidated Damages and disagrees with ATL's determination regarding the assessment of Liquidated Damages, Contractor may escalate the dispute pursuant to **Section 25 (Dispute Resolution)**.

Unless ATL determines that Contractor met the specified Performance Standard or that extenuating circumstances excuse the imposition of Liquidated Damages, all Liquidated Damages assessed under this Section 9 may be deducted by ATL from any money due the Contractor. Such deductions will typically be taken from Contractor's next monthly invoice. However, ATL does not waive its right to assess and deduct Liquidated Damages from later payments to the Contractor in the event ATL does not deduct Liquidated Damages from Contractor's next monthly invoice.

- 9.6. Unenforceability of Liquidated Damages. If any Liquidated Damages are found for any reason to be void, invalid or otherwise inoperative so as to disentitle ATL from claiming all or part of the Liquidated Damages, then ATL is entitled to claim against the Contractor damages at law or in equity for the Contractor's failure to complete or otherwise perform the Services as set forth in the Contract.
- 9.7. Reservation of Rights and No Waiver. ATL's decision to assess or not assess Liquidated Damages on any particular occasion does not constitute a waiver of any of ATL's rights and remedies under this Contract, including but not limited to, the right of ATL to terminate this Contract for default pursuant to **Section 27.1 (Termination for Cause)**.

10. Contractor Personnel.

- 10.1. General. The Contractor shall provide sufficient professional personnel and staffing to provide the Services and so as not to delay any aspect of the Services. Contractor warrants and represents that all Persons assigned to perform under this Contract shall be employees or authorized subcontractors of Contractor, shall be licensed in the State (if required by Law) and shall be fully qualified to perform the Services. Contractor shall include a similar provision in any agreement with any subcontractor and/or supplier selected to perform and/or to provide any Services. Personnel commitments, if any, made in Contractor's Proposal shall not be changed unless approved by ATL. Contractor's failure to continuously provide adequate staffing to prosecute the Services competently and according to the Contract Documents may result in the termination of this Contract for Contractor default. All of Contractor's and Contractor Parties' personnel shall comply with ATL's confidentiality and security requirements while on ATL's premises or otherwise performing the Services, including but not limited to obtaining criminal background checks and the execution of confidentiality agreements.

- 10.2. ATL's Right to Remove. ATL shall have the right to require the Contractor to remove an employee from performing under this Contract, based on cause or other reasonable standard. In the event of such removal, Contractor will replace the employee with the appropriate skilled personnel within the time reasonably specified by ATL.
- 10.3. Contractor's General Manager. Contractor shall at all times provide a General Manager approved by ATL who (a) will have full responsibility for the prosecution of the Services, (b) will act as agent in all matters on behalf of Contractor, and (c) will be available to respond to ATL upon ATL's request.
- 10.4. Key Personnel. Contractor shall not substitute key personnel as required under Section 3.6.2 (Qualifications and Experience of Key Personnel) of the RFP and assigned to this Contract without the prior written approval of ATL, which shall not be unreasonably withheld. Unless otherwise specifically authorized in writing by ATL, the Key Personnel providing services under this Contract shall be assigned full time to the performance of the Services provided under this Contract. Notwithstanding any provision in the Contract Documents to the contrary, the Contractor's General Manager, Operations Manager, Maintenance Managers, Safety and Training Managers, and Customer Service Managers shall be considered Key Personnel.
- Any desired substitution shall be noticed to ATL, accompanied by the names, experience and references of Contractor's recommend substitute personnel. Contractor shall provide ATL at least thirty (30) Days advance notice prior to any contemplated change to Key Personnel. Contractor shall fill any vacancy in a Key Personnel position, within sixty (60) Days of the date of vacancy with an individual whose qualifications and experience meet the requirements of the position. Subject to ATL's approval, a vacancy must be temporarily filled by a qualified individual on an interim basis while a more extensive search for a replacement is conducted. Failure to provide a satisfactory replacement for a Key Personnel position within sixty (60) Days shall result in a deduction of the prorated amount of the salary and benefits of the individual during the full period of the vacancy from ATL's monthly payments to the Contractor.
- 10.5. Wages. Contractor shall comply and cause its subcontractors to comply with all Laws pertaining to wages.
- 10.6. Immigration Act. Contractor and its subcontractors shall comply with the Georgia Immigration & Compliance Act ("Immigration Act"), O.C.G.A. § 13-10-90, et seq. Contractor must certify compliance with the Immigration Act using the form required by ATL. The required certificates and affidavits must be filed with ATL and copies maintained by Contractor and each of the Contractor Parties as of the Effective Date, recertified as of July 15 of each year and upon final completion of the Services. State officials, including officials of the Georgia Department of Labor and ATL, retain the right to inspect and audit the Project and employment records of Contractor and its subcontractors without notice during normal working hours until the Services under the applicable Contract are complete, and as otherwise specified by Law.
- 10.7. No Discrimination. Contractor shall not, and shall cause any subcontractor to not, discriminate on the basis of race, color, national origin, sex, age, religion, or handicap in the performance of the services under this Contract. Contractor shall carry out, and shall cause its subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in termination hereof or such other remedy permitted hereunder as ATL deems appropriate. Contractor shall include this provision in every subcontract (including purchase orders) pertaining to the Services under this Contract.
- 10.8. Equal Employment. Contractor confirms for itself and its subcontractors providing Services under this Contract that Contractor and each such subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap and that Contractor and each such subcontractor maintains no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap. Contractor shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions of the Law, and shall require the Contractor Parties to comply with such Laws.
- 10.9. Notice of Labor Disputes. If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately

give notice, including all relevant information, to the ATL Transit Operations Director.

11. **Operating Revenue.** All Operating Revenues collected by Contractor are the sole property of ATL. Contractor shall promptly remit all collected Operating Revenue to ATL in accordance with the guidelines established by Contractor and approved by ATL and as necessary to meet requirements of federal, State and local financial audits. For the purposes of this Contract, Contractor is responsible for reporting operating revenues that consist of physical currency collected for fares by the Contractor.
12. **Advertising Revenue.** ATL does not currently permit paid interior or exterior advertising on the Xpress fleet; however, ATL has the right to determine interior and exterior advertising policies for its fleet and may permit paid advertising in the future. Should ATL elect to permit paid advertising on the Xpress fleet, all revenue received from advertising on the Xpress fleet are the sole property of ATL.
13. **Publication and Publicity.** Articles, papers, bulletins, data, studies, statistics, interim or final reports, oral transmittals or any other materials reporting the plans, progress, analyses, results, or findings of Services conducted under this Contract shall not be presented publicly or published without prior written approval by ATL Transit Operations Director.
 - 13.1. Disclaimer Provision. All releases of information, findings, and recommendations shall include a disclaimer provision and all published reports shall include that disclaimer on the cover and title page in the following form:

"The contents of this publication reflect the views of the author(s), who is (are) responsible for the facts and accuracy of the data presented herein. The opinions, findings, and conclusions in this publication are those of the author(s) and do not necessarily reflect the official views or policies of those of the Atlanta-region Transit Link Authority, the State of Georgia or the Federal Transit Administration. This publication does not constitute a standard, specification or regulation."
 - 13.2. Unauthorized Releases. If any information concerning the Services, their conduct, results or data gathered or processed should be released by the Contractor without prior approval from ATL, the release of same shall constitute grounds for termination of this Contract without indemnity to the Contractor. In addition, the Contractor shall indemnify and hold harmless ATL, its officers, employees, and agents from any liability arising from such unauthorized release of data.
 - 13.3. Open Records Requests. The Contractor acknowledges and agrees that all records of the Services, including records of Contractor and subcontractors are subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., with particular attention being called to O.C.G.A. § 50-18-70(a) regarding the records of private persons, firms, corporations, or other private entity engaged in performance of services or functions on behalf of a state agency, public agency or public office. The Contractor shall include this language or similar language in all contracts with subcontractors.
14. **Review of Services.** ATL and its authorized representatives may at all reasonable times review and inspect the Services, financial reports and data collected under terms and conditions of this Contract and any Amendments thereto.
15. **Subcontracting and Assignment.**
 - 15.1. Assignment. Contractor shall not assign, delegate, sublet or transfer this Contract or any rights under or interest in this Contract without the prior written consent of ATL, which may be withheld for any reason. ATL and Contractor agree that ATL may, in its sole discretion, assign its rights, responsibilities, and interest in this Contract to any other duly authorized State agency or authority.
 - 15.2. Subcontracting. Nothing contained herein shall prevent Contractor from employing independent professional associates, subcontractors and suppliers as Contractor may deem appropriate to assist in the performance of Services hereunder. However, Contractor shall not subcontract Services to subcontractors and/or suppliers that are different from those subcontractors and/or suppliers listed in Contractor's Proposal, without obtaining ATL's prior written approval, which approval is within ATL's sole discretion. ATL shall

have the right to require the Contractor to remove a subcontractor and/or supplier of Contractor from performing under this Contract, if in ATL's sole opinion, such subcontractor and/or supplier:

- 15.2.1. is not performing its portion of the Services satisfactorily;
- 15.2.2. is failing to cooperate as required in the Contract Documents;
- 15.2.3. is posing a security risk to the Project or to ATL's business;
- 15.2.4. is otherwise breaching a term of the Contract Documents that is applicable to that portion of the Services being performed by the subcontractor and/or supplier; or
- 15.2.5. presence on the Project is not in the best interest of ATL, acting reasonably.

In the event of such removal, Contractor shall replace the subcontractor and/or supplier with a suitable replacement within the time specified by ATL.

- 15.3. Contractor Remains Responsible. If Contractor subcontracts any of the Services to be performed under this Contract, Contractor shall be as fully responsible to ATL for the acts, errors, or omissions of Contractor's subcontractor and/or supplier and of the persons employed by them as Contractor is for the acts and omissions of persons directly employed by Contractor. Contractor shall be obligated to assist ATL in the enforcement of any rights that ATL has against subcontractor. Notwithstanding any subcontract or agreement with any subcontractor, Contractor shall be fully responsible for all of the Services on this Project. Notwithstanding any provision to the contrary, Contractor shall be responsible to ATL for all terms, conditions, liabilities, and responsibilities under the Contract Documents regardless of whether Contractor or its subcontractors, suppliers, independent contractors, agents or assigns perform any aspect of the Services
 - 15.4. Mandatory Terms in Subcontracts. Nothing contained in this Contract shall create any contractual relationship between any subcontractor of Contractor and ATL. Any subcontract entered into as a result of this Contract, except those exclusively regarding third-party materials, suppliers, and Commercial Off The Shelf ("COTS") hardware and software supplied by the Contractor under the Contract, shall contain all applicable provisions of this Contract that in any way relate to the Services that the applicable Contractor Party will perform and/or furnish, as well as provisions pertaining to, records, and payment methods. The Contractor shall further ensure that all subcontracts entered into by Contractor for any Services to be performed or equipment or materials supplied grant ATL all of the rights and privileges of such subcontract, including but not limited to (so long as ATL is not in default of its obligations under this Contract) ATL's right to secure materials, equipment or services from the subcontractor that might be a part of the subcontractor's Services.
 - 15.5. Timely Payments to Subcontractors. Contractor warrants that it shall make timely payments for Services performed to any subcontractor or supplier hereunder and Contractor shall indemnify, defend and hold harmless ATL and the State for any breach of this warranty.
 - 15.6. Failure to Comply. Any assignments or subcontracts made in violation of **Sections 15.1 (Assignment) or 15.2 (Subcontracting)** shall be null and void.
16. **Relationship of the Parties**. Each Party, in the performance of this Contract, shall be acting in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other Party. The employees, agents, partners, or contractors of one Party shall not be deemed or construed to be the employees, agents, partners or contractors of the other Party for any purposes. Neither Party shall assume any liability of any type on behalf of the other Party or any of such other Party's employees, agents, partners, or contractors. The Parties expressly understand and agree that Contractor is an independent Contractor of ATL in all manner and respect and that neither Party to this Contract is authorized to bind the other Party to any liability or obligation or to represent in any way that it has such authority. Contractor shall be solely responsible for all payments to its subcontractors, agents, consultants, suppliers, employees, partners or any other parties with which it does business including, but not limited to, paying all benefits, taxes and insurance, including workmen's compensation insurance, for its employees.

- 16.1. **Joint Venture/Partnership.** If Contractor is a joint venture or partnership then each member of the joint venture or partnership shall be jointly and severally liable to ATL and to the State for any and all obligations, responsibilities, liabilities, damages, Liquidated Damages, warranties or otherwise arising under the Contract Documents.
17. **Employment of ATL's Personnel.** Contractor shall not employ any person(s) employed by ATL for the Services required to be delivered by Contractor pursuant to this Contract, without the prior written permission of ATL.
18. **Safety.** The Contractor shall be solely and completely responsible for the safety of all persons and property in any way related to the Services and comply with the rules and regulations of OSHA and any other Governmental Entity responsible for safety of labor and the Services. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of its methods and for any damage which may result from their improper construction, maintenance, or operations. The Contractor's Key Personnel in charge of safety shall be responsible for the prevention of accidents. Contractor may appoint a different person to be responsible for the prevention of accidents by submitting written notice to the ATL. Contractor shall furnish any and all Material Safety Data Sheets applicable to Contractor's work to ATL prior to commencing work under this Contract.
19. **Risk of Loss or Damage.** Contractor shall be responsible for the revenue and support vehicles, equipment, tires, supplies, and facilities used in the performance of Services, whether owned by ATL, Contractor, or Gwinnett County or leased by ATL, Contractor or Gwinnett County. Contractor shall be responsible for all losses or damages with respect to any such revenue or support vehicles, equipment, tires, and supplies, and facilities, excepting those losses or damages due to either intentional acts of ATL or ATL's gross negligence. In the event of damage or loss to a Revenue Vehicle or support vehicle due to an accident, Contractor shall be responsible for the replacement cost of the Revenue Vehicle or support vehicle at the depreciated value of the Revenue Vehicle or support vehicle, as applicable, at the time of loss.
20. **Warranties.**
- 20.1. **Express Warranties.** In addition to any express or implied warranties provided by Law and not otherwise disclaimed below and in the RFP, Contractor hereby expressly represents and warrants the following:
- 20.1.1. *Accuracy of Responses.* All of Contractor's responses included in the Contractor's Proposal are true and correct in each and every instance as of the date each document, respectively, was submitted to ATL.
- 20.1.2. *Licenses.* The Contractor has and will maintain and keep in full force and effect during the Term of the Contract all required authority, licenses, certifications and permits, professional ability, skills, and capacity necessary to perform the Services.
- 20.1.3. *Organization.* The Contractor is a corporation duly organized and validly existing under the Laws of the State of Maryland, and has the requisite power and all required licenses to carry on its present and proposed activities in the State, and has full power, right and authority to execute and deliver this Contract and to perform each and all of the obligations of Contractor provided for herein. Contractor is duly qualified to do business, and is in good standing, in the State.
- 20.1.4. *Good Standing.* Contractor covenants and agrees that it will maintain its existence and will remain in good standing in the State throughout the Term of the Contract and will maintain its existence for as long thereafter as any obligations remain outstanding under this Contract.
- 20.1.5. *Authorization by Contractor.* The execution, delivery and performance of the Contract has been duly authorized by all necessary corporate, partnership or limited liability company action (as the case may be) of Contractor; each person executing this Contract on behalf of Contractor has been duly authorized to execute and deliver it on behalf of Contractor; and this Contract has been duly executed and delivered by Contractor.

- 20.1.6. *Authorization of Signer.* The person signing this Contract on behalf of the Contractor has been duly authorized by Contractor to execute and deliver same.
- 20.1.7. *Valid Contract.* This Contract constitutes the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar Laws affecting the enforceability of the rights of creditors generally and general principles of equity.
- 20.1.8. *No Default.* Neither the execution and delivery by Contractor of this Contract, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing instruments of Contractor, any approvals or Laws applicable to Contractor or any other material agreement to which Contractor is a party.
- 20.1.9. *No Proceeding.* There is no action, suit, proceeding, investigation or litigation pending and served on Contractor which challenges Contractor's authority to execute, deliver or perform, or the validity or enforceability of, this Contract or which challenges the authority of the Contractor official executing this Contract; and Contractor has disclosed to ATL any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Contractor is aware.
- 20.1.10. *No Breach of Law.* Contractor is not in breach of any applicable Law that would have a material adverse effect on the operations of any Project or Contractor's ability to perform its obligations under this Contract.
- 20.1.11. *Real Party in Interest.* Contractor is the legal and valid holder of the interest attributed to Contractor under the Contract.
- 20.1.12. *Equipment, Hardware, Supplies and Materials.* Contractor represents and warrants that during the Term of the Contract all hardware, equipment, supplies and other material, supplied under the Contract Documents shall (1) comply with and conform to all performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the Contract Documents, (2) have a minimum service life as set forth by applicable FTA requirements, and (3) with regard to equipment and hardware that will either be installed or otherwise purchased by ATL pursuant to the Contract Documents, Contractor will convey good and marketable title, and that all such equipment and supplies shall be delivered to ATL and remain free from all security interests or other liens or encumbrances. Contractor also agrees to defend ATL's title against all persons claiming ownership or other interest in the whole or part of any such equipment or supplies furnished to ATL under this Contract.
- 20.1.13. *Software.* Contractor represents and warrants that during the Term of the Contract all Software that Contractor will use to perform the Services, except for COTS, shall be provided pursuant to the Contract Documents and free from defects and any update or revision to any of such software will be free from defects and will meet all specifications set forth in the Contract Documents. Contractor shall obtain written approval from ATL prior to installing any software on to the ATL's systems and equipment.
- 20.1.14. *Cooperation.* Contractor represents and warrants that during the Term of the Contract Contractor shall fully cooperate with ATL, ATL-designated Representatives, and any other entity, in furnishing all the Services required by the Contract. Without limiting the foregoing requirement, Contractor shall also:
- 20.1.14.1. FTA: Cooperate with and respond to all requests by the ATL in attempting to comply with FTA requirements or responding to FTA requests.
- 20.1.14.2. Third Party Claims: Contractor shall designate a single point of contact who is responsible coordinating with the ATL regarding any third-party claims against ATL

related to the Contractor's performance of the Services under this Contract.

20.1.14.3. **Communication with Passengers:** Contractor shall cooperate with ATL regarding communications with passengers as set forth in the RFP or as otherwise directed by ATL Transit Operations Director.

20.1.15. **Intellectual Property.** As used in this Contract, "Intellectual Property" shall mean any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the forgoing, whether or not registered as of the Effective Date or at any later date. Contractor represents that Contractor, its agents, employees, subcontractors and assigns will neither violate nor in any way infringe upon the Intellectual Property rights of ATL or of any other third party.

20.1.16. **Compliance with Laws, Rules and Regulations.** Contractor represents and warrants that during the Initial Term and each Renewal Term of the Contract (1) the Services will not be in violation of any applicable Law, rule or regulation, and Contractor will obtain all permits and licenses required to comply with such Laws and regulations, (2) Contractor has obtained and has a current certificate of authority to transact business from the Georgia Secretary of State, and (3) Contractor will comply in all respects with all other Laws, rules, regulations, ordinances of any governing authority that impact or relate in any way to the Services. Any changes to applicable Laws, rules, or regulations that are enacted after the Effective Date may be the subject of an Amendment only if a change to applicable Laws, rules, or regulations results in an actual and direct increase in cost to Contractor.

20.2. **Third Party Warranties.** Contractor shall assign to ATL the manufacturers' or other third-party warranties for any and all items of Services furnished to ATL.

20.3. **No-waiver.** Neither any provision of this Contract nor any decision of ATL shall relieve the Contractor of responsibility for faulty materials, faulty workmanship, or omission of any Services. Any deviation in the Contract Documents that is evidenced by an Amendment signed by ATL will constitute an acceptance by ATL of such deviation from the applicable Contract requirement. Notwithstanding the preceding sentence, such deviation will still need to pass acceptance or other testing as may otherwise be required in the Contract Documents.

20.4. **Contractor duty to Remedy.** Contractor shall, within the time periods designated in the Contract Documents, correct, remedy, replace, re-execute, supply omitted or defective Services and pay for any damage to other work resulting therefrom, without expense to ATL, including but not limited to shipping costs. If the RFP does not specify a warranty, then Contractor shall replace any defective item of Services furnished in breach of the Contract Documents, no later than five (5) Business Days after the date of ATL's written notification thereof.

20.5. **ATL Cure.** If the Contractor does not remove, make good the deficiency, correct, or remedy defective Services, or supply any omitted Services within the time periods set forth under the Contract Documents, and if no time is set in the RFP then unless otherwise agreed to in writing by the Parties, within ten (10) Days, then ATL may, after five (5) Days written notice to the Contractor, remove the Services, correct the Services, remedy the Services or supply omitted Services at the expense of the Contractor. If ATL has not yet made payment to Contractor, then ATL may deduct the cost thereof from any payment then or thereafter due and owing the Contractor. If payment of the final invoice has been made to Contractor, then Contractor shall reimburse the cost to ATL within thirty (30) Days of written demand therefore by ATL. In case of emergency involving health, safety of property or safety of life, ATL may proceed at once and without notice to Contractor and Contractor shall remain responsible for the cost thereof.

20.6. **Defective Services Contractor Responsibility.** Correction of defective Services or supplying of omitted Services whether or not covered by warranty of a manufacturer, Contractor Party, remains the primary, direct responsibility of the Contractor.

21. **Inspection of Services.** If the RFP or the Laws, ordinances, rules or regulations, or any Governmental Entity require any component of the Services to be tested or approved, the Contractor shall give ATL timely notice in writing of its readiness for inspection and testing, and if the inspection is by any authority other than ATL, of the date fixed for such inspection. The Contractor assumes the responsibility of furnishing all Services in accordance with this Contract. No provisions of this Section 21 nor any inspection of the Services by ATL, representatives of ATL, or any other third party shall in any way diminish, relieve, or alter the responsibility and undertaking of the Contractor; nor shall the omission of any of the foregoing to discover or to bring to the attention of the Contractor the existence of any Services that is not in accordance with the Contract Documents in any way diminishes, relieves, or alters the obligations of the Contractor nor shall the aforesaid omission diminish or alter the rights or remedies of ATL as set forth in this Contract.
22. **Confidential Information.** Contractor acknowledges that in order to perform the Services called for in this Contract, it may be necessary for ATL to disclose to Contractor certain trade secrets, proprietary information, customer information, and other protected information (collectively "Confidential Information"). Contractor agrees that it shall not disclose, transfer, use, copy, or allow access to any such Confidential Information to any employees or to any third parties excepting those who have a need to know such Confidential Information in order to allow Contractor to perform the Services, and who, in the case of third parties, have executed a nondisclosure agreement consistent with the provisions hereof. Customer information of any kind shall be deemed ATL's Confidential Information.
- 22.1. Open Records Act. Notwithstanding anything else to the contrary, information provided to ATL is subject to disclosure under the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.), as it may be amended from time to time. Pursuant to O.C.G.A. § 50-18-72 (a)(34), "An entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A § 10-1-760 et seq.]."
- 22.2. No Obligation of Confidentiality. Neither Party shall have any obligation of confidentiality with respect to any information which (i) is or becomes (through no improper action or inaction of the receiving Party or any of its affiliates, agents, consultants or employees) generally available to the public; (ii) can be demonstrated by the receiving Party to have been in its possession or known by it prior to the receipt under this Contract; (iii) is rightfully disclosed to the receiving Party by a third party without restriction; (iv) is disclosed by the receiving Party with the written approval of the disclosing Party; (v) is developed independently by the receiving Party without any reference, whether direct or indirect, to the Confidential Information of the disclosing Party; or (vi) is obligated to be disclosed by order of a court of competent jurisdiction or is subject to disclosure under the Georgia Open Records Act, provided the disclosing Party is promptly notified in order to resist or limit any such disclosure by the receiving Party.
- 22.3. Use of Confidential Information. The Party receiving the Confidential Information shall use the Confidential Information solely for the purpose of providing the Services required under the Contract Documents and shall not in any way use the Confidential Information to the detriment of disclosing Party.
- 22.4. Return of Confidential Information. Except as otherwise provided in the Contract or by Law, the receiving Party shall return to disclosing Party any Confidential Information immediately on request but no later than upon the termination for whatever reason of this Contract.
23. **Indemnification.**
- 23.1. Contractor Liability for Contractor Parties. The Contractor shall be responsible to ATL for all injury or damage or losses of any kind to any person or to property resulting from any negligent act or omission to act, or breach, failure or other default by the Contractor, or any of its subcontractors, agents, employees or others working at the direction of the Contractor or otherwise on its behalf.
- 23.2. Indemnification of ATL. Contractor hereby agrees to indemnify and hold harmless ATL, the State and its departments, agencies, authorities, commissions and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "Indemnitees") from and

against any and all claims, demands, damages, liabilities, losses, and all related costs, including without limitation fees or expenses, including attorneys' fees, costs of investigation, litigation, settlement, judgment, fines, fees, interest and penalties (collectively, "Losses") to the extent arising from claims or actions based upon or arising out of or related to:

- 23.2.1. Contractor or Contracting Parties' negligent acts or willful misconduct in performing or failing to perform Contractor's obligations under the Contract Documents;
- 23.2.2. any actual, alleged, or threatened violation of any applicable Laws by Contractor or Contractor Parties, to the extent such claim is based on the act or omission of Contractor or any Person acting for, in the name of, at the direction or supervision of or on behalf of Contractor or Contractor Parties;
- 23.2.3. death or injury to any individual to the extent caused, in whole or in part, by the tortious conduct of Contractor or Contractor Parties; and
- 23.2.4. damage to, or loss or destruction of, any real or tangible personal property to the extent caused, in whole or in part, by the negligent act or omission of Contractor or Contractor Parties. This indemnification extends to the successors and assigns of the Contractor. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by Law, the bankruptcy of the Contractor. If and to the extent such damage or loss as covered by this indemnification is paid by the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State's Department of Administrative Services Risk Management Division (hereinafter "DOAS") the Contractor agrees to reimburse the Funds for such monies paid out by the Funds.

23.3. Indemnification of ATL's Landlord.

- 23.3.1. Indemnification of ATL's Landlord at Mall of Georgia and Sugarloaf Mills. Prior to the start of services, Contractor shall provide a written indemnification to the owner of the Mall of Georgia and Sugarloaf Mills on behalf of ATL. The written indemnification provided by Contractor to the owner of the Mall of Georgia and Sugarloaf Mills shall provide all indemnification required by Section 6 (Indemnity and Exculpation of Landlord) of the lease between the owner of the Mall of Georgia and the ATL, which currently states:

"(a) Tenant shall assume liability for and shall indemnify, defend, and hold harmless Landlord and any other owners of the Shopping Center, and all their shareholders, partners, directors, related and affiliated entities, ground lessors, managers, management companies, employees, agents, guests, customers and invitees (with Landlord, collectively the "Landlord Parties") against and from any and all liabilities, obligations, losses, penalties, actions, suits, claims, damages, expenses, disbursements (collectively, "Claims", including legal fees and expenses), or costs of any kind and nature whatsoever in any way relating to or arising out of; (i) any act or omission of Tenant (including without limitation the acts or omissions of the Tenant's officers, directors, employees, agents, contractors, invitees, and/or licensees within the Shopping Center), (ii) any occurrence which takes place in or about the Space as the result of Tenant's negligence or willful misconduct, (iii) any damages to the Space excluding claims arising solely from the gross negligence or willful misconduct of Landlord Parties. To the extent permitted by applicable Law, Tenant's duty to indemnify Landlord under this paragraph will apply regardless of and will extend to cover losses caused by either Tenant's or Landlord's concurrent, comparative, or contributory negligence.

(b) The Landlord Parties shall not be liable to Tenant for, and Tenant waives all claims against such parties, for injury, death, or damage to person or property sustained by Tenant or any person claiming through Tenant resulting from any condition, accident or occurrence in or upon the Space, or any other part of the Shopping Center, unless such matters arise solely from the gross negligence or willful misconduct of Landlord Parties.

(c) Tenant agrees that the rent payable hereunder does not include the cost of guard services or other security measures, and that Landlord shall have no obligation to provide same. Tenant assumes full responsibility for the protection of the Space, Tenant, and Tenant's employees, invitees, licensees, guests and customers against the acts of third party, and will indemnify, defend, and hold harmless Landlord from any such claims made by the above specified persons of any damages, including attorney's fees, resulting therefrom.

(d) To the fullest extent permitted by applicable law, Tenant shall indemnify and save Landlord harmless from any and all claims, demands, or suits that may be brought against Landlord by any employee, representative, or agent of Tenant, or any legal representative or successor of any of them, in any way arising out of or incident to this Lease, unless such suits are brought about solely by the gross negligence or willful misconduct of Landlord Parties.

(e) The indemnification and waivers contained in this Section 6 shall survive expiration or early termination of this Lease."

23.3.2. Indemnification for Services on ATL Leased Property. In addition to the indemnification requirements of Section 23.3.1, the Contractor shall provide the same indemnities to the ATL that it provides to the owner of the mall of Georgia in Section 23.3.1.

23.3.3. Indemnification of Landlords of Other Leased Properties. In the event that the ATL leases additional property during the Term that will be utilized by the Contractor in performance of the Services, then within thirty (30) Days of Contractor's receipt of ATL's written request to provide indemnification to the landlord of such additional property, the Contractor shall provide written indemnification of the owners of such leased properties as may be required under such applicable lease.

23.4. Intellectual Property Indemnification. Contractor represents and warrants that it will have at all times while performing the Services and labor needed for the Services and ATL will have, upon completion of the Services, all necessary patent, copyright, and any other necessary Intellectual Property rights to all Services furnished by Contractor under the Contract and that all Services, as a whole and each of its components shall not infringe any third party patent, copyright, trademark, trade secret or other Intellectual Property right. In case any component of the Services are held to constitute an infringement of the patent rights or copyrights or other Intellectual Property rights of a third party and its use is enjoined, the Contractor at the Contractor's sole cost and expense, shall promptly (a) secure for ATL, its representatives, agents, and designees the right to continue using the infringing item by suspension of the injunction or by procuring a perpetual, non-revocable, paid-up, royalty-free, assignable, non-exclusive license(s) to reproduce, publish, or otherwise use for ATL's direct purposes; or (b) replace the infringing item with a non-infringing substitute that meets the requirements of the Contract Documents; or (c) modify the infringing item so that it becomes non-infringing provided the resulting Services meet the requirements of the Contract Documents. If the amount of time necessary to proceed with one of these options is deemed excessive by ATL, ATL may direct the Contractor to select another option or risk default. Nothing in this provision shall be deemed to limit or condition ATL's rights otherwise set forth in the Contract, including termination. Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the Indemnitees and indemnify the Indemnitees from any loss resulting from the use by the Indemnitees of Intellectual Property supplied under this Contract and against any award of damages and costs made against the Indemnitees by a final judgment of a court of last resort in such suit to the extent the same is based on a claim that any performance under this Contract constitutes an infringement of any United States Letters Patent or copyright by Indemnitees, provided ATL gives Contractor notice in writing of the institution of such suit, permits Contractor to participate fully in the defense of the same, and gives Contractor all available information, assistance, and authority to enable Contractor to do so. Subject to the approval of the Attorney General of the State, the Indemnitees shall tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against the Indemnitees reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the Indemnitees unless approved by the Indemnitees. This Intellectual Property infringement provision shall not apply to any infringement or alleged

infringement which is the result of or arises out of ATL, its employees or agents 1) modifying or altering any part or component, alone or in combination with any other part or component, except as consented to by Contractor, 2) using the components in direct contravention of the Contract Documents, or 3) using a combination of the components with any materials not provided or approved by Contractor. The Contractor's obligations under this Section 23.5 are in addition to Contractor's Insurance obligations.

- 23.5. Defense and Indemnification Procedures. If any of the Indemnitees receives notice of a claim that it believes is within the scope of the indemnities under **Section** Error! Reference source not found. **(Indemnification)**, ATL will by writing as soon as practicable after receipt of the claim, (a) inform Contractor of the claim, (b) send to Contractor a copy of all written materials ATL has received asserting such claim. As soon as practicable after Contractor receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable insurance policies and comply with all notice requirements contained in such insurance policies. ATL and other Indemnitees also shall have the right to tender such claims to such insurers. ATL and Contractor shall reasonably cooperate in connection with the defense of any claim. Contractor shall designate a single point of contact to coordinate with ATL regarding any third-party claims and provide their name and contact information to the ATL Transit Operations Director within thirty (30) Days of the Effective Date of the Contract. If this point of contact changes, Contractor shall provide written notice to ATL's Transit Operations Director of the Contractor's new point of contact for third-party claims within five (5) Business Days of such change.
- 23.6. Obligations not Mutually Exclusive. The Contractor's obligations under this Section are in addition to Contractor's obligations under **Section 24 (Insurance)** of the Contract.

24. Insurance.

- 24.1. Insurance Certificates. The Contractor shall procure the insurance coverages identified below at the Contractor's expense and shall furnish ATL an insurance certificate listing ATL as the certificate holder and blanket endorsement(s) that includes ATL as an additional insured by said contract where applicable, with respect to the Services, or any actions or inactions of Contractor or Contractor Parties arising out of the Contract Documents. Evidence of insurance coverages shall be provided on the form acceptable to ATL and the Georgia Office of the Insurance Commissioner. The insurance certificate must provide the following:

- name and address of authorized agent;
- name and address of insured;
- name of insurance company(ies);
- description of policies;
- policy number(s);
- policy period(s);
- limits of liability;
- name and address of ATL as certificate holder;
- project Name and Number;
- signature of authorized agent;
- telephone number of authorized agent; and
- notice of cancellation in accordance with policy provisions.

- 24.2. Insurer Qualifications, Insurance Requirements. Each of the insurance coverages required below (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of insurance in the State for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self-insureds or group self insureds, a specific excess insurer providing statutory limits) with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions:

24.2.1 the insurance company shall endeavor to provide thirty (30) Days advanced written notice prior to cancellation and ten (10) days for prior to cancellation for nonpayment of any policy required herein. Contractor shall provide written notice of any changes that may adversely impact

the required coverage under any policy required herein to ATL within three (3) Business Days of Contractor's receipt of notice of any changes or proposed changes from the insurance company;

24.2.2 the policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents, or other representatives ("Separation of Insureds");

24.2.3 each Insurer is hereby notified that the statutory requirement that the Attorney General of Georgia shall represent and defend the Indemnitees remains in full force and effect and is not waived by issuance of any policy of insurance. In the event of litigation, any settlement on behalf of the indemnities must be expressly approved by the Attorney General. The Contractor and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnitees, in which case there will be mutual cooperation between the Attorney General and such counsel. See O.C.G.A. § 45-15-12;

24.2.4 all deductibles shall be paid for by the Contractor; and

24.2.5 self-insured retention, except for qualified self-insurers or group self-insurers, in any policy shall not exceed \$200,000.00.

24.3. Minimum Required Insurance Coverages. The Contractor also agrees to purchase insurance and have the authorized agent state on the insurance certificate that the Contractor has purchased the following types of insurance coverages, consistent with the policies and requirements of O.C.G.A. § 50-21-37. The minimum required coverages and liability limits are as follows:

24.3.1. *Workers' Compensation Insurance.* The Contractor agrees to provide at a minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the Contractor qualifies to pay its own workers' compensation claims. Self-insurance programs are subject to prior approval by ATL upon review of Contractor's financial capacity to provide such self-insurance.

<u>Coverage</u>	<u>Limit</u>
1. Workers Compensation	Georgia Statutory
2. Employer's Liability-Each Accident	\$500,000
3. Employer's Liability-Disease (Each Employee)	\$500,000
4. Employer's Liability-Disease (Policy Limit)	\$500,000

24.3.1.1 The Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit a certificate on the letterhead of the Contractor in the following language,

"This is to certify that all subcontractors performing Services on this Project are covered by their own workers' compensation insurance or are covered by the Contractor's workers' compensation insurance."

24.3.2. *Employment Practices Liability Insurance.* The Contractor shall also maintain Employer's Liability Insurance Coverage with limits of at least \$1,000,000 for each occurrence (wrongful acts, including bodily injury).

24.3.2.1 The Contractor shall require all subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall submit a certificate on the letterhead of the Contractor in the following language,

"This is to certify that all subcontractors performing Services on this Project are covered by their

own Employers Liability Insurance Coverage or are covered by the Contractor's Employers Liability Insurance Coverage."

- 24.3.3. *Commercial General Liability Insurance.* The Contractor shall provide Commercial General Liability Insurance ("CGL") (2001 ISO Occurrence Form or equivalent) that shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The CGL policy must include at a minimum the following limits:

Limits of Liability

1. General Aggregate	\$ 5,000,000.00
2. Each Occurrence	\$ 1,000,000.00

- 24.3.4. *Commercial Business Automobile Liability Insurance.* The Contractor shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$5,000,000 Combined Single Limits for each occurrence.

- 24.3.5. *Commercial Umbrella Liability Insurance.* The Contractor shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and Employers' Liability to satisfy the minimum limits set forth herein. The umbrella coverage shall follow form or as broad as the underlying policy with the Umbrella limits required as follows:

Limits of Liability

1. Aggregate	\$25,000,000
2. Each Occurrence	\$25,000,000

- 24.3.6. *All Risk Fire and Extended Coverage.* Provide All Risk Fire and Extended Coverage for the full replacement cost on all owned, used and leased equipment, tools, supplies and contents used in the performance of Services pursuant to the Contract.
- 24.3.7. *Commercial Crime.* Provide coverage for the misuse of funds in the amount of \$500,000 insuring against dishonesty, theft, fraud or misappropriation of funds of other misuse of money. The ATL shall be named as an Loss Payee as its interests may appear. A letter of credit in the amount of \$500,000 may be provided in lieu of a Fidelity Bond or in addition to a Fidelity Bond to meet the deductible.

- 24.4. Additional Requirements. The insurance provided in Sections 24.3.3, 4, and 5 shall also meet the following additional requirements:

- 24.4.1. *Additional Insured.* The policy shall include as additional insureds the officers, members, and employees of ATL; and

- 24.4.2. *Occurrence Basis.* The policy must be on an "occurrence" basis.

- 24.5. Disposition of Insurance Documents. Certificate of insurance with all endorsements attached must be deposited with ATL for each insurance policy required.

- 24.6. Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the expiration or other termination of the Contract.

- 24.7. Failure of Insurers. The Contractor is responsible for any delay resulting from the failure of his insurance carriers to furnish proof of proper coverage in the prescribed form.
- 24.8. Ongoing Coverage. Contractor is responsible for tracking insurance coverages for itself and its subcontractors, for ensuring that coverages remain in force throughout the duration of the Contract, and for demonstrating to ATL ongoing compliance with this Section 24.
- 24.9. Notice of Cancellation. For each insurance policy required by this Section 24, Contractor must provide to ATL, within two (2) Business Days of receipt, a notice if a policy is suspended, voided or cancelled for any reason.
- 24.10. General. The Contractor's obligations under this Section 24 are in addition to Contractor's obligations under **Section 23 (Indemnification)** of this Contract.
25. **Dispute Resolution**. In the event of any dispute whatsoever arising out of or relating to the Contract Documents, or Services, the disputing Party must furnish a written notice to the other Party, setting forth in detail the dispute. Such notice must be addressed to the ATL's Chief Transit Officer or Contractor's General Manager, as applicable. Within five (5) Days after the receipt of the notice by the receiving Party, the ATL Chief Transit Officer and Contractor's General Manager shall meet in ATL's offices to attempt to resolve the dispute. If the ATL Chief Transit Officer and Contractor's General Manager cannot resolve the dispute then, within fourteen (14) Days after the date of written notice by either the ATL Chief Transit Officer or Contractor's General Manager to the Executive Director of ATL and the Chief Executive Officer of the Contractor, the Executive Director of ATL and the Chief Executive Officer shall meet in ATL's offices to attempt to resolve the dispute. The decision of the Executive Director of ATL for the determination of such dispute shall be final and conclusive. During course of any dispute resolution, the Parties shall continue to diligently perform their obligations under the Contract Documents.
26. **Default/Remedies**.
- 26.1. Event of Default. Subject to relief from its performance obligations pursuant to **Section 31 (Force Majeure)** of this Contract, Contractor shall be in breach under this Contract upon the occurrence of any one or more of the following events or conditions:
- 26.1.1. Contractor has withheld, disrupted or delayed Services or any deliverable due to non-payment by ATL;
 - 26.1.2. the Contractor incurs is assessed Liquidated Damages in the same category for more than six (6) consecutive months or incurs Liquidated Damages in any category more than eight (8) times in any rolling twelve (12) month period;
 - 26.1.3. the Contractor has assigned its rights and obligations under this Contract in violation of this Contract;
 - 26.1.4. the Contractor has failed to provide "adequate assurances" within five (5) Days of ATL's notice, when, in the opinion of ATL, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform any of its obligations under this Contract;
 - 26.1.5. the Contractor has failed to maintain performance security and insurance policies and coverages or fails to provide proof of performance security and insurance or copies of performance security and insurance policies, or fails to comply with any requirement of this Contract pertaining to the amount, terms or coverage of the same as required by **Section 24 (Insurance)** and **Section 28 (Performance Security)** of this Contract;
 - 26.1.6. the Contractor becomes insolvent or the Contractor has taken advantage of any insolvency statute or debtor/creditor Law or the Contractor's property or affairs have voluntarily been put in the hands of a receiver; or any case, proceeding or other action against the Contractor was commenced in bankruptcy, or seeking reorganization, liquidation or any relief under any bankruptcy,

insolvency, reorganization, liquidation, dissolution or other similar act or Law of any jurisdiction;

- 26.1.7. the suspension or revocation of any license, permit, or registration necessary for the performance of the Contractor's obligations under this Contract;
- 26.1.8. the Contractor has suspended or failed to proceed with any properly authorized part of the Services;
- 26.1.9. the default in the performance or observance of any of the Contractor's other obligations under the Contract Documents;
- 26.1.10. any representation or covenant in the Contract Documents made by Contractor, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Contractor to ATL pursuant to the Contract Documents is materially false, materially misleading or materially inaccurate when made or omits material information when made; or
- 26.1.11. after exhaustion of all rights of appeal, there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State department or agency of (a) Contractor, (b) any member of Contractor with a material financial obligation owing to Contractor for equity or shareholder loan contributions, or (c) any affiliate of Contractor for whom transfer of ownership would constitute a Change of Control.

26.2. Cure Periods. For the purpose of ATL's exercise of remedies set forth in **Section 26.3 (ATL Damages/Remedies)** and subject to remedies that this Section 26.2 expressly states may be exercised before lapse of a cure period, Contractor shall have the following cure periods with respect to the following Events of Default:

26.2.1 Respecting an Event of Default under Sections 26.1.1, 26.1.2, 26.1.5, 26.1.6, or 26.1.7, a period of five (5) Days after ATL delivers to Contractor written notice of such Event of Default.

26.2.2 Respecting an Event of Default under Sections 26.1.3, 26.1.4, 26.1.8, 26.1.9, 26.1.10, or 26.1.11 a period of fifteen (15) Days after ATL delivers to Contractor written notice of the Event of Default.

26.2.2.1 As to Section 26.1.11, a cure will be regarded as complete when the adverse effects of the breach are cured or if the debarred or suspended Person is a managing member, general partner or controlling investor of Contractor, cure will be regarded as complete when Contractor proves it has removed such Person from any position or ability to manage, direct or control the decisions of Contractor or to perform Services, and if the debarred or suspended Person is a Key Personnel cure will be regarded as complete when Contractor replaces the Key Personnel with ATL's prior written approval in its good faith discretion as provided in **Section 10.4 (Key Personnel)**.

26.3. ATL Damages/Remedies. With the exception of those instances where Liquidated Damages have been assessed, upon the occurrence of an Event of Default, ATL may, in addition to and without prejudice to all other contractual remedies and/or remedies allowed at Law or in equity, proceed to take any or all of the following actions:

26.3.1 Withhold any money then due and/or thereafter due to Contractor;

26.3.2 Perform or cause to be performed for the account of Contractor any contractual covenant in the performance of which the Contractor is in default or make any payment for which the Contractor is in default. The Contractor shall pay to ATL upon demand any amount reasonably paid or incurred by ATL in the performance of such covenant. Any amounts which have been paid or incurred by reason of failure of the Contractor to comply with any covenant or provision of this Contract shall bear interest at the Default Rate, which shall be defined as the Prime Rate plus five percent (5%), but in no case higher than the highest rate permitted by Law, from thirty (30) Days

from notice to Contractor by ATL of demand for payment of such incurred costs until paid by the Contractor;

- 26.3.3 Collect lost revenue and other direct damages that were the result of the Event of Default. In the event that ATL is unable to determine lost revenue because data is lost or otherwise unavailable, then the Parties agree that lost revenue shall be based on historical figures maintained by ATL
- 26.3.4 Obtain the Services, or a portion thereof, from a third party under substantially similar terms of this Contract, if possible, and recover from Contractor all additional costs and expenses paid or incurred by ATL as a result of the Event of Default, plus all additional costs paid or incurred by ATL to obtain the replacement Services as set forth in **Section 26.3 (ATL Damages/Remedies)** of this Contract;
- 26.3.5 Terminate the Contract, in whole or in part; and
- 26.3.6 Reduce the scope of Services.

26.4. **ATL Default.** Subject to ATL's exercise of its withholding rights and other remedies and rights under the Contract, if ATL fails to pay Contractor undisputed invoices when due under the Contract and fails to make such payments within sixty (60) Days of receipt of written notice from Contractor of the failure to make such payments, Contractor may, by giving written notice to ATL, terminate this Contract as of a date specified in the notice of termination. Contractor shall not have the right to terminate the Contract for ATL's breach of the Contract except as specifically provided in this Section 26.4. In the event of termination of this Contract by Contractor for a ATL default as provided in this Section 26.4, ATL shall be liable only for payments required by the terms of this Contract for Services which has received Acceptance from ATL prior to the effective date of termination, and any restocking fees actually and reasonably incurred by Contractor for Services purchased or Services ordered but not used on the Project, and other reasonable and actual demobilization costs pursuant to the Contract Documents and for which Contractor has received prior written approval from ATL for such purchases, subject to ATL's exercise of its other rights and remedies under the Contract. ATL shall not be responsible for any other costs, fees and expenses of any nature whatsoever, including but not limited to administrative fees, legal fees, salary, or any other cost or expense, whether direct or indirect, whether foreseen or unforeseen.

27. **Termination.**

27.1. **Termination for Cause.** Upon an Event of Default, and after the expiration of any relevant cure period set forth in Section 26.2 of the Contract (except in the case of an emergency in which case ATL is not required to wait until the expiration of a cure period), during which Contractor did not remedy the Event of Default, ATL may, in its sole discretion, terminate this Contract in whole or in part. Termination shall take effect on the date set forth in ATL's notice to Contractor. Upon such termination ATL shall not be required to pay Contractor any amounts for Services performed prior to the date of termination for which payment may be due and owing but not yet paid ("Remaining Payment"). In the event ATL's expenses incurred or anticipated to be incurred as a result of Contractor's breach are less than the Remaining Payment, ATL shall remit such differential to the Contractor. In the event ATL's expenses incurred or anticipated to be incurred as a result of Contractor's breach exceed the Remaining Payment, then Contractor shall within thirty (30) Days of written notice from ATL, make payment of the differential to ATL. In addition to the rights and remedies in this Section 27.1, ATL shall have all other rights and remedies against Contractor which are available at Law or in equity.

- 27.2. Termination for Convenience. ATL may terminate this Contract, in whole or in part, for convenience upon 60 Days written notice, which shall commence upon the date included in the notice. In the event of a termination for convenience, ATL shall only pay the Contractor for Services performed through the termination date, any restocking fees actually and reasonably incurred by Contractor for any Services, and reasonable and actual demobilization costs, for which Contractor has received prior written approval from ATL for such purchases. ATL shall not be responsible for any other costs, fees and expenses of any nature whatsoever, including but not limited to administrative fees, legal fees, salary, or any other cost or expense, whether direct or indirect, whether foreseen or unforeseen. The Contractor acknowledges that the remedy set forth in this Section 27.2 is the Contractor's sole and exclusive remedy against ATL for termination for convenience and Contractor hereby waives all other rights and remedies it may have against ATL for termination for convenience.
- 27.3. Termination for Lack of Funding. Contractor acknowledges that institutions of the State of Georgia are prohibited from pledging the credit of the State so as to prevent incurring a financial obligation unless funds to honor the obligation have been lawfully appropriated. Consequently, as may be the case, if the sources of payment for the Contract no longer exist or are determined to be insufficient, the ATL will notify Contractor promptly (and in any event within thirty (30) days) after the ATL becomes aware of such and may immediately terminate this Contract upon notice to Contractor without any further obligation, other than payment for Services performed through the termination date. The determination of the ATL as to the occurrence of the events stated in this paragraph will be conclusive.
- 27.4. Pre-existing Liability. No termination of this Contract shall excuse either Party from any liability arising out of any default as provided in this Contract that occurred prior to termination.
- 27.5. Compliance with Contract. Both Parties shall comply with all of the terms and conditions of the Contract Documents, including but not limited to, the provisions of Section 7 of the RFP and Section 30 (Cooperation, Transition/Turnover, End of Contract Responsibilities) of this Contract, in the event ATL exercises any of its rights under Section 27.
- 27.6. Termination Procedures and Duties. Upon expiration of the Term or any earlier termination of this Contract for any reason, the Contractor shall comply with the requirements of Section 7 of the RFP regarding turnover. Contractor shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due to Contractor or ATL on account of such termination.
- 27.6.1. *Preservation of Materials.* Contractor shall take all action that may be necessary, or that ATL may direct, for the protection and preservation of the Services and such materials, goods, machinery, equipment, parts, supplies and other property.
- 27.6.2. *Documentation upon Termination.* On or about the termination date, Contractor shall execute and deliver to ATL the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to ATL, acting reasonably, assigning and transferring to ATL all of Contractor's right, title and interest in and to the following:
- 28.5.4.1 all books, records, reports, test reports, studies and other documents of a similar nature relating to the Services;
- 27.6.3. *Contractor Assistance.* Contractor shall otherwise assist ATL in such manner as ATL may require prior to and for a reasonable period following the termination date to ensure the orderly transition of the Services and its management to ATL or its designee, and shall, if appropriate and if requested by ATL, take all steps as may be necessary to enforce the provisions of Contractor's agreements with the Contractor Parties pertaining to the surrender of the Services.
- 27.7. Reduction in Fixed Route Service. A reduction or change in fixed route service by ATL shall not be construed as a partial termination of the Contract.

28. **Performance Security.** The Contractor shall supply security at the time the Contract is executed. The Contractor shall supply security in the form of an annual renewable performance surety bond from an insurance company licensed in Georgia with a Best Policyholders Rating of "A-" or better with a financial size of Class V or larger, cash, cash equivalent or an unconditional irrevocable standby letter of credit, on deposit in or issued by, respectively, a Federal or State chartered bank with offices physically located in State of Georgia in the amount of 25% of the one-year cost of the forthcoming year of the Contract whereby funds are (1) pledged to the benefit of ATL; (2) are not under the control of Contractor; and (3) are payable to ATL upon written demand to the holder.

This security is for the faithful performance of this Contract between the ATL and Contractor and will further protect, indemnify and save harmless ATL from all costs and damages by reason of Contractor's default, breach or failure to satisfactorily perform the obligations outlined in the Contract Documents. Further, any revenue or other yield generated by the security shall be owned by the Contractor and may be withdrawn periodically so long as the applicable minimum-security amount is maintained.

In the event of any condition of breach or other circumstance attributable to Contractor, ATL shall have the right to draw against the security such sums as are necessary to make the ATL whole, or for such other sums as may become due to ATL pursuant to the Contract, including but not limited to, the costs incurred to secure and compensate for substituted services of another entity made necessary by the breach. Nothing herein shall be construed to mean that the security provided for herein is exclusive or constitutes any limitation or restriction on any remedies to which ATL may avail itself.

29. **Records Retention and Audit Rights.** In addition to audit obligations as set forth in the RFP, Contractor shall and shall cause each Contractor Party to maintain accurate books, records, documents and other evidence concerning Contractor's performance of Services under this Contract (hereinafter referred to as the "Records"). Contractor agrees to make available, at all reasonable times during which this Contract is in effect the Records for inspection or audit by any authorized representative of ATL or the Georgia State Auditor. Within no more than five (5) Days after the termination of this Contract for any reason, copies of all Records shall be given by the Contractor to ATL. Records that relate to appeals, litigation, or the settlements of claims arising out of the performance of this Contract, or costs and expenses of any such agreement as to which exception has been taken by the State Auditor or any of his or her duly authorized representatives, shall be retained by Contractor until such appeals, litigation, claims or exceptions have been disposed. Upon termination or expiration of this Contract, Contractor shall preserve and maintain the Records for a period of seven (7) years thereafter, during which time ATL and its representatives shall have access to such Records and shall have the right to make any copies thereof for the purpose of auditing or verifying invoices or for any other reasonable business purpose. Notwithstanding anything to the contrary stated in this provision, nothing in this Section 38 shall obligate the Contractor to provide Contractor's internal cost data for review or for audit. ATL shall also at all times during the Term of this Contract have the right to conduct the monitoring, reviewing, inspection, testing, reporting, auditing and other oversight functions set forth in the Contract Documents, including monitoring and auditing Contractor and its books and records to determine compliance with requirements of the Contract Documents and the approved Project Management Plan, including audit review of design documents, plans, and other submittals.

30. **Cooperation, Transition/Turnover, End of Contract Responsibilities.**

- 30.1. Cooperation. In the event that ATL enters into any agreement at any time with any other vendor(s) for additional work related to the Services, Contractor agrees to cooperate fully with such other vendors in order to facilitate the performance of work by such other vendor(s) and/or provision of the Services by the Contractor and to refrain from any activity which would interfere with performance of work by such other vendor(s) and/or provision of the Services by the Contractor.
- 30.2. Transition/Turnover. Upon expiration or earlier termination of this Contract, Contractor shall comply with the requirements of Section 7 of the RFP and accomplish a complete transition and turnover of the Services from Contractor to ATL, or to any replacement provider designated by ATL, without any interruption of, or adverse impact on the Services any component thereof or any other work provided by third parties. All Services related to such transition shall be performed at no additional cost.

- 30.3. **End of Contract.** The Contractor shall perform the end of Contract responsibilities as specified in the Contract Documents or as otherwise directed by ATL.
- 30.4. **Failure to Comply.** The Parties acknowledge and understand that Contractor's failure to comply with the terms and conditions as stated in this Section 30 may adversely affect ATL and result in monetary loss to ATL. ATL shall assess, audit, and certify to the Contractor monetary losses resulting from the Contractor's failure to comply with the provisions of Section 30. ATL's reasonable determination as to the amount of the monetary loss suffered shall be conclusive and, unless an action is brought by Contractor in a court of law pursuant to **Section 42.5 (Governing Law/Venue)** of this Contract within thirty (30) Days of ATL's determination of monetary loss and ATL's determination is deemed unreasonable by such court, Contractor shall compensate ATL for any undisputed loss within thirty (30) Days of such a determination by ATL or by the court of competent jurisdiction, as applicable. If Contractor challenges ATL's actions taken pursuant to this Section 30.4, and the court does not find that ATL's actions are unreasonable, then Contractor shall also pay to ATL interest at the rate of one percent (1%) per month on the amount due to ATL under this Section 30.4, from the date ATL forwarded notice to Contractor of the amount of monetary loss until the date payment is received by ATL.
31. **Force Majeure.** Neither Party shall be liable to the other Party for any delay or failure of performance due to: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, in each case occurring within the State; (b) any act of terrorism or sabotage that causes direct physical damage to the Project; (c) nuclear explosion or contamination, in each case occurring within the State; (d) riot and civil commotion on or in the immediate vicinity of the Project; (e) fire, explosion, flood, earthquake, hurricane, or tornado, in each case that causes direct physical damage to the Project; (f) pandemic or epidemic; or (g) national or statewide (i.e., State of Georgia) strike that has a direct adverse impact on the Contractor's ability to obtain materials, equipment or labor for the Project. Force majeure events under this Contract **do not include labor related incidents among Contractor's staff, such as strikes or work stoppages.**

In the event of a declared civil disorder or natural catastrophe, Contractor shall direct its employees to operate as ordered by federal, state and/or local civil authorities. Compensation for such services under this Contract shall be based on actual hours of service performed.

32. **Replacement Services.** In the event that Contractor is unable due to a strike, work stoppage, or other event not caused by ATL and not covered by **Section 31 (Force Majeure)**, to provide services in full compliance with the requirements of the Contract, then ATL may, in lieu of finding the Contractor in default, obtain the services of a replacement Operator or provide the services with its own resources (collectively referred to as "Replacement Services"). ATL may use such Replacement Services as a substitute for all or any part of Contractor's services, and may maintain such Replacement Services in effect until the Contractor is able to resume performance in full compliance with the Contract. Prior to implementing Replacement Services, ATL shall notify the Contractor in writing and provide the Contractor with three (3) Days to cure its noncompliance.

If ATL uses replacement services under this section, the Contractor shall be liable to ATL for the actual amount by which the cost of such services exceeds the amount that would have been payable under this agreement for comparable services, including any expenses (including internal administrative costs) incurred by ATL in soliciting and obtaining those services. In addition, the only compensation payable to the Contractor by ATL during any period in which replacement services are being provided shall be for any hours of service actually provided by the Contractor.

Any actions taken by ATL pursuant to this section to the Contractor's failure to perform shall not preclude ATL from subsequently finding the Contractor in default for the same or any related failure to perform.

33. **Conflicts of Interest.** The Contractor represents and warrants that it, its principals, its employees, and all others in close association with it, have no conflict of interest or of time, directly or indirectly, that would prevent timely performance of the Services or the performance of Services in a manner that is free of appearance or fact of impropriety. The Contractor promises not to allow such conflict to arise and promises to disclose such a conflict in the event that, nevertheless, one develops.

34. **Data Ownership/Access/Security.** All data including maintenance data, customer data, system database, other logs, and any other data that is collected by the Contractor or to which Contractor has access, is the property of ATL. If the data is organized and stored using COTS database or proprietary database software then the Contractor must provide to ATL a secure network path and web service connection to the database with appropriate permissions and credentials to extract data from the database. This includes, but is not limited to, newly inserted or updated data in the database, database backups, and archives (offline backups). In addition to Contractor's obligations in **Section 22 (Confidential Information)**, Contractor shall ensure that no unauthorized personnel will have access to individual facilities, cabinets, data and records, any personal information of existing or potential ATL customers.
35. **Ownership of Documents.** All documents, including reports, drawings, computer discs, specifications, survey notes, estimates, maps, computations, video and audio recordings, and other data generated or prepared by the Contractor or for Contractor under the terms of this Contract shall not be made available to any individual or organization outside the Contract without the prior written approval of ATL, unless such is required by law or a court process. Contractor shall promptly notify ATL of any request for such information. All documents, including reports, drawings, computer discs, specifications, survey notes, estimates, maps, computations, video and audio recordings, and other data prepared by the Contractor or for Contractor under the terms of this Contract shall be delivered to, become and remain the property of ATL upon termination or completion of the Services. ATL shall the right to use such documents without restriction or limitation and without compensation to the Contractor beyond what is provided for in this Contract. Contractor shall not have the right to use such documents for sale or other benefit without express written permission from ATL.
36. **Copyrighting.** The Contractor and ATL agree that any papers, interim reports, forms, and any other material which are part of the Services under this Contract are to be deemed "work for hire", as such term is defined in the Copyright Laws of the United States. As a "work made for hire," all copyright interests in said works will vest in ATL upon creation of the copyrightable work. If any papers, interim reports, forms or other material which are a part of the Services under this Contract are deemed by Law not to be a "work for hire," any copyright interests of the Contractor are hereby assigned completely and solely to ATL. Publication rights to any works produced under this Contract are reserved by ATL.
37. **Licenses, Permits and Filing Fees.** With the exception of vehicle registrations and license plates, Contractor is solely responsible for obtaining all other licenses or authorizations required by Law to perform the Services required under the Contract. The cost of all licenses and permits necessary to operate each vehicle and other equipment under all such applicable Laws and regulations shall be the responsibility of Contractor. These permits and licenses shall include, but shall not be limited to, all necessary Georgia motor vehicle driver licenses and certificates.
- Contractor shall pay all filing fees and legal fees involved in submitting route, schedule, and rate changes. Contractor shall pay all federal, state and local taxes imposed on Contractor by reason of the ownership or leasing of any vehicle, equipment, inventory or operation of the *Xpress* Regional Commuter System. responsible for obtaining all other licenses or authorizations required by Law to perform the Services required under this Contract.
38. **Meetings.** Upon request of ATL, Contractor shall, at its own expense, attend public meetings to provide information concerning the *Xpress* Regional Commuter System. The Contractor's General Manager and other Key Personnel shall attend meetings with ATL Transit staff at times and locations to be determined.
39. **ATL and Contractor Supplied Property and Equipment.**
- 39.1. **Equipment.** The title to capital items and equipment provided by the ATL shall remain titled with the ATL. Contractor shall be required to maintain such capital items equipment utilizing manufacturers' recommended maintenance standards, at a minimum, or those standards provided by the ATL, at the ATL's sole discretion. Furthermore, Contractor shall maintain adequate property control records of all ATL-furnished property in accordance with sound industry practice and as approved by ATL.

Contractor shall obtain in ATL's name and ATL shall own all of the hardware and equipment as required by the Contract Documents. The hardware and equipment shall in all ways during the Term, conform to the

requirements for each respective item of hardware and equipment as set forth in the Contract Documents regardless of the fact that ATL shall maintain ownership.

The ATL shall have the option, upon the expiration or termination of the Contract, to purchase all or any part of non-revenue equipment not already purchased by the ATL and used by Contractor in the performance of the Services specified in the Contract at a price equal to that portion of the original cost of the equipment which has not yet been amortized as of the date the Contract expires or is terminated. Amortization shall be deemed to be made in accordance with generally accepted accounting principles. In addition, ATL shall have the option, upon the expiration or termination of the Contract to purchase any equipment, hardware, supplies, and parts that are in Contractor's inventory at the North Facility or South Facility for performance of the Services but that have not yet been put into use and purchased by ATL. The price for such equipment, hardware, supplies, and parts shall be the same as the price under Contract Documents. To the extent there is no applicable price under the Contract Documents, for such equipment, hardware, supplies and parts, then the Parties will negotiate a purchase price in good faith.

- 39.2. Tracking and Inventory. Upon ATL's request, Contractor shall enter equipment and hardware into ATL's inventory and tracking system.
- 39.3. Bill of Sale. Any invoices furnished by Contractor to ATL for hardware, equipment and equipment inventory shall have an original and signed Bill of Sale in ATL's name on a form substantially similar to that on Exhibit D (Bill of Sale).
- 39.4. FOB Destination. Transportation of all software, hardware, equipment, supplies and any other item that must be transported so that Contractor may furnish the Services, shall be FOB Destination (North or South Facilities as applicable). Freight, handling, hazardous material charges, taxes, and distribution and installation charges shall be included in the total price of each item as set forth in Exhibit D (Pricing Schedules). Any additional charges will not be honored for payment unless authorized in writing by SRTA. If a party other than Contractor ships materials against this Contract, the shipper shall be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment. A complete packing list shall accompany each shipment.

40. **Exhibits.** The following Exhibits are attached hereto and incorporated into the Contract Documents:

Exhibit A - Definitions
Exhibit B - RFP
Exhibit C - Contractor's Proposal
Exhibit D - Contractor's Price Schedule
Exhibit E - Mandatory FTA Clauses
Exhibit F - Bill of Sale
Exhibit G - Intent to Perform as a Subcontractor
Appendix 1 - Performance Standards Chart

41. **Miscellaneous Provisions.**

- 41.1. Compliance with Laws. The Contractor shall perform its obligations hereunder, and shall ensure that all of its subcontractors perform their obligations, in accordance with all applicable federal, State, and local government Laws, rules, regulations, orders and approvals, including but not limited to procedures and requirements relating to labor standards, compliance with Americans with Disabilities Act, anti-solicitation Laws, O.C.G.A. § 50-5-82, O.C.G.A. § 13-10-91, and auditing and reporting provisions, now or hereafter in effect, and any rules required by any federal grant funding payment by ATL. Any changes to applicable Laws, rules, or regulations that are enacted after contract award may be the subject of an Amendment only if a change to applicable Laws, rules, or regulations results in an actual and direct increase in cost to Contractor to comply with such changes. In such an event, the increased cost shall reflect the unit prices set forth in the Contractor's Price Proposal included in the Contractor's Proposal, and if the labor or material is not included in the Contractor's Price Proposal, then the Amendment shall reflect an increase in price of Contractor's actual cost plus 9% markup.

- 41.2. Parties Bound. This Contract will bind the respective heirs, executors, administrators, legal representatives, successors, and assigns of each Party.
- 41.3. Trading with State Employees. The Contractor warrants that the provisions of O.C.G.A. §§ 45-10-20 et seq. have not and will not be violated during the Term or any Renewal Term of this Contract.
- 41.4. Federal Intellectual Property Bankruptcy Protection Act. ATL shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n) and any amendments thereto.
- 41.5. Governing Law and Venue.
- 41.5.1. *Governing Law*. This Contract is a Georgia agreement made under the Laws of the State of Georgia. It will be enforced according to Georgia Law without regard to its conflict of Laws rules or any other rules directing referral to foreign Law or forums.
- 41.5.2. *Uniform Commercial Code*. Except to the extent provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted by the State shall govern this Contract. To the extent the Contract entails both the supply of goods and services such shall be deemed goods within the meaning of the Uniform Commercial Code, except when deeming such services as goods would result in a clearly unreasonable interpretation.
- 41.5.3. *Venue*. Any action arising out of or related to this Contract in any way shall be brought exclusively in the Superior Court of Fulton County, Georgia, and each Party hereby consents to the jurisdiction and venue of such Court and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum. Each Party hereby agrees to execute an acknowledgment of service of process at the request of the other Party in any litigation related to this Contract. In the event that a Party does not provide an acknowledgment of service as agreed, each Party consents to service of process at that Party's address set forth in **Section 42.6 (Notices)** of this Contract.
- 41.6. Notices. All notices, notifications, requests, approvals, or other communications (excluding Invoices) required by or otherwise related to the Contract Documents shall be in writing and transmitted via hand delivery, overnight courier, or certified mail (return receipt requested), to the Parties at the respective addresses set forth below. Notices may also be sent by email provided that the recipient acknowledges receipt of the notice, notification, request, approval, or other communication, as applicable. Invoices shall be sent by U.S. Mail, postage prepaid, to the attention of Accounts Payable at ATL's address set forth below. Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing, all other notices received after 5:00 p.m. (local Atlanta time) shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m. (local Atlanta time)). Any technical communications pertaining to the Services shall be conducted between Contractor's Project Manager and ATL Transit Operations Director.

For ATL:

Executive Director
245 Peachtree Center Ave, Suite 2200
Atlanta, Georgia 30303
Phone: (404) 893-6111
Email: ctomlinson@srta.ga.gov

For the Contractor:

Transdev General Counsel

720 E Butterfield, Suite 300
Lombard, IL 60148
630-571-7070
Jennifer.coyne@transdev.com

With a copy to:

Chief Legal Officer
245 Peachtree Center Ave, Suite 2200
Atlanta, Georgia 30303
Phone: (404) 893-6111
Email: mmandus@srtga.gov

Gail Franklin
245 Peachtree Center Ave, Suite 2200
Atlanta, Georgia 30303
Phone: (404) 893-xxxx
Email: gfranklin@ATLtransit.ga.gov

- 41.7. Taxes. Contractor will pay, prior to delinquency, all taxes lawfully imposed upon it that may arise with respect to this Contract.
- 41.8. Publicity. Contractor shall not issue a press release or otherwise publicize the Services or this Contract without the prior written permission of ATL's Chief Communications Officer.
- 41.9. Drug-Free Workplace. Contractor hereby certifies that (a) a drug free workplace will be provided for the Contractor's employees during the performance of this Contract, and (b) it will secure from any subcontractor hired to work in a drug free workplace the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name), certifies to the Contractor that a drug free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection B of Code Section 50-24-3."
- 44.10.1 Contractor may be suspended, terminated, or debarred if it is determined that (a) the Contractor has made false certification hereinabove, or (b) the Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. § 50-24-3.
- 41.10. Remedies Cumulative. With the exception of Liquidated Damages, the rights and remedies of ATL under this Contract are cumulative of one another and with those otherwise provided by Law or in equity.
- 41.11. Integration of the Contract Documents. ATL and Contractor agree and expressly intend that, subject to **Section 41.13 (Severability)** of this Contract, this Contract, and the other Contract Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.
- 41.12. Waiver. No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the obligee Party. The exercise by a Party of any right or remedy provided under the Contract Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy as such right or remedy is specifically allowed under this Contract. No waiver by any Party of any right or remedy under the Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given. Except as provided otherwise in the Contract Documents, no act, delay or omission done or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the Contract Documents. Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding.
- 41.13. Severability. The invalidity or unenforceability of any clause, provision, section or part of the Contract Documents shall not affect the validity or enforceability of the balance of the Contract Documents, which

shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.

- 41.14. No Third-Party Beneficiaries. Nothing contained in the Contract Documents shall be construed as conferring upon or giving to any person, other than the Parties hereto, any rights or benefits under or by reason of the Contract Documents.
- 41.15. Headings. The captions in this Contract are solely for convenience, and will not affect the interpretation of any terms of this Contract.
- 41.16. Counterparts. The Parties may execute this Contract in counterparts, each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.
- 41.17. Construction of Contract. In the event this Contract must be interpreted by a court of competent jurisdiction as set forth in Section 44.6 (Governing Law and Venue), the Parties expressly agree that this is a negotiated Contract that will not be construed against one Party over the other because such Party drafted the Contract.
- 41.18. Survival. In addition to those provisions, which by their terms would naturally survive termination of the Contract, Sections 6 (Payment), 9 (Liquidated Damages), 15 (Subcontracting and Assignment), 20 (Warranties), 19 (Risk of Loss or Damage), 22 (Confidential Information), 23 (Indemnification), 24 (Insurance), 25 (Dispute Resolution), 26 (Default /Remedies), 27 (Termination), 28 (Performance Security), 29 (Records Retention and Audit Rights), 30 (Cooperation, Transition, End of Contract Responsibilities, and Replacement Services), 34 (Data Ownership/Access/Security), 39 (ATL and Contractor Supplied Equipment) and 41 (Miscellaneous Provisions) of this Contract shall survive the termination for whatever reason of this Contract.
- 41.19. Entire Contract; Amendment. This Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all other prior and contemporaneous contracts and understandings between the Parties, whether oral or written. ATL shall not be bound by any terms and conditions included in any packaging, invoice, catalog, brochure, technical data sheet, or other document prepared by the Contractor which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein. No amendment to this Contract shall be valid unless made in writing and signed by both Parties.
- 41.20. Registered Lobbyists. Contractor represents and warrants that the Contractor and its lobbyists, if any, are in compliance with the Lobbyist Registration Requirements in accordance with the Georgia Procurement Manual, which is incorporated herein by reference.
- 41.21. Sexual Harassment Prevention. The State of Georgia promotes respect and dignity and does not tolerate sexual harassment in the workplace. The State is committed to providing a workplace and environment free from sexual harassment for its employees and for all persons who interact with state government. All State of Georgia employees are expected and required to interact with all persons including other employees, contractors, and customers in a professional manner that contributes to a respectful work environment free from sexual harassment. Furthermore, the State of Georgia maintains an expectation that its contractors and their employees and subcontractors will interact with entities of the State of Georgia, their customers, and other contractors of the State in a professional manner that contributes to a respectful work environment free from sexual harassment.

Pursuant to the State of Georgia's Statewide Sexual Harassment Prevention Policy (the "Policy"), all contractors who are regularly on State premises or who regularly interact with State personnel must complete sexual harassment prevention training on an annual basis.

If the Consultant, including its employees and subcontractors, violates the Policy, including but not limited to engaging in sexual harassment and/or retaliation, the Contractor may be subject to appropriate corrective action. Such action may include, but is not limited to, notification to the employer, removal from State premises, restricted access to State premises and/or personnel, termination of contract, and/or other

corrective action(s) deemed necessary by the State.

41.21.1. If Contractor is an individual who is regularly on State premises or who will regularly interact with State personnel, Consultant certifies that:

- Contractor has received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy>;
- Contractor has completed sexual harassment prevention training in the last year and will continue to do so on an annual basis; or will complete the Georgia Department of Administrative Services' sexual harassment prevention training located at this direct link <https://www.youtube.com/embed/NjVt0DDnc2s?rel=0> prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and
- Upon request by the State, Contractor will provide documentation substantiating the completion of sexual harassment training.

41.21.2. If Contractor has employees and subcontractors that are regularly on State premises or who will regularly interact with State personnel, Contractor certifies that:

- Contractor will ensure that such employees and subcontractors have received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy>;
- Contractor has provided sexual harassment prevention training in the last year to such employees and subcontractors and will continue to do so on an annual basis; or Contractor will ensure that such employees and subcontractors complete the Georgia Department of Administrative Services' sexual harassment prevention training located at this direct link <https://www.youtube.com/embed/NjVt0DDnc2s?rel=0> prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and
- Upon request of the State, Contractor will provide documentation substantiating such employees and subcontractors' acknowledgment of the State of Georgia's Statewide Sexual Harassment Prevention Policy and annual completion of sexual harassment prevention training.

41.22. Disadvantaged Business Enterprise ("DBE") Program and Participation Periodic Review. The Parties agree that a periodic review of the Contractor's DBE Program and DBE Participation will occur at least once every quarter. However, ATL may, in its sole discretion, increase the frequency of such periodic reviews to once every month. A periodic review of the Contractor's DBE Program and DBE Participation must include, but is not limited to, submission by the Contractor to ATL of the following: Contractor's contracts with DBE subcontractors and vendors that were awarded or terminated after the prior periodic review; Contractor payments made to DBE subcontractors and vendors after the prior periodic review; any Contractor outreach activities to any DBE subcontractors and vendors that have occurred or are planned in the future, which have not been previously disclosed to ATL. ATL may, in its sole discretion, require that the Contractor attend an in-person meeting for the periodic review.

[Signatures to Follow]

IN WITNESS WHEREOF, the Parties have caused this Contract to be signed, sealed and delivered as of the Effective Date.

Atlanta-region Transit Link Authority

_____(SEAL)

Transdev Services, Inc.

By: DocuSigned by:
Christopher Tomlinson
Christopher S. Tomlinson
Executive Director

By: Laura J. Hendricks
Laura J. Hendricks
President

Attest: DocuSigned by:
Merryl Mandus
Merryl Mandus
Chief Legal Officer

By: Mathieu Le Bourhis
Mathieu Le Bourhis
CFO & Treasurer

Approved by the ATL Board, Resolution Number 2021.03.11.02

By: on March 11, 2021
Charlie Sutlive
ATL Board Chair

EXHIBIT A

Definitions

Amendment means a document that is properly signed by both Parties that changes the terms and conditions of the Contract Documents.

Americans with Disabilities Act of 1990 (ADA) means the statute enacted by the United States Congress as public Law Number 101-366.

ATL-designated Representatives means the Person or persons authorized by ATL to represent ATL in some or all dealings with the Contractor.

ATL Headquarters means 245 Peachtree Center Ave., Suites 2200, Atlanta, Georgia 30303.

ATL Transit Operations Director means the Person holding this title that is the ATL's primary point of contact with the Contractor.

Business Day means Monday through Friday excluding State-recognized holidays.

Confidential Information shall have the meaning assigned to it in Section 22 (Confidential Information) of the Contract.

Contract means this binding Transit System Operations and Maintenance Services Contract between ATL and Contractor.

Contract Documents shall have the meaning assigned to it in Section 3 (Inclusion and Priority of Documents) of the Contract.

Contractor shall have the meaning assigned to it in the Recitals.

Contractor Party(ies) means the agents, employees, independent contractors, assigns, subcontractors, suppliers, or any other entity or Person with whom Contractor entered into an arrangement or agreement to perform services or supply materials and/or equipment or any other item of Services required of Contractor under the Contract Documents; or any other Person acting for, in the name of, at the direction or supervision of or on behalf Contractor.

Contractor's General Manager means the individual designated by Contractor and approved in writing by ATL in the position to take full responsibility for the prosecution of the Services and will, along with a deputy Project Manager, as the main point of contact on behalf of Contractor as described in the approved Project Management Plan.

Contractor's Proposal shall have the meaning assigned to it in Section 3 (Inclusion and Priority of Documents) of the Contract.

Day(s) means calendar days unless otherwise specified in the Contract as a Business Day. Periods of time referred to in this Contract shall be deemed to begin on the first Day (or Business Day as the case may be) that began the period and ending at 5:00 pm on the last day of the period unless otherwise specified in this Contract.

Deadhead or Deadhead Hours means the hours that a Revenue Vehicle travels when out of Revenue Service and shall include leaving or returning to a maintenance facility or changing routes when there is no expectation of carrying revenue passengers. It shall not include charter service, Operator training or maintenance training.

Effective Date shall have the meaning assigned to it in the first paragraph of the Contract.

Event of Default shall have the meaning assigned to it in Section 26 (Default /Remedies) of the Contract.

FTA means the Federal Transit Administration.

Governmental Approval means any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, special provision, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Services.

Governmental Entity(ies) means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than ATL.

Immigration Act means the Georgia Immigration & Compliance Act, O.C.G.A. § 13-10-90, et seq. as set forth in Section 10.6 (Immigration Act) of the Contract.

Wherever the word “including” “includes” or “include” is used in this Contract, it shall be deemed to be followed by the words “without limitation.”

Indemnitees shall have the meaning assigned to it in Section 23.2 (Indemnification of ATL) of the Contract

Initial Term shall have the meaning assigned to it in Section 4 (Contract Term and Renewal) of the Contract.

Intellectual Property shall have the meaning assigned in Section 20.1.15 (Intellectual Property).

Key Personnel shall include the personnel designated as Key Personnel in Section 3.6.2 of the RFP.

Law or Laws means:

- (a) any statute, law, code, regulation, ordinance, rule or common law,
- (b) any binding judgment (other than regarding a Claim or Dispute),
- (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute),
- (d) any written directive, guideline, policy requirement or other governmental restriction, or
- (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by

any Governmental Entity, in each case which is applicable to or has an impact on the Services, whether taking effect before or after the Effective Date, including Environmental laws but excluding Governmental Approvals.

Liquidated Damages means the damages as may accrue and be due and payable by Contractor to ATL for failure to meet the Performance Standards as set forth under Section 9 (Liquidated Damages) of the Contract.

Losses shall have the meaning assigned to it in Section 23.2 (Indemnification of ATL) of the Contract.

Major Service Change(s) means a change to routes, schedules, or both routes and schedules made by ATL that increases or decreases the current total annual Vehicle Revenue Hours by 15% or more.

Minor Service Change(s) means a change to routes, schedules or both routes and schedules made by ATL that increases or decreases the current total annual Vehicle Revenue Hours by less than 15%.

Non-revenue Vehicle means vehicles other than Revenues Vehicles that are used by Contractor to perform the Services.

North Facility means the operations and maintenance facility currently located at 2880 Remington Park Court, Norcross, GA 30071 to be utilized for providing Services to both Gwinnett County Transit and ATL in the Northeast Atlanta-metro area as set forth in the Contract Documents.

Notice to Proceed means the written authorization from ATL to Contractor notifying Contractor that Services may begin.

O.C.G.A. means the Official Code of Georgia Annotated.

Open Records Act shall have the meaning ascribed to it in Section 22.1 (Open Records Act) of the Contract.

Operator means a person who drives vehicles professionally for the Contractor.

Performance Standard(s) means the performance criteria that the Contractor is required to meet as set forth in Section 8 (Performance Standards) of the Contract and Section 10 of the RFP.

Person means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust or other commercial enterprise.

Project means the scope of Services for accomplishing the Services as specified in the Contract Documents.

Renewal Term shall have the meaning assigned to it in Section 4 (Contract Term and Renewal) of the Contract.

Revenue Service means when a Revenue Vehicle is available to the general public and there is a reasonable expectation of carrying passengers.

Revenue Vehicle means vehicles used by the Contractor to provide Revenue Service.

RFP means the Transit System Operations and Maintenance RFP No. 21-083 and any addenda thereto.

Services shall have the meaning assigned to it in the Recitals of the Contract.

South Facility means the operations and maintenance facility located at 5250 Frontage Road, Forest Park, GA 30297 to be utilized for providing Services to ATL in the South Atlanta-metro area as set forth in the Contract Documents.

State means the State of Georgia.

Term shall have the meaning assigned to it in Section 4 (Contract Term and Renewal) of the Contract.

Trip means the complete route for a Revenue Vehicle from starting time to end time as indicated on the corresponding schedule.

Vehicle Revenue Hour means the scheduled hours of service as set forth in the current Xpress schedules or any revisions thereto, plus or minus adjustments for schedule deviations, trippers or other service level changes as specifically authorized by ATL under this Contract.

Xpress means ATL's commuter-focused fixed route express bus service.

Wherever a period of time is referred to in this Contract, it shall be deemed local Atlanta time.

OS013-21 PROVISION OF TRANSIT SYSTEM OPERATION AND MAINTENANCE
SERVICES ON A MULTI-YEAR CONTRACT

BETWEEN

GWINNETT COUNTY, GEORGIA

AND

TRANSDEV SERVICES, INC.

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PROVISION OF TRANSIT SYSTEM OPERATION AND MAINTENANCE SERVICES ON A
MULTI-YEAR CONTRACT

THIS TRANSIT SYSTEM OPERATION AND MAINTENANCE SERVICES CONTRACT is made and entered into as of _____, 2021 (“Effective Date”), by and between Gwinnett County, Georgia (“THE COUNTY”), and _Transdev Services, Inc. _____, a _____ Maryland corporation authorized to do business in the State of Georgia (the “Contractor”). THE COUNTY and Contractor may be referred to individually, as “Party” or collectively, as “Parties.”

WHEREAS, THE COUNTY desires to engage a qualified and experienced firm to provide transit operations and maintenance services, as more fully described in the Transit Operations and Maintenance Services RFP No. 21-083 and any addenda thereto and any documents referenced therein (the “RFP”) and this Contract;

WHEREAS, the Contractor has represented to THE COUNTY that it is experienced and qualified and willing to provide all of the labor, materials, equipment, and expertise needed to successfully provide those services described in the RFP (“Services”); and

WHEREAS, THE COUNTY has relied upon such representations and selected the Contractor to furnish the Services.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated into the Contract.
2. **Definitions.** Certain capitalized terms used in this Contract shall have the meanings assigned to them as set forth in Exhibit A to this Contract. Other terms used but not defined in Exhibit A have the same meanings assigned in the RFP to that term.
3. **Precedence of Documents.** The RFP is incorporated by reference as Exhibit B. The Contractor’s Proposal (and any documents referenced therein) which were submitted in response to the RFP, are incorporated by reference as Exhibit C (collectively the

“Contractor’s Proposal”). This Contract (including all Amendments, and Exhibits referenced in this Contract at Section 39 (Exhibits)) shall be collectively referred to as the “Contract Documents.”

In the event of a conflict among the Contract Documents, the Contract Documents herein shall govern the contractual relationship between the Contractor and THE COUNTY, and shall control one over another in the following order:

- 1) Amendments to the Contract;
- 2) The Contract including Exhibit A (Definitions) and excluding all other Exhibits;
- 3) The RFP; and
- 4) Contractor’s Proposal.

In the event of any conflict, ambiguity or inconsistency between or among any Contract Documents having the same order of precedence, the more stringent standard will prevail. However, where a lower priority document contains additional or supplemental details, those additional details shall take precedence except where they irreconcilably conflict with a higher priority document.

If Contractor’s Proposal includes statements, offers, terms, concepts or designs that can reasonably be interpreted as offers to (i) provide higher quality items than otherwise required by the other Contract Documents, (ii) perform services or meet standards in addition to or better than those otherwise required, or (iii) otherwise contains terms or designs which are more advantageous to THE COUNTY than the other requirements of the other Contractor Documents, as reasonably determined by THE COUNTY, then Contractor’s obligations under the Contract Documents include compliance with all such statements, offers, terms, concepts, and designs.

4. Contract Term and Renewal. This Contract begins on the Effective Date and continues until June 30, 2024 11:59 pm (local Atlanta time) (the “Initial Term”). THE COUNTY may elect to renew this Contract on the same terms and conditions for up to two (2) additional renewal periods with a term of up to one (1) year each (each renewal a “Renewal Term”). The Initial Term and any and all Renewal Terms may be referred to collectively as the “Term.” The renewal of the Contract shall be at the sole discretion of THE COUNTY and evidenced by an Amendment signed by both Parties.

At its sole discretion, during the fifth year of the Term of Agreement, the AUTHORITY may request that CONTRACTOR provide a price proposal to further extend the term for an additional period. If the AUTHORITY chooses to extend the Term of Agreement beyond five (5) years, it shall conduct a detailed cost analysis to justify the extension.

5. Scope of Services.

5.1. Services in General. The Contractor agrees to perform all of the Services set forth in the Contract Documents. All of the Services and each component thereof shall conform to each

and every standard, specification, provision, criteria and requirement as applicable and as set forth in the RFP and, in particular, with each and every standard, specification, provision, criteria and requirement of the Contract Documents. All of the Services and each component thereof shall conform to each and every standard, specification, provision, criteria and requirement as applicable and as set forth in the Contract Documents.

5.2. Prohibited Uses. Unless expressly authorized in writing by THE COUNTY, the Contractor shall not use any Revenue Vehicle, Non-revenue Vehicle or other COUNTY equipment other than in connection with the Services required to be performed under the Contract Documents. The Contractor shall not use any Revenue Vehicle, Non-revenue Vehicle or other COUNTY equipment for any private charters or any purpose other than as may be specifically permitted by THE COUNTY and in THE COUNTY's sole discretion.

5.3. Notice to Proceed. Contractor's performance of the Services will begin with the issuance of a written Notice to Proceed, which shall be in writing and signed by THE COUNTY's Project Manager.

6. Payment.

6.1. General. For satisfactory performance of the Services, THE COUNTY hereby agrees to compensate the Contractor in accordance with the prices set forth in Exhibit D (Contractor Price Schedule). Rates on Exhibit D include taxes, insurance, bonds, benefits, ancillary costs, overhead, profit and any other monetary component to which Contractor is entitled.

6.2. Methods of Compensation.

6.2.1 Vehicle Revenue Hours are the scheduled hours of service as set forth in the current GCT schedules or any revisions thereto, plus or minus adjustments for schedule deviations, trippers or other service level changes as specifically authorized by THE COUNTY under this Contract. Vehicle Revenue Hours shall specifically exclude Deadhead Hours. The Vehicle Revenue Hours operated shall be directly traceable by the CAD/AVL system and Avail and/or TransTrack reporting. Vehicle Revenue Hours shall be compensated monthly at the rate provided in Exhibit D, Contractor's Price Schedule.

Vehicle Revenue Hours shall include the following types of services:

- The scheduled hours of GCT commuter and fixed route local, service as set forth in THE COUNTY's schedule, or any revisions thereto, plus or minus adjustments for schedule deviations, trippers, or other service level changes, as specifically authorized by THE COUNTY.
- The actual hours of paratransit and microtransit service as set forth in THE COUNTY's scheduled operating hours, or any revisions thereto, plus or minus adjustments for schedule deviations, trippers, or other service level changes, as specifically authorized by THE COUNTY.

- Special events services which are defined as service other than scheduled GCT transit service. Contractor will be compensated during the time when a driver and vehicle are ready to provide service. In order to be compensated, Special event services must be preauthorized in writing by THE COUNTY and billed gate to gate
- Vehicle Revenue Hours shall specifically exclude Deadhead Hours, such as time for travel to and from storage facilities, changing routes, downtime for road calls, road tests, fueling, vehicle inspections, driver training, driver lunches and breaks, and traffic or accident delays.

6.2.2 Fixed Fees The total annual fixed fee to be paid to the Contractor for each year of the Term is set forth in Exhibit D, Contractor's Price Schedule. The total annual fixed fee includes Annual General Administration Fixed Fee and the Annual Non-Vehicle Maintenance Fixed Fees as set forth in Exhibit D, Contractor's Price Schedule. The total annual fixed fee for a particular year of the Term shall be paid in equal monthly installments

6.3. Fuel Reimbursement. The Contractor shall provide diesel fuel for the North Operations and Maintenance Facility. The total annual fixed fee payable to Contractor for the Services does not include the cost of fuel and the cost of fuel is not included in Exhibit D, Contractor's Price Schedule. THE COUNTY shall pay Contractor for fuel it purchases for the North Operations and Maintenance Facility on a reimbursement basis (i.e. as a pass through based on actual fuel costs). Contractor shall make a good faith effort to secure the best possible pricing for fuel and diesel exhaust fluid prior to entering into an agreement with a third party to provide fuel for use under this Contract at the North Facility, the Contractor shall provide THE COUNTY with copies of the fuel quotes that Contractor receives and Contractor shall select the best price unless there are factors that reasonably justify not selecting the best price. If Gwinnett County's fuel co-op becomes available at the North Facility, then the Contractor will be allowed to purchase fuel from Gwinnett County, potentially allowing for a lower fuel cost. The Contractor shall only invoice for fuel used when it is dispensed into a Revenue Vehicle.

6.4. North Facility Lease Payments. THE COUNTY's annual lease payments for the North Facility is based on THE COUNTY's proportional share of Revenue Vehicles being operated from the North Facility (e.g. ____ % for Year 1). THE COUNTY will determine and inform the Contractor of the COUNTY's proportion share of the Revenue Vehicles being operated from the North Facility for the next year of the Term no later than June 15. THE COUNTY's annual lease payments for North Facility are noted on Exhibit D, Contractor's Price Schedule.

6.5. Payment Not Acceptance. Payment or use of any Services of portion thereof by THE COUNTY shall not constitute an acceptance of any Services not performed in accordance with the Contract Documents.

6.6. Invoicing. The Contractor shall deliver to THE COUNTY an invoice on a monthly basis by the tenth (10th) day of each month following the month in which the Services were

performed. The Contractor shall submit invoices using THE COUNTY's invoice template. The Contractor shall provide all information requested in THE COUNTY's invoice template for Services performed during the previous calendar month, which includes but is not limited to the following information: the monthly portion of the annual fixed fee (general administrative and non-vehicle maintenance).

Information such as, the Vehicle Revenue Hours (separated by route), fuel usage at the North Facilities (separated by Revenue Vehicle), vehicle revenue miles (separated by route), Deadhead miles (separated by route) and total miles (separated by route), and Revenue Vehicle average miles per gallon, should all be entered and verified in TransTrack by the 10th. The invoice shall include sufficient detail to allow THE COUNTY to verify the itemized billing. Along with each invoice, the Contractor will provide any necessary backup documentation, certifications, and test results, as required in the Contract Documents. Contractor shall also provide with each invoice all other documents, records, correspondence and deliverables which Contractor is required to provide pursuant to the Contract or as otherwise requested by THE COUNTY.

All invoices shall reference Gwinnett County Contract No. 21-083. The applicable invoice address for THE COUNTY is as follows:

Gwinnett County Transit
75 Langley Drive
Lawrenceville GA 30046

Email: dotfinance@gwinnettcountry.com as well as the current Transit Director's email.

6.7 Net 30 Days. Provided all of the conditions in Section 5 (Scope of Services) of the RFP have been met to THE COUNTY's satisfaction and Contractor is not otherwise in breach of the Contract, THE COUNTY agrees to pay Contractor in accordance with THE COUNTY's normal processes and procedures for all undisputed amounts with thirty (30) Days of the later of a review, if any, undertaken by THE COUNTY pursuant to Section 14 (Review of Services) or THE COUNTY's receipt of a valid invoice. If THE COUNTY objects to any invoice submitted by Contractor, THE COUNTY shall so advise Contractor in writing giving reasons therefor within fourteen (14) business days of receipt of such invoice. If THE COUNTY disputes any invoice submitted by Contractor, only that portion so disputed may be withheld from payment.

6.8 Reduction of Payment for Non-Conforming Services. If any defined action, duty or services or other item of Services required by the Contract Documents is not performed by Contractor in accordance with the requirements of the Contract Documents, the value of such action, duty or services or other item of Services will be determined by THE COUNTY and deducted from any invoice claiming such items for payment. If the Services or part thereof has been completed and is not in conformance with the Contract Documents, the Contractor will be notified.

6.9 Overpayment. In the event an overpayment is made to Contractor under this Contract, Contractor shall immediately refund to THE COUNTY the full amount of any such erroneous payment or overpayment following Contractor's written notice of such erroneous payment or

overpayment, as issued by THE COUNTY. The provisions in this Section shall survive the expiration or termination of this Contract.

6.10 No Disruption of Services. Under no circumstances whatsoever, shall Services to be provided by the Contractor be withheld, disrupted or delayed due to non-payment by THE COUNTY pursuant to any provision of Section 6 (Payment) or for any other reason. Contractor's failure to comply with this Section 6.10 shall be considered an Event of Default as set forth in Section 26.1 (Event of Default).

6.11 End of Fiscal Year. No later than the 5th of January each year, Contractor must submit to THE COUNTY any outstanding invoices for Services successfully rendered during the period of January 1-December 31 of the prior year. Failure to adhere to this requirement may result in nonpayment for the Services. THE COUNTY reserves its right to dispute part or all of an invoice and to withhold payment for Services that were not completed or supplied in accordance with the Contract Documents.

6.12 Late Fees. THE COUNTY shall not be liable for late fees, collection fees, attorney's fees, interest or other fees incurred by Contractor as a result of non-payment or a delay in payment by THE COUNTY.

6.13. Right to Set Off. THE COUNTY may retain or set off any amount owed to it by Contractor.

6.14. Full Compensation. All Services performed by the Contractor in meeting the requirements of the Contract Documents shall be paid as set forth herein, which shall constitute full compensation for the, including but not limited to: (a) the cost of all insurance and bond premiums, home office, job site and other overhead, and profit relating to Contractor's performance of its obligations under this Contract; (b) the cost of performance of each and every portion of the Services (including all costs of all Services provided by subcontractors and suppliers); (c) the cost of obtaining all Governmental Approvals and all costs of compliance with and maintenance of such Governmental Approvals; (d) all risk of inflation, currency risk, interest and other costs of funds associated with the partial payment schedule for the Services as provided herein; and (e) payment of any taxes, duties, permits and other fees and/or royalties imposed with respect to the Services and any equipment, materials, supplies, documentation, labor or services included therein.

6.15. Overtime. Unless otherwise authorized in writing by THE COUNTY, no premium pay or overtime will be considered compensable and will not be paid by THE COUNTY.

6.16. Acceptance of Payment. By acceptance of THE COUNTY's payment of an invoice amount, the Contractor releases THE COUNTY from any and all claims for service provided or work performed through the date of the invoice.

6.17. Firm Fixed Price. The prices for the Services set forth in Exhibit D, Contractor's Price Schedule, shall be firm throughout the Term.

7. Service Changes.

The parties agree that THE COUNTY may modify or adjust the Services provided under this Contract at any time in accordance with the procedures in the Contract Documents, and in particular this Section 7. Service changes shall be set forth in a written notice from THE COUNTY. Service changes shall be set forth in a written notice from THE COUNTY. THE COUNTY anticipates conducting service changes throughout the term of the Contract. The Contractor does not have the authority to make service changes without the written authorization of THE COUNTY except in the case of non-recurring events and emergencies which may have an impact on public safety, and in such circumstances service changes may be made by Contractor, but strictly as set forth in Section 7.8.

- 7.1. Allowable Service Changes. Service changes are changes to routes and schedules. Allowable service changes may include, but are not limited to, extending, deleting from, or adding to the service area and a corresponding revision of Services; increasing routes; decreasing routes; and reallocating, decreasing or increasing Vehicle Revenue Hours or the frequency of service. Changes in Revenue Vehicle fleet mix do not constitute a service change.
- 7.2. Process for Service Changes. During the Contract Term, THE COUNTY and the Contractor will evaluate ridership changes, changes in hours of service demand, passenger trips per run, capacity constraints, and On-Time Performance to determine if a service change is appropriate. If the current level of services no longer meets THE COUNTY's service standards, THE COUNTY may request, in writing, that the Contractor prepare for a service change. The written request will outline whether there will be any change to the Fixed Monthly Rate or Revenue Hour Rate, revenue vehicle deployment requirements, and other resources necessary to accommodate the service change.
- 7.3. Contractor Response to a Service Change Request. Within ten (10) Days of receipt of a request for a Service Change, Contractor shall provide THE COUNTY, in writing, with (a) a timeline for implementation of the Service Change; (b) an estimate of the cost or savings of the proposed Service Change; (c) the anticipated impact of the Service Change on existing operations; (d) the necessity for any additional capital equipment to implement the Service Change; and (e) the feasibility of the Service Change. Contractor may also propose Service Changes for THE COUNTY's review and may suggest alternatives or modifications to the Service proposed by THE COUNTY.
- 7.4. Service Change Implementation. THE COUNTY will review the information provided by the Contractor pursuant to Section 7.2, and may (a) instruct Contractor to proceed with the development and implementation timeline for the Service Change as originally proposed by THE COUNTY; (b) instruct Contractor to implement the Service Change with modifications; or (c) notify Contractor that the proposed Service Change will not be implemented. Only those Service Changes directed and approved by THE COUNTY, in writing, shall be implemented by Contractor.

- 7.5. Rate Adjustments. In the event of a Major Service Change Contractor may request a renegotiation of the then-applicable Fixed Monthly Rate or Vehicle Revenue Hour Rate. Any rate adjustment requested under this Section 7.5 must be submitted to THE COUNTY in writing and include detailed quantitative documentation that the proposed Major Service Change has resulted, or will result, in additional costs to the Contractor in the operation or maintenance of the Revenue Vehicles under this Contract. THE COUNTY is not obligated to agree to such request, but will review and consider such request in good faith. If THE COUNTY does not agree to a rate adjustment after a Major Service Change then the current Fixed Monthly Rate and Vehicle Revenue Hour Rate will continue to apply. The then-applicable Fixed Monthly Rate or Vehicle Revenue Hour Rate shall not be adjusted for Minor Service Changes.
- 7.6. Temporary Service Modifications. Notwithstanding Sections 7.2 (Process for Service Changes), 7.3 (Contractor Response to a Service Change Request) and 7.4 (Service Change Implementation), THE COUNTY may direct the Contractor to make temporary modifications in the Services provided or the schedules in order to address short term operating problems or issues. The Contractor may not request a renegotiation of the then applicable Fixed Monthly Rate or Vehicle Revenue Hour Rate for temporary service modifications unless such temporary service modification reaches the level of a Major Service Change.
- 7.7. Other Route and Service Modifications. The Contractor is responsible for making service changes to schedules and routes caused by non-recurring events, such as traffic accidents and inclement weather. The Contractor, subject to THE COUNTY approval, is also responsible for making service changes to schedules and routes due to recurring events, such as street closures for special events. In case of emergencies, the Contractor shall immediately make modifications to schedules and routes to protect public safety and as may be directed by THE COUNTY. In the event of service changes pursuant to this Section 7.7, Contractor shall still be paid based on scheduled Revenue Hours.
- 7.8. State, Regional or County-wide Emergencies. Upon the declaration of an emergency, the Contractor may become responsible for a number of transportation-related activities, including the implementation of emergency travel routes and coordination with other agencies supplying common carrier services. In the event of a declared emergency, the Contractor shall deploy vehicles in a manner described by THE COUNTY as part of any transportation emergency operations plan. In the case of a declared medical emergency (such as a pandemic), the Contractor will implement the applicable approved SOPs to mitigate and protect their staff, COUNTY staff, and the customers. The Contractor will comply with State and Federal health guidelines as issued. THE COUNTY will adjust service levels as needed for the duration of the emergency. Any Services provided by Contractor during an emergency pursuant to this Section 7.8 shall be invoiced separately from scheduled Vehicle Revenue Hours. Contractor shall be paid at the current Vehicle Revenue Hour rate for Services provided pursuant to this Section 7.8. Total compensable

time for Services provided pursuant to this Section 7.8 for each Revenue Vehicle utilized will be calculated starting from the time a Revenue Vehicle arrives at the assigned pick up location to the time the Revenue Vehicle departs from the assigned drop-off location or is released to return to the North Facility or South Facility, whichever occurs first.

7.9. Other Service. If THE COUNTY determines that other services or routes should be added, THE COUNTY reserves the right in its sole discretion to implement such other services or routes through the Process for Service Changes set forth in Section 7 or to separately procure and Contract for the other services or other routes with an alternate provider.

8. Performance Standards. Contractor shall perform all Services required by this Contract in accordance with the Performance Standards for THE COUNTY transit service set forth in the Contract Documents and in particular, Appendix 1 (Performance Standards Chart) and Section 10 of the RFP. Failure by the Contractor to meet these Performance Standards will result in THE COUNTY assessing Liquidated Damages for each incident of non-compliance as specified in Section 10 (Liquidated Damages). The Contractor shall receive incentive payments for meeting certain Performance Standards as detailed in Appendix 1 (Performance Standards Chart). Incentives will be determined and paid monthly, except as specifically noted in Appendix 1

(Performance Standards Chart)

THE COUNTY reserves the right to monitor Contractor's performance of the Contract to ensure adherence to all Performance Standards. THE COUNTY or its representative(s) may, without prior notice, ride in Contractor-operated vehicles and monitor transit services to ensure compliance with the Contract. Contractor shall fully cooperate in the measurement of Contractor's adherence to the Performance Standards, which includes but is not limited to accurate self-reporting.

Performance Standards are metrics developed by THE COUNTY to measure the Contractor's performance. Contractor is required to meet or exceed the Performance Standards set forth in Appendix 1 (Performance Standards Chart).

9. Liquidated Damages.

9.1. Basis of Assessment. Liquidated Damages for failure to meet the Performance Standards per Appendix 1 (Performance Standards Chart) shall be calculated, assessed and reported by THE COUNTY to the Contractor on a monthly basis, in accordance with this subsection. Liquidated Damages shall be assessed on the basis of the information provided on the Contractor's invoices, reports and other documentation as required under the Contract and verified, as applicable, through various reporting mechanisms available to THE COUNTY including, but not limited to CAD/AVL, visual observations, third-party inspections, ride checks, data surveys, and passenger comments.

9.2. Difficulty of Ascertaining Certain Damages. The amount of Liquidated Damages as set forth in Appendix 1 (Performance Standards Chart) is fixed and agreed to by and between the Contractor and THE COUNTY because both Parties agree and acknowledge the

impracticability and extreme difficulty of fixing and ascertaining the true value of the damages which THE COUNTY will sustain by failure of the Contractor to failure to meet Performance Standards referenced in Appendix 1 (Performance Standards Chart), such as loss of revenue, service charges, interest charges, harm and inconvenience to the public, delays caused to other activities of THE COUNTY by failure to perform this Contract, increase of inspection and administrative costs, and other damages, some of which are indefinite and not susceptible of easy proof. Said amounts were actively negotiated between the Parties, and are in each instance agreed by both Parties to be a reasonable estimate of the amount of damages which THE COUNTY will sustain in each instance and said amount shall be deducted from any monies due or that may become due to the Contractor. Both Parties hereto acknowledge that any Liquidated Damages assessed by THE COUNTY and paid by Contractor to THE COUNTY shall constitute Contractor's sole liability and THE COUNTY's sole remedy with respect to the failure to meet the Performance Standards for which Liquidated Damages are assessed as enumerated in Appendix 1 (Performance Standards Chart).

Liquidated Damages that are assessed by THE COUNTY will be deducted from any money due the Contractor, not as a penalty, but as a reasonable estimate of THE COUNTY's damages; provided however, that THE COUNTY reserves the right, at their sole discretion, to allow extenuating circumstances to excuse the imposition of Liquidated Damages.

9.3. Notice of Liquidated Damages. THE COUNTY will provide Contractor with a listing of Liquidated Damages assessed each month, itemized by performance category and dollar amount.

THE COUNTY will establish appropriate forms for such notification and assessment.

9.4. Uniformity with THE ATL. Should the Contractor agree in its separate contract with the ATL to a Liquidated Damages assessment amount for any of the Performance Standards set forth in Table 10.2 of the RFP or Appendix 1 of the ATL Contract, that is greater than the amount set forth in the RFP, the Contractor agrees that THE COUNTY may at its option impose that same higher amount for each such category of Liquidated Damages assessable by THE COUNTY.

9.5. Cure Periods. Appendix 1 (Performance Standards Chart) sets forth whether or not a cure period will be afforded to the Contractor in the event the Contractor fails to meet the applicable Performance Standard. If a cure period is afforded to the Contractor, then Appendix 1 (Performance Standards Chart) will note the length of the cure period and how often the cure period may be afforded during the term of the Contract. If no cure period is afforded to the Contractor for a particular Performance Standard then Appendix 1 (Performance Standards Chart) will note "No cure period." If applicable, a cure period for failure to meet a Performance Standard will begin on the date the Contractor first failed to meet the applicable Performance Standard. During the cure period the Liquidated Damages for failure to meet the applicable Performance Standard will not be accrued or assessed. If the Contractor does not successfully cure the failure to meet the Performance Standard

during cure period then Liquidated Damages may accrue and be assessed by the ATL or County, as applicable, beginning from the Day immediately following the end of the applicable cure period.

- 9.6. Response by Contractor to Notice of Liquidated Damages. Contractor has the opportunity to respond to the notice of assessment of Liquidated Damages. If Contractor chooses to respond, then Contractor must provide a written response to THE COUNTY's Project Manager in writing within five (5) business days of receipt of the notice of assessment of Liquidated Damages. If Contractor does not timely respond to THE COUNTY's notice of assessment of Liquidated Damages, then Contractor waives the right to dispute that assessment of Liquidated Damages. As part of Contractor's response to a notice of assessment of Liquidated Damages, Contractor may provide evidence to THE COUNTY that it complied with the applicable Performance Standards or that Contractor made all reasonable efforts to comply with its contractual obligations and that extenuating circumstances excuse the imposition of Liquidated Damages. Extenuating circumstances beyond the Contractor's control that could justify an excuse of imposition of Liquidated Damages do not include delays which may be reasonably anticipated on a daily basis on any given roadway or in any given area . Within five (5) business days of receipt of Contractor's response to the notice of assessment of Liquidated Damages, THE COUNTY shall respond in writing to Contractor with either its final determination regarding the notice of assessment of Liquidated Damages or THE COUNTY may request that the Contractor provide additional information within a period of time set by THE COUNTY. THE COUNTY reserves the right, at its sole discretion, to allow extenuating circumstances to excuse the imposition of Liquidated Damages. If Contractor timely responded to the notice of assessment of Liquidated Damages and disagrees with THE COUNTY's determination regarding the assessment of Liquidated Damages, Contractor may escalate the dispute pursuant to Section 40.5 (Disputes).

Unless THE COUNTY determines that Contractor met the specified Performance Standard or that extenuating circumstances excuse the imposition of Liquidated Damages, all Liquidated Damages assessed under this Section 9 may be deducted by THE COUNTY from any money due the Contractor. Such deductions will typically be taken from Contractor's next monthly invoice. However, THE COUNTY does not waive its right to assess and deduct Liquidated Damages from later payments to the Contractor in the event THE COUNTY does not deduct Liquidated Damages from Contractor's next monthly invoice.

- 9.7. Unenforceability of Liquidated Damages. If any Liquidated Damages are found for any reason to be void, invalid or otherwise inoperative so as to disentitle THE COUNTY from claiming all or part of the Liquidated Damages, then THE COUNTY is entitled to claim against the Contractor damages at law or in equity for the Contractor's failure to complete or otherwise perform the Services as set forth in the Contract.
- 9.8. Reservation of Rights and No Waiver. THE COUNTY's decision to assess or not assess Liquidated Damages on any particular occasion does not constitute a waiver of any of THE

COUNTY's rights and remedies under this Contract, including but not limited to, the right of THE COUNTY to terminate this Contract for default pursuant to Section 27.1 (Termination for Cause).

10. Contractor Personnel.

- 10.1. General. The Contractor shall provide sufficient professional personnel and staffing to provide the Services and so as not to delay any aspect of the Services. Contractor warrants and represents that all Persons assigned to perform under this Contract shall be employees or authorized subcontractors of Contractor, shall be licensed in the State (if required by Law) and shall be fully qualified to perform the Services. Contractor shall include a similar provision in any agreement with any subcontractor and/or supplier selected to perform and/or to provide any Services. Personnel commitments, if any, made in Contractor's Proposal shall not be changed unless approved by THE COUNTY. Contractor's failure to continuously provide adequate staffing to prosecute the Services competently and according to the Contract Documents may result in the termination of this Contract for Contractor default. All of Contractor's and Contractor Parties' personnel shall comply with THE COUNTY's confidentiality and security requirements while on THE COUNTY's premises or otherwise performing the Services, including but not limited to obtaining criminal background checks and the execution of confidentiality agreements.
- 10.2. THE COUNTY's Right to Remove. THE COUNTY shall have the right to require the Contractor to remove an employee from performing under this Contract, at THE COUNTY's reasonable request. In the event of such removal, Contractor will replace the employee with the appropriate skilled personnel within the time reasonably specified by THE COUNTY. In no event shall Contractor assign an employee to perform under this Contract who has been removed from performing under Contractor's separate contract with the ATL.
- 10.3. Contractor's General Manager. Contractor shall at all times provide a General Manager approved by THE COUNTY who (a) will have full responsibility for the prosecution of the Services, (b) will act as agent in all matters on behalf of Contractor, and (c) will be available to respond to THE COUNTY upon THE COUNTY's request.
- 10.4. Key Personnel. Contractor shall not substitute Key Personnel as required under Section 3.6.2 of the RFP (Qualifications and Experience of Key Personnel) and assigned to this Contract, without the prior written approval of THE COUNTY, which shall not be unreasonably withheld. Unless otherwise specifically authorized in writing by THE COUNTY, the Key Personnel providing services under this Contract shall be full time to the Service provided under this Contract. Notwithstanding any provision in the Contract Documents to the contrary, the Contractor's General Manager, Operations Manager, Maintenance Managers, Safety and Training Managers, and Customer Service Managers shall be considered Key Personnel.

Any desired substitution shall be noticed to THE COUNTY, accompanied by the names, experience and references of Contractor's recommend substitute personnel. Contractor shall provide THE COUNTY at least thirty (30) Days advance notice prior to any contemplated change to Key Personnel. Contractor shall fill any vacancy in a Key Personnel position, within sixty (60) Days of the date of vacancy with an individual whose qualifications and experience meet the requirements of the position. Subject to THE COUNTY's approval, a vacancy must be temporarily filled by a qualified individual on an interim basis while a more extensive search for a replacement is conducted. Failure to provide a satisfactory replacement for a Key Personnel position within sixty (60) Days shall result in a deduction of the prorated amount of the salary and benefits of the individual during the full period of the vacancy from THE COUNTY's monthly payments to the Contractor.

10.5. Wages. Contractor shall comply and cause its subcontractors to comply with all Laws pertaining to wages.

10.6. Immigration Act. Contractor and its subcontractors shall comply with the Georgia Immigration & Compliance Act ("Immigration Act"), O.C.G.A. § 13-10-90, et seq. Contractor must certify compliance with the Immigration Act using the form required by THE COUNTY. The required certificates and affidavits must be filed with THE COUNTY and copies maintained by Contractor and each of the Contractor Parties as of the Effective Date, recertified as of July 15 of each year and upon final completion of the Services. THE COUNTY retains the right to inspect and audit the Project and employment records of Contractor and its subcontractors without notice during normal working hours until the Services under the applicable Contract are complete, and as otherwise specified by Law.

10.7. No Discrimination. Contractor shall not, and shall cause any subcontractor to not, discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the services under this Contract. Contractor shall carry out, and shall cause its subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in termination hereof or such other remedy permitted hereunder as THE COUNTY deems appropriate. Contractor shall include this provision in every subcontract (including purchase orders) pertaining to the Services under this Contract.

10.8. Equal Employment. Contractor confirms for itself and its subcontractors providing Services under this Contract that Contractor and each such subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap and that Contractor and each such subcontractor maintains no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap. Contractor shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions of the Law, and shall require the Contractor Parties to comply with such Laws.

- 10.9. Notice of Labor Disputes. If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice, including all relevant information, to THE COUNTY's Project Manager.
- 11. Operating Revenue.** All Operating Revenues collected by Contractor are the sole property of THE COUNTY. Contractor shall promptly remit all collected Operating Revenue to THE COUNTY in accordance with the guidelines established by THE COUNTY and as necessary to meet requirements of federal, state and local financial audits. For the purposes of this Contract, Contractor is responsible for reporting operating revenues that consist of physical currency collected for fares by the Contractor.
- 12. Advertising Revenue.** THE COUNTY does not currently permit paid interior or exterior advertising on its fleet; however, THE COUNTY has the right to determine interior and exterior advertising policies for its fleet and may permit paid advertising in the future. Should THE COUNTY elect to permit paid advertising on the fleet, all revenue received from advertising on THE COUNTY fleet are the sole property of THE COUNTY.
- 13. Publication and Publicity.** Articles, papers, bulletins, data, studies, statistics, interim or final reports, oral transmittals or any other materials reporting the plans, progress, analyses, results, or findings of Services conducted under this Agreement shall not be presented publicly or published without prior written approval by THE COUNTY.
- 13.1. Disclaimer Provision. All releases of information, findings, and recommendations shall include a disclaimer provision and all published reports shall include that disclaimer on the cover and title page in the following form:
- “The contents of this publication reflect the views of the author(s), who is (are) responsible for the facts and accuracy of the data presented herein. The opinions, findings, and conclusions in this publication are those of the author(s) and do not necessarily reflect the official views or policies of those of Gwinnett County, Georgia, the Atlanta-region Transit Link Authority, the State of Georgia or the Federal Transit Administration. This publication does not constitute a standard, specification or regulation.”
- 13.2. Unauthorized Releases. If any information concerning the Services, their conduct, results or data gathered or processed should be released by the Contractor without prior approval from THE COUNTY, the release of same shall constitute grounds for termination of this Agreement without indemnity to the Contractor. In addition, the Contractor shall indemnify and hold harmless THE COUNTY, its officers, employees, and agents from any liability arising from such unauthorized release of data.
- 13.3. Open Records Requests. Any request for information directed to the Contractor, pursuant to the Georgia Open Records Act, by the public shall be immediately redirected to THE COUNTY for handling. THE COUNTY shall be responsible for providing the response to requests under the Georgia Open Records Act. The Contractor acknowledges and agrees

that all records of the Services, including records of Contractor and subcontractors are subject to the Georgia Open Records Act, O.C.G. § 50-18-70 et seq., with particular attention being called to O.C.G. § 50-1870(a) regarding the records of private persons, firms, corporations, or other private entity engaged in performance of services or functions on behalf of a state agency, public agency or public office. The Contractor shall include this language or similar language in all contracts with subcontractors.

14. Review of Services. THE COUNTY and its authorized representatives may at all reasonable times review and inspect the Services, financial reports and data collected under terms and conditions of this Contract and any Amendments thereto.

15. Assignment and Subcontracting.

15.1. Assignment. Contractor shall not assign, delegate, sublet or transfer this Contract or any rights under or interest in this Contract without the prior written consent of THE COUNTY, which may be withheld for any reason. THE COUNTY and Contractor agree that THE COUNTY may, in its sole discretion, assign its rights, responsibilities, and interest in this Contract to the Metropolitan Atlanta Rapid Transit Authority (MARTA) or any other duly authorized State or local agency or authority.

15.2. Subcontracting. Nothing contained herein shall prevent Contractor from employing independent professional associates, subcontractors and suppliers as Contractor may deem appropriate to assist in the performance of Services hereunder. However, Contractor shall not subcontract Services to subcontractors and/or suppliers that are different from those subcontractors and/or suppliers listed in Contractor's Proposal, without obtaining THE COUNTY's prior written approval, which approval is within THE COUNTY's sole discretion. THE COUNTY shall have the right to require the Contractor to remove a subcontractor and/or supplier of Contractor from performing under this Contract, if in THE COUNTY's sole opinion, such subcontractor and/or supplier:

- i. is not performing its portion of the Services satisfactorily; ii. is failing to cooperate as required in the Contract Documents; iii. is posing a security risk to the Services or to THE COUNTY's business; and/or
- iv. is otherwise breaching a term of the Contract Documents that is applicable to that portion of the Services being performed by the subcontractor and/or supplier; or
- v. whose performance of the Project is not in the best interest of THE COUNTY, acting reasonably.

In the event of such removal, Contractor will replace the subcontractor and/or supplier with a suitable replacement within the time specified by THE COUNTY.

15.3. Contractor Remains Responsible. If Contractor subcontracts any of the Services to be performed under this Contract, Contractor shall be as fully responsible to THE COUNTY for the

acts, errors, or omissions of Contractor's subcontractor and/or supplier and of the persons employed by them as Contractor is for the acts and omissions of persons directly employed by Contractor. Contractor shall be obligated to assist THE COUNTY in the enforcement of any rights that THE COUNTY has against subcontractor. Notwithstanding any subcontract or agreement with any subcontractor, Contractor shall be fully responsible for all of the Services on this Project. Notwithstanding any provision to the contrary, Contractor shall be responsible to THE COUNTY for all terms, conditions, liabilities, and responsibilities under the Contract Documents regardless of whether Contractor or its subcontractors, suppliers, independent contractors, agents or assigns perform any aspect of the Services.

15.4. Mandatory Terms in Subcontracts. Nothing contained in this Contract shall create any contractual relationship between any subcontractor of Contractor and THE COUNTY. Any subcontract entered into as a result of this Contract, except those exclusively regarding third-party materials, suppliers, and commercial off-the-shelf (COTS) hardware and software supplied by the Contractor under the Contract, shall contain all applicable provisions of this Contract that in any way relate to a Services that the applicable Contractor Party will perform and/or furnish, as well as provisions pertaining to, records, and payment methods. The Contractor shall further ensure that all subcontracts entered into by Contractor for any Services to be performed or equipment or materials supplied grant THE COUNTY all of the rights and privileges of such subcontract, including but not limited to (so long as THE COUNTY is not in default of its obligations under this Contract) THE COUNTY's right to secure materials, equipment or services from the subcontractor that might be a part of the subcontractor's Services.

15.5. Timely Payments to Subcontractors. Contractor warrants that it shall make timely payments for Services performed to any subcontractor or supplier hereunder and Contractor shall indemnify, defend and hold harmless THE COUNTY for any breach of this warranty.

15.6. Failure to Comply. Any assignments or subcontracts made in violation of Sections 15.1 (Assignment) or 15.2 (Subcontracting) shall be null and void.

16. Relationship of the Parties. Each Party, in the performance of this Contract, shall be acting in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other Party. The employees, agents, partners or contractors of one Party shall not be deemed or construed to be the employees, agents, partners or contractors of the other Party for any purposes. Neither Party shall assume any liability of any type on behalf of the other Party or any of such other Party's employees, agents, partners or contractors. The Parties expressly understand and agree that Contractor is an independent Contractor of THE COUNTY in all manner and respect and that neither Party to this Contract is authorized to bind the other Party to any liability or obligation or to represent in any way that it has such authority. Contractor shall be solely responsible for all payments to its subcontractors, agents, consultants, suppliers, employees, partners or any other parties with which it does business including, but not limited to, paying all benefits, taxes and insurance, including workmen's compensation insurance, for its employees.

16.1. Joint Venture/Partnership. If Contractor is a joint venture or partnership then each member of the joint venture or partnership shall be jointly and severally liable to THE COUNTY for any and all obligations, responsibilities, liabilities, damages, liquidated damages, warranties or otherwise arising under the Contract Documents.

17. Employment of THE COUNTY's Personnel. Contractor shall not employ any person(s) employed by THE COUNTY for the Services required to be delivered by Contractor pursuant to this Contract, without the written permission of THE COUNTY.

18. Safety. The Contractor shall be solely and completely responsible for the safety of all persons and property in any way related to the Services and comply with the rules and regulations of OSHA and any other Governmental Entity responsible for safety of labor and the Services. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of its methods and for any damage which may result from their improper construction, maintenance, or operations. Contractor shall designate a responsible member of its organization whose duty shall be the prevention of accidents. In the absence of notice to the contrary, filed with THE COUNTY in writing, this person shall be the Contractor's Safety and Training Manager for the North Facility. Contractor shall furnish any and all Material Safety Data Sheets applicable to Contractor's Services to THE COUNTY prior to commencing Service under this Contract.

19. Risk of Loss or Damage. Contractor shall be responsible for the revenue and support vehicles, equipment, tires, supplies and Facilities, whether owned by THE COUNTY, Contractor, or the County or leased by THE COUNTY, Contractor or the County, used in the performance of Services. Contractor shall be responsible for all losses or damages with respect to any revenue or support vehicles, equipment, tires, and supplies, subject to normal wear and tear. In the event of damage or loss to a revenue vehicle or support vehicle due to an accident, Contractor shall be responsible for the replacement cost of the revenue vehicle or support vehicle at the depreciated value of the revenue vehicle or support vehicle, as applicable, at the time of loss.

20. Warranties.

20.1. Express Warranties. In addition to any express or implied warranties provided by Law and not otherwise disclaimed below and in the RFP, Contractor hereby expressly represents and warrants the following:

20.1.1. Accuracy of Responses. All of Contractor's responses included in the Contractor's Proposal and the Contractor's Qualification Statement are true and correct in each and every instance as of the time each document, respectively, was submitted to THE COUNTY for review.

20.1.2. Licenses. The Contractor has and will maintain and keep in full force and effect during the Term of the Contract all required authority, licenses, certifications and permits, professional ability, skills and capacity necessary to perform the Services.

20.1.3. *Organization.* The Contractor is a corporation duly organized and validly existing under the Laws of the State of _____, and has the requisite power and all required licenses to carry on its present and proposed activities in the State, and has full power, right and authority to execute and deliver this Contract and to perform each and all of the obligations of Contractor provided for herein. Contractor is duly qualified to do business, and is in good standing, in the State of Georgia.

20.1.4. *Good Standing.* Contractor covenants and agrees that it will maintain its existence and will remain in good standing in the State throughout the Term of the Contract and will maintain its existence for as long thereafter as any obligations remain outstanding under this Contract.

20.1.5. *Authorization by Contractor.* The execution, delivery and performance of the Contract has been duly authorized by all necessary corporate, partnership or limited liability company action (as the case may be) of Contractor; each person executing this Contract on behalf of Contractor has been duly authorized to execute and deliver it on behalf of Contractor; and this Contract has been duly executed and delivered by Contractor.

20.1.6. *Authorization of Signer.* The person signing this Contract on behalf of the Contractor has been duly authorized by Contractor to execute and deliver same.

20.1.7. *Valid Contract.* This Contract constitutes the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar Laws affecting the enforceability of the rights of creditors generally and general principles of equity.

20.1.8. *No Default.* Neither the execution and delivery by Contractor of this Contract, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing instruments of Contractor, any approvals or Laws applicable to Contractor or any other material agreement to which Contractor is a party.

20.1.9. *No Proceeding.* There is no action, suit, proceeding, investigation or litigation pending and served on Contractor which challenges Contractor's authority to execute, deliver or perform, or the validity or enforceability of, this Contract or which challenges the authority of the Contractor official executing this Contract; and Contractor has disclosed to THE COUNTY any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Contractor is aware.

20.1.10. *No Breach of Law.* Contractor is not in breach of any applicable Law that would have a material adverse effect on the operations of any Project or Contractor's ability to perform its obligations under this Contract.

20.1.11. *Real Party in Interest.* Contractor is the legal and valid holder of the interest attributed to Contractor under the Contract.

20.1.12. *Equipment, Hardware, Supplies and Materials.* Contractor represents and warrants that during the Term of the Contract all hardware, equipment, supplies and other material, supplied under the Contract Documents shall (1) comply with and conform to all performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the RFP, (2) have a minimum service life as set forth by applicable FTA requirements, and (3) with regard to equipment and hardware that will either be installed or otherwise purchased by THE COUNTY pursuant to the Contract Documents, Contractor will convey good and marketable title, and that all such Equipment and supplies shall be delivered to THE COUNTY and remain free from all security interests or other liens or encumbrances. Contractor also agrees to defend THE COUNTY's title against all persons claiming ownership or other interest in the whole or part of any such equipment or supplies furnished to THE COUNTY under this Contract.

20.1.13. *Software.* Contractor represents and warrants that during the Term of the Contract with the exception of COTS, all Software that Contractor will use to perform the Services shall be provided pursuant to the Contract Documents and free from defects and any update or revision to any of such software will be free from defects and will meet all specifications set forth in the Contract Documents.

20.1.14. *Cooperation.* Contractor represents and warrants that during the Term of the Contract Contractor shall fully cooperate with THE COUNTY, THE COUNTY-designated Representatives, THE COUNTY's vendors and any other Governing Authority, in furnishing all the Services required by the Contract. Without limiting the foregoing requirement, the contractor shall also:

20.1.14.1. FTA: Cooperate with and respond to all requests by THE COUNTY in attempting to comply with FTA requirements or responding to FTA requests.

20.1.14.2. Third Party Claims: Contractor shall designate a single point of contact who is responsible coordinating with THE COUNTY regarding any third-party claims against ATL related to the Contractor's performance of the Services under this Contract.

20.1.14.3. Communication with Passengers: Contractor shall cooperate with THE COUNTY regarding communications with passengers as set forth in the RFP or as otherwise directed by THE COUNTY's Project Manager.

20.1.15. *Intellectual Property.* As used in this Contract, "Intellectual Property" shall mean any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the foregoing, whether or not registered as of the Effective Date or at any later date. Contractor represents that Contractor, its agents, employees, subcontractors and

assigns will neither violate nor in any way infringe upon the Intellectual Property rights of THE COUNTY or of any other third party.

20.1.16. Compliance with Laws, Rules and Regulations. Contractor represents and warrants that during the Initial Term and each Renewal Term of the Contract (1) the Services will not be in violation of any applicable Law, rule or regulation, and Contractor will obtain all permits and licenses required to comply with such Laws and regulations, (2) Contractor has obtained and has a current certificate of authority to transact business from the Georgia Secretary of State, and (3) Contractor will comply in all respects with all other Laws, rules, regulations, ordinances of any Governing Authority that impact or relate in any way to the Services. Any changes to applicable Laws, rules, or regulations that are enacted after the Effective Date may be the subject of an Amendment only if a change to applicable Laws, rules, or regulations results in an actual and direct increase in cost to Contractor.

20.2. Third-Party Warranties. Contractor shall assign to THE COUNTY the manufacturers' or other third-party warranties for any and all items of Services furnished to THE COUNTY.

20.3. No Waiver. Neither any provision of this Contract nor any decision of THE COUNTY shall relieve the Contractor of responsibility for faulty materials, faulty workmanship, or omission of any Service. Any deviation in the Contract Documents that is evidenced by an Amendment signed by THE COUNTY will constitute an acceptance by THE COUNTY of such deviation from the applicable Contract requirement. Notwithstanding the preceding sentence, such deviation will still need to pass acceptance or other testing as may otherwise be required in the Contract Documents.

20.4. Contractor Duty to Remedy. Contractor shall, within the time periods designated in the Contract Documents, correct, remedy, replace, re-execute, supply omitted or defective Services and pay for any damage to other work resulting therefrom, without expense to THE COUNTY, including but not limited to shipping costs. If the RFP does not specify a warranty, then Contractor shall replace any defective item of Services furnished in breach of the Contract Documents, no later than five (5) business days after the date of THE COUNTY's written notification thereof.

20.5. THE COUNTY's Right to Cure. If the Contractor does not remove, make good the deficiency, correct, or remedy defective Services, or supply any omitted Services within the time periods set forth under the Contract Documents, and if no time is set in the RFP then unless otherwise agreed to in writing by the Parties, within ten (10) Days, then THE COUNTY may, after five (5) Days written notice to the Contractor, remove the Services, correct the Services, remedy the Services or supply omitted Services at the expense of the Contractor. If THE COUNTY has not yet made payment to Contractor, then THE COUNTY may deduct the cost thereof from any payment then or thereafter due and owing the Contractor. If payment of the final invoice has been made to Contractor, then Contractor shall reimburse the cost to THE COUNTY within thirty (30) Days of written demand therefore by THE COUNTY. In case of emergency involving health, safety of property or safety of life, THE COUNTY may proceed at once and without notice to Contractor and Contractor shall remain responsible for the cost thereof.

20.6. Defective Service Contractor Responsibility. Correction of defective Services or supplying of omitted Services whether or not covered by warranty of a manufacturer, Contractor Party, remains the primary, direct responsibility of the Contractor.

20.7. Other Remedies. CONTRACTOR'S EXPRESS WARRANTIES PROVIDED HEREIN ARE EXCLUSIVE AND ARE PROVIDED IN LIEU OF THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

21. Inspection of Services. If the RFP or the Laws, ordinances, rules or regulations, or any Governmental Entity require any component of the Services to be tested or approved, the Contractor shall give THE COUNTY timely notice in writing of its readiness for inspection and testing, and if the inspection is by any authority other than THE COUNTY, of the date fixed for such inspection. The Contractor assumes the responsibility of furnishing all Services in accordance with this Contract. No provisions of this Section nor any inspection of the Services by THE COUNTY, representatives of THE COUNTY, or any other third party shall in any way diminish, relieve, or alter the responsibility and undertaking of the Contractor; nor shall the omission of any of the foregoing Persons to discover or to bring to the attention of the Contractor the existence of any Service that is not in accordance with the Contract Documents or in any way diminishes, relieves, or alters the obligations of the Contractor. Inspection by the County shall nevertheless not alter the rights or remedies of THE COUNTY as set forth in this Contract. THE COUNTY and its authorized representatives may at all reasonable times review and inspect the Services, financial reports and data collected under terms and conditions of this Contract and any Amendments thereto.

22. Confidential Information. Contractor acknowledges that in order to perform the Services called for in this Contract, it may be necessary for THE COUNTY to disclose to Contractor certain trade secrets, proprietary information, customer information, and other protected information (collectively "Confidential Information"). Contractor agrees that it shall not disclose, transfer, use, copy, or allow access to any such Confidential Information to any employees or to any third parties excepting those who have a need to know such Confidential Information in order to allow Contractor to perform the Services, and who, in the case of third parties, have executed a nondisclosure agreement consistent with the provisions hereof. Customer information of any kind shall be deemed THE COUNTY's Confidential Information.

22.1. Open Records Act. Notwithstanding anything else to the contrary, information provided to THE COUNTY is subject to disclosure under the Georgia Open Records Act (O.C.G.A. § 50-1870 et seq.), as it may be amended from time to time. Pursuant to O.C.G.A. § 50-18-72 (A)(34), "An entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A § 10-1-760 et seq.]."

22.2. No Obligation of Confidentiality. Neither Party shall have any obligation of confidentiality with respect to any information which (i) is or becomes (through no improper action or inaction of the receiving Party or any of its affiliates, agents, consultants or employees) generally available to the public; (ii) can be demonstrated by the receiving Party to have been in its possession or known by it prior to the receipt under this Contract; (iii) is rightfully disclosed to the receiving Party by a third party without restriction; (iv) is disclosed by the receiving Party with the written approval of the disclosing Party; (v) is developed independently by the receiving Party without any reference, whether direct or indirect, to the Confidential Information of the disclosing Party; or (vi) is obligated to be disclosed by order of a court of competent jurisdiction or is subject to disclosure under the Georgia Open Records Act, provided the disclosing Party is promptly notified in order to resist or limit any such disclosure by the receiving Party.

22.3. Use of Confidential Information. The Party receiving the Confidential Information shall use the Confidential Information solely for the purpose of providing the Services required under the Contract Documents and shall not in any way use the Confidential Information to the detriment of disclosing Party.

22.4. Return of Confidential Information. Except as otherwise provided in the Contract or by Law, the receiving Party shall return to disclosing Party any Confidential Information immediately on request but no later than upon the termination for whatever reason of this Contract.

23. Indemnification.

23.1. Contractor Liability for Contractor Parties. The Contractor shall be responsible to THE COUNTY for all injury or damage or losses of any kind to any person or to property resulting from any negligent act or omission to act, or breach, failure or other default by the Contractor, or any of its subcontractors, agents, employees or others working at the direction of the Contractor or otherwise on its behalf.

23.2. Indemnification. Contractor hereby agrees to indemnify and hold harmless THE COUNTY and its departments, agencies, authorities, commissions and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, damages, liabilities, losses, and all related costs, including without limitation fees or expenses, including attorneys' fees, costs of investigation, litigation, settlement, judgment, fines, fees, interest and penalties (collectively, "Losses") to the extent arising from claims or actions based upon or arising out of or related to:

- i. Contractor or Contracting Parties' negligent acts or willful misconduct in performing or failing to perform Contractor's obligations under the Contract Documents;
- ii. any actual, alleged, or threatened violation of any applicable Laws by Contractor or Contractor Parties, to the extent such claim is based on the act or omission of Contractor or any Person acting for, in the name of, at the direction or supervision of or on behalf of Contractor or Contractor Parties;

iii. death or injury to any individual to the extent caused, in whole or in part, by the tortious conduct of Contractor or Contractor Parties; and

iv. damage to, or loss or destruction of, any real or tangible personal property to the extent caused, in whole or in part, by the negligent act or omission of Contractor or Contractor Parties.

This indemnification extends to the successors and assigns of the Contractor. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by Law, the bankruptcy of the Contractor. If and to the extent such damage or loss as covered by this indemnification is paid by the Risk Management, Auto Liability, and/or Workers' Compensation funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by THE COUNTY) the Contractor agrees to reimburse the Funds for such monies paid out by the Funds.

23.3. Indemnification of THE COUNTY's Landlord(s). Should THE COUNTY enter into one or more leases of real property for use during the term of this Contract, THE COUNTY shall provide reasonable notice to Contractor of same along with the terms of any written indemnification required by the owner or owners of that real property. Prior to the start of services, Contractor shall provide a written indemnification to the owner or owners on behalf of THE COUNTY. The written indemnification provided by Contractor shall provide all indemnification required by the owner or owners.

23.4. Risk Management. THE COUNTY will endeavor to notify affected insurers of claims made against THE COUNTY that fall within this indemnity.

23.5. Intellectual Property Indemnification. Contractor represents and warrants that it will have at all times while performing the Services and labor needed for the Services and THE COUNTY will have, upon completion of the Services, all necessary patent, copyright, and any other necessary Intellectual Property rights to all Services furnished by Contractor under the Contract and, further, that all Services, as a whole and each of its components shall not infringe any third party patent, copyright, trademark, trade secret or other Intellectual Property right. In case any component of the Services are held to constitute an infringement of the patent rights or copyrights or other Intellectual Property rights of a third party and its use is enjoined, the Contractor at the Contractor's sole cost and expense, shall promptly (a) secure for THE COUNTY, its representatives, agents, and designees the right to continue using the infringing item by suspension of the injunction or by procuring a perpetual, non-revocable, paid-up, royalty-free, assignable, non-exclusive license(s) to reproduce, publish, or otherwise use for THE COUNTY's direct purposes; or (b) replace the infringing item with a non-infringing substitute that meets the requirements of the Contract Documents; or (c) modify the infringing item so that it becomes noninfringing provided the resulting Services meet the requirements of the Contract Documents. If the amount of time necessary to proceed with one of these options is deemed excessive by THE COUNTY, THE COUNTY may direct the Contractor to select another option or risk default. Nothing in this provision shall be deemed to limit or condition THE COUNTY's rights otherwise set forth in the Contract, including termination. Contractor shall, at its own expense, be entitled to and shall have

the duty to participate in the defense of any suit instituted against the Indemnitees and indemnify the Indemnitees from any loss resulting from the use by the Indemnitees of Intellectual Property supplied under this Contract and against any award of damages and costs made against the Indemnitees by a final judgment of a court of last resort in such suit to the extent the same is based on a claim that any performance under this Contract constitutes an infringement of any United States Letters Patent or copyright by Indemnitees, provided THE COUNTY gives Contractor notice in writing of the institution of such suit, permits Contractor to participate fully in the defense of the same, and gives Contractor all available information, assistance, and authority to enable Contractor to do so. Subject to the approval of the County Attorney, the Indemnitees shall tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against the Indemnitees reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the Indemnitees unless approved by the Indemnitees. This Intellectual Property infringement provision shall not apply to any infringement or alleged infringement which is the result of or arises out of THE COUNTY, its employees or agents 1) modifying or altering any part or component, alone or in combination with any other part or component, except as consented to by Contractor, 2) using the components in direct contravention of the Contract Documents, or 3) using a combination of the components with any materials not provided or approved by Contractor. The Contractor's obligations under this Section are in addition to Contractor's Insurance obligations.

23.6. Defense and Indemnification Procedures. If any of the Indemnitees receives notice of a claim that it believes is within the scope of the indemnities under Section 23 (Indemnification), THE COUNTY will by writing as soon as practicable after receipt of the claim, (a) inform Contractor of the claim, (b) send to Contractor a copy of all written materials THE COUNTY has received asserting such claim. As soon as practicable after Contractor receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable insurance policies and comply with all notice requirements contained in such insurance policies. THE COUNTY and other Indemnitees also shall have the right to tender such claims to such insurers. THE COUNTY and Contractor shall reasonably cooperate in connection with the defense of any claim. Contractor shall designate a single point of contact to coordinate with THE COUNTY regarding any third-party claims and provide their name and contact information to THE COUNTY's Project Manager within thirty (30) Days of the Effective Date of the Contract. If this point of contact changes, Contractor shall provide written notice to THE COUNTY's Project Manager of the Contractor's new point of contact for third-party claims within five (5) Business Days of such change.

23.7. Obligations Not Mutually Exclusive. The Contractor's obligations under this Section are in addition to Contractor's obligations under Section 24 (Insurance) of the Contract.

24. Insurance

24.1. Insurance Certificates. The Contractor shall procure the insurance coverages identified below at the Contractor's expense and shall furnish THE COUNTY an insurance certificate including THE COUNTY as the certificate holder and an endorsement including THE COUNTY as an additional insured in regards to Commercial General, Commercial Auto & Umbrella/Excess, with respect to the Services, or any actions or inactions of Contractor or Contractor Parties arising out of the Contract Documents. Evidence of insurance coverages shall be provided on the form acceptable to THE COUNTY and the Georgia Office of the Insurance Commissioner. The insurance certificate must provide the following:

name and address of authorized agent; name and address of insured; name of insurance company(ies); description of policies; policy number(s); policy period(s); limits of liability; name and address of THE COUNTY as certificate holder; project Name and Number; signature of authorized agent; telephone number of authorized agent; and Standard Notice of Cancellation.

24.2. Insurer Qualifications, Insurance Requirements. Each of the insurance coverages required below (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of insurance in the State for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions:'

- i. the insurance company shall endeavor to provide thirty (30) Days advanced written notice prior to cancellation, 10 days for non-payment of any policy required herein. Contractor shall provide written notice of any changes that may adversely impact the required coverage under any policy required herein to THE COUNTY within three business days of Contractor's receipt of notice of any changes or proposed changes from the insurance company;
- ii. the policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("Separation of Insureds");
- iii. In the event of litigation, any settlement on behalf of the Indemnities must be expressly approved by the County Attorney. The Contractor and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnities, in which case there will be mutual cooperation between THE COUNTY and such counsel;
- iv. all deductibles shall be paid for by the Contractor; and

24.3. Minimum Required Insurance Coverages. The Contractor also agrees to purchase insurance and have the authorized agent state on the insurance certificate that the Contractor has purchased the following types of insurance coverages, consistent with the policies and requirements set forth

herein or otherwise required by law. The minimum required coverages and liability limits are as follows:

24.3.1 Workers' Compensation Insurance. The Contractor agrees to provide at a minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the Contractor qualifies to pay its own workers' compensation claims. Self-insurance programs are subject to prior approval by THE COUNTY upon review of Contractor's financial capacity to provide such self-insurance.

Coverage	Limit
1. Workers Compensation	Georgia Statutory
2. Employer's Liability-Each Accident	\$500,000
3. Employer's Liability-Disease (Each Employee)	\$500,000
4. Employer's Liability-Disease (Policy Limit)	\$500,000

24.3.1.1 The Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit a certificate on the letterhead of the Contractor in the following language:

This is to certify that all subcontractors performing work on this Project are covered by their own workers' compensation insurance or are covered by the Contractor's workers' compensation insurance.

24.3.2 Employment Practices Liability Insurance. The Contractor shall also maintain Employer's Liability Insurance Coverage with limits of at least:

24.3.2.1 Limits of Liability

24.3.2.2 Each Occurrence (wrongful acts, including bodily injury) \$1,000,000

24.3.2.3 The Contractor shall require all subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall submit a certificate on the letterhead of the Contractor in the following language:

"This is to certify that all subcontractors performing work on this Project are covered by their own Employers Liability Insurance Coverage or are covered by the Contractor's Employers Liability Insurance Coverage."

24.3.3 Commercial General Liability Insurance. The Contractor shall provide Commercial General Liability Insurance ("CGL") (2001 ISO Occurrence Form or equivalent) that shall include, but need not be limited to, coverage for bodily injury and property damage arising

from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The CGL policy must include at a minimum the following limits:

Limits of Liability

1. General Aggregate \$ 5,000,000.00
2. Each Occurrence \$ 1,000,000.00

24.3.4 Commercial Business Automobile Liability Insurance. The Contractor shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$5,000,000 Combined Single Limits for each occurrence.

24.3.5 Commercial Umbrella/Excess Liability Insurance. The Contractor shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and Employers' Liability to satisfy the minimum limits set forth herein. The umbrella/excess coverage shall follow form or be as broad as underlying coverage with the Umbrella/Excess limits required as follows:

Limits of Liability

1. Aggregate \$20,000,000
2. Each Occurrence \$20,000,000

24.3.6 All Risk Fire and Extended Coverage for the full replacement cost on all owned, used and leased equipment, tools, supplies and contents used in the performance of Services pursuant to the Contract.

24.3.7 Commercial Crime Coverage. Provide Commercial Crime Coverage in the amount of \$500,000 insuring against dishonesty, theft, fraud or misappropriation of funds of other misuse of money. THE COUNTY shall be named as an Loss Payee as its interests may appear.

24.4. Additional Requirements. The insurance provided in Sections 25.3(iii), (iv) and (v) shall also meet the following additional requirements:

24.4.1 Additional Insured. The policy shall include as additional insureds the officers, members, and employees of THE COUNTY; and

24.4.2 Occurrence Basis. The policy must be on an "occurrence" basis.

24.5. Disposition of Insurance Documents. One certificate of insurance with all endorsements attached must be deposited with THE COUNTY for each insurance policy required.

24.6. Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the expiration or other termination of the Contract.

24.7. Failure of Insurers. The Contractor is responsible for any delay resulting from the failure of its insurance carriers to furnish proof of proper coverage in the prescribed form.

24.8. Ongoing Coverage. Contractor is responsible for tracking insurance coverages for itself and its subcontractors, for ensuring that coverages remain in force throughout the duration of the Contract, and for demonstrating to THE COUNTY ongoing compliance with this Section 24.

24.9. General. The Contractor's obligations under this Section 24 are in addition to Contractor's obligations under Section 23 (Indemnification) of this Contract.

25. Replacement Services In Lieu of Default.

25.1. THE COUNTY'S Option to Replace Services. In the event that the Contractor is unable, due to a strike, work stoppage, or other event not caused by THE COUNTY and not covered by the Force Majeure clause of this Contract, to provide services in full compliance with the requirements of the Contract, then THE COUNTY may, in lieu of finding the Contractor in default, obtain the services of a replacement Operator or provide the services with its own resources (collectively referred to as "replacement services"). THE COUNTY may use such replacement services as a substitute for all or any part of Contractor's services, and may maintain such replacement services in effect until the Contractor is able to resume performance in full compliance with the Contract. Prior to implementing replacement services, THE COUNTY shall notify the Contractor in writing and provide the Contractor with three days to cure its noncompliance.

25.2. Contractor Liable for Cost. If THE COUNTY uses replacement services under this Section, the Contractor shall be liable to THE COUNTY for the actual amount by which the cost of such services exceeds the amount that would have been payable under this agreement for comparable services, including any expenses (including internal administrative costs) incurred by THE COUNTY in soliciting and obtaining those services. In addition, the only compensation payable to the Contractor by THE COUNTY during any period in which replacement services are being provided shall be for any hours of service actually provided by the Contractor.

25.3. No Preclusion. Any actions taken by THE COUNTY pursuant to this Section to the Contractor's failure to perform shall not preclude THE COUNTY from subsequently finding the Contractor in default for the same or any related failure to perform.

26. Default/Remedies.

26.1. Event of Default. Subject to relief from its performance obligations pursuant to Section 44.12 (Waiver) of this Contract, Contractor shall be in breach under this Contract upon the occurrence of any one or more of the following events or conditions:

- 26.1.1. Contractor has withheld, disrupted or delayed Service or any deliverable due to non-payment by THE COUNTY;
- 26.1.2. Contractor has assigned its rights and obligations under this Contract in violation of this Contract;
- 26.1.3. the Contractor has failed to provide “adequate assurances” within five (5) Days of THE COUNTY’s notice, when, in the opinion of THE COUNTY, reasonable grounds for uncertainty exist with respect to the Contractor’s ability to perform any of its obligations under this Contract;
- 26.1.4. the Contractor has failed to maintain performance security and insurance policies and coverages or fails to provide proof of performance security and insurance or copies of performance security and certificates of insurance, or fails to comply with any requirement of this Contract pertaining to the amount, terms or coverage of the same as required by Section 24 (Insurance) and Section 28 (Performance Security) of this Contract;
- 26.1.5. the Contractor becomes insolvent or the Contractor has taken advantage of any insolvency statute or debtor/creditor Law or the Contractor’s property or affairs have voluntarily been put in the hands of a receiver; or any case, proceeding or other action against the Contractor was commenced in bankruptcy, or seeking reorganization, liquidation or any relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution or other similar act or Law of any jurisdiction;
- 26.1.6. the suspension or revocation of any license, permit, or registration necessary for the performance of the Contractor’s obligations under this Contract;
- 26.1.7. the Contractor has suspended or failed to proceed with any properly authorized part of the Services;
- 26.1.8. the default in the performance or observance of any of the Contractor’s other obligations under the Contract Documents;
- 26.1.9. any representation or covenant in the Contract Documents made by Contractor, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Contractor to THE COUNTY pursuant to the Contract Documents is materially false, materially misleading or materially inaccurate when made or omits material information when made; or
- 26.1.10. after exhaustion of all rights of appeal, there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State department or agency of (a) Contractor, (b) any member of Contractor with a material financial obligation

owing to Contractor for equity or shareholder loan contributions, and (c) any affiliate of Contractor for whom transfer of ownership would constitute a change of control.

26.2. Cure Periods. For the purpose of THE COUNTY's exercise of remedies set forth in Section 26.3 (THE COUNTY's Damages/Remedies) and subject to remedies that this Section 26.2 expressly states may be exercised before lapse of a cure period, Contractor shall have the following cure periods with respect to the following Events of Default:

26.2.1. Respecting an Event of Default under Sections 26.1.1, 26.1.4, 26.1.5, or 26.1.6, a period of five (5) Days after THE COUNTY delivers to Contractor written notice of such Event of Default.

26.2.2. Respecting an Event of Default under Sections 26.1.2, 26.1.3, 26.1.7, 26.1.8, 26.1.9 or 26.1.10, a period of fifteen (15) Days after THE COUNTY delivers to Contractor written notice of the Event of Default.

26.2.2.1. As to Section 26.1.10, a cure will be regarded as complete when the adverse effects of the breach are cured or if the debarred or suspended Person is a managing member, general partner or controlling investor of Contractor, cure will be regarded as complete when Contractor proves it has removed such Person from any position or ability to manage, direct or control the decisions of Contractor or to perform Services, and if the debarred or suspended Person is a Key Personnel cure will be regarded as complete when Contractor replaces the Key Personnel with THE COUNTY's prior written approval in its good faith discretion as provided in Section 10.4 (Key Personnel).

26.3. THE COUNTY's Damages/Remedies. With the exception of those instances where liquidated damages have been assessed, upon the occurrence of an Event of Default, THE COUNTY may, in addition to and without prejudice to all other contractual remedies and/or remedies allowed at Law or in equity, proceed to take any or all of the following actions:

26.3.1. Withhold any money then due and/or thereafter due to Contractor;

26.3.2. Perform or cause to be performed for the account of Contractor any contractual covenant in the performance of which the Contractor is in default or make any payment for which the Contractor is in default. The Contractor shall pay to THE COUNTY within 30 days upon demand any amount reasonably paid or incurred by THE COUNTY in the performance of such covenant. Any amounts which have been paid or incurred by reason of failure of the Contractor to comply with any covenant or provision of this Contract shall bear interest at the Default Rate, which shall be defined as the Prime Rate plus five percent (5%), but in no case higher than the highest rate permitted by Law, from the date of payment by THE COUNTY until paid by the Contractor;

- 26.3.3. THE COUNTY or THE COUNTY-designated Representatives shall have the right to immediately take possession of any or all of the materials, tools, technical specifications, drawings, Equipment, supplies and property of every kind, provided, purchased, maintained, leased, owned, or rented by THE COUNTY, including but not limited to the Source Code, and the Equipment and hardware paid for by THE COUNTY, used by Contractor to perform Services or otherwise stored by THE COUNTY or at the Project site; make available any or all of the foregoing items to a third party provider and/or procure other materials, plant, tools, Equipment, and supplies and charge the Contractor therefor and the Contractor shall be liable to THE COUNTY for the expense of said labor, materials, plant, tools, Equipment, supplies and property;
- 26.3.4. Collect lost revenue and other direct damages that were the result of the Event of Default. In the event that THE COUNTY is unable to determine lost gross revenue because data is lost or otherwise unavailable, then the Parties agree that lost gross revenue shall be based on historical figures (traffic or other type of measurement depending upon the type of Transaction involved) maintained by THE COUNTY;
- 26.3.5. Obtain the Services, or a portion thereof, from a third party under substantially similar terms of this Contract, if possible, and recover from Contractor all additional costs and expenses paid or incurred by THE COUNTY as a result of the Event of Default, plus all additional costs paid or incurred by THE COUNTY to obtain the replacement Services as set forth in Section 26.3 (THE COUNTY Damages/Remedies) of this Contract;
- 26.3.6. Terminate the Contract, in whole or in part; and
- 26.3.7. Reduce the scope of Services.

26.4. THE COUNTY's Default. Subject to THE COUNTY's exercise of its withholding rights and other remedies and rights under the Contract, if THE COUNTY fails to pay Contractor undisputed invoices when due under the Contract and fails to make such payments within sixty (60) Days of receipt of written notice from Contractor of the failure to make such payments, Contractor may, by giving written notice to THE COUNTY, terminate this Contract as of a date specified in the notice of termination. Contractor shall not have the right to terminate the Contract for THE COUNTY's breach of the Contract except as specifically provided in this Section 28.4. In the event of termination of this Contract by Contractor for THE COUNTY default as provided in this Section 26.4, THE COUNTY shall be liable only for payments required by the terms of this Contract for Service which has been accepted by THE COUNTY prior to the effective date of termination, and any restocking fees actually and reasonably incurred by Contractor for Services purchased or Services ordered but not used, and other reasonable and actual demobilization costs pursuant to the Contract Documents and for which Contractor has received prior written approval from THE COUNTY for such purchases, subject to THE COUNTY's exercise of

its other rights and remedies under the Contract. THE COUNTY shall not be responsible for any other costs, fees and expenses of any nature whatsoever, including but not limited to administrative fees, legal fees, salary, or any other cost or expense, whether direct or indirect, whether foreseen or unforeseen.

27. Termination.

- 27.1. Termination for Cause. Upon an Event of Default, and after the expiration of any relevant cure period set forth in Section 26.2 of the Contract (except in the case of an emergency in which case THE COUNTY is not required to wait until the expiration of a cure period), during which Contractor did not remedy the Event of Default, THE COUNTY may, in its sole discretion, terminate this Contract in whole or in part. Termination shall take effect on the date set forth in THE COUNTY's notice to Contractor, which shall be no less than five (5) Days after the date of such notice. Upon such termination THE COUNTY shall not be required to pay Contractor any amounts for Services performed prior to the date of termination for which payment may be due and owing but not yet paid ("Remaining Payment"). In the event THE COUNTY's expenses incurred or anticipated to be incurred as a result of Contractor's breach are less than the Remaining Payment, THE COUNTY shall remit such differential to the Contractor. In the event THE COUNTY's expenses incurred or anticipated to be incurred as a result of Contractor's breach exceed the Remaining Payment, then Contractor shall within thirty (30) Days of written notice from THE COUNTY, make payment of the differential to THE COUNTY. In addition to the rights and remedies in this Section 27.1, THE COUNTY shall have all other rights and remedies against Contractor which are available at Law or in equity.
- 27.2. Termination for Convenience. THE COUNTY may terminate this Contract, in whole or in part, for convenience upon 30 Days written notice, which shall commence upon the date included in the notice. In the event of a termination for convenience, THE COUNTY shall only pay the Contractor for Services performed through the termination date, any restocking fees actually and reasonably incurred by Contractor for any Services, and reasonable and actual demobilization costs, for which Contractor has received prior written approval from THE COUNTY for such purchases. THE COUNTY shall not be responsible for any other costs, fees and expenses of any nature whatsoever, including but not limited to administrative fees, legal fees, salary, or any other cost or expense, whether direct or indirect, whether foreseen or unforeseen. The Contractor acknowledges that the remedy set forth in this Section 27.2 is the Contractor's sole and exclusive remedy against THE COUNTY for termination for convenience and Contractor hereby waives all other rights and remedies it may have against THE COUNTY for termination for convenience.
- 27.3. Pre-existing Liability. No termination of this Contract shall excuse either Party from any liability arising out of any default as provided in this Contract that occurred prior to termination.

27.4. Compliance with Contract. Both Parties shall comply with all of the terms and conditions of the Contract Documents, including but not limited to the provisions of Section 30 (Cooperation, Transition, End of Contract Responsibilities) of this Contract, in the event THE COUNTY exercises any of its rights under Section 27.

27.5. Termination Procedures and Duties. Upon expiration of the Term or any earlier termination of this Contract for any reason, the provisions of this Section 27.5 shall apply. Contractor shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due to Contractor or THE COUNTY on account of such termination.

27.5.1. Preservation of Materials. Contractor shall take all action that may be necessary, or that THE COUNTY may direct, for the protection and preservation of the Services and such materials, goods, machinery, equipment, parts, supplies and other property.

27.5.2. Documentation upon Termination. On or about the termination date, Contractor shall execute and deliver to THE COUNTY the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to THE COUNTY, acting reasonably, assigning and transferring to THE COUNTY all of Contractor's right, title and interest in and to all books, records, reports, test reports, studies and other documents of a similar nature relating to the Services;

27.5.3. Contractor Assistance. Contractor shall otherwise assist THE COUNTY in such manner as THE COUNTY may require prior to and for a reasonable period following the termination date to ensure the orderly transition of the Services and its management to THE COUNTY or its designee, and shall, if appropriate and if requested by THE COUNTY, take all steps as may be necessary to enforce the provisions of Contractor's agreements with the Contractor Parties pertaining to the surrender of the Services.

28. Performance Security. The Contractor shall supply security at the time the Contract is executed. The Contractor shall supply security in the form of a surety bond from an insurance company licensed in Georgia with a Best Policyholders Rating of "A-" or better with a financial size of Class V or larger, cash, cash equivalent or an unconditional irrevocable standby letter of credit, on deposit in or issued by, respectively, a Federal or State chartered bank with offices physically located in State of Georgia in the amount of 25% of the one-year cost of the forthcoming year of the Contract whereby funds are (1) pledged to the benefit of THE COUNTY; (2) are not under the control of Contractor; and (3) are payable to THE COUNTY upon written demand to the holder.

This security is for the faithful performance of this Contract between THE COUNTY and Contractor and will further protect, indemnify and save harmless THE COUNTY from all costs and damages by reason of Contractor's default, breach or failure to satisfactorily perform the obligations outlined in the Contract Documents. Further, any revenue or other yield generated by

the security shall be owned by the Contractor and may be withdrawn periodically so long as the applicable minimum-security amount is maintained.

In the event of any condition of breach or other circumstance attributable to Contractor, THE COUNTY shall have the right to draw against the security such sums as are necessary to make THE COUNTY whole, or for such other sums as may become due to THE COUNTY pursuant to the Contract, including but not limited to, the costs incurred to secure and compensate for substituted services of another entity made necessary by the breach. Nothing herein shall be construed to mean that the security provided for herein is exclusive or constitutes any limitation or restriction on any remedies to which THE COUNTY may avail itself.

29. Records Retention and Audit Rights. In addition to audit obligations as set forth in the RFP, Contractor shall maintain and shall cause each Contractor Party to maintain accurate books, records, documents and other evidence concerning Contractor's performance of Services under this Contract (hereinafter referred to as the "Records"). Contractor agrees to make available, at all reasonable times during which this Contract is in effect the Records for inspection or audit by any authorized representative of THE COUNTY or its Auditor. Within no more than five (5) Days after the termination of this Contract for any reason, copies of all Records shall be given by the Contractor to THE COUNTY. Records that relate to appeals, litigation, or the settlements of claims arising out of the performance of this Contract, or costs and expenses of any such agreement as to which exception has been taken by THE COUNTY'S Auditor, the State Auditor, or any of his or their duly authorized representatives, shall be retained by Contractor until such appeals, litigation, claims or exceptions have been disposed. Upon termination or expiration of this Contract, Contractor shall preserve and maintain the Records for a period of seven (7) years thereafter, during which time THE COUNTY and its representatives shall have access to such Records and shall have the right to make any copies thereof for the purpose of auditing or verifying invoices or for any other reasonable business purpose. Notwithstanding anything to the contrary stated in this provision, nothing in this Section 29 shall obligate the Contractor to provide Contractor's internal cost data for review or for audit. THE COUNTY shall also at all times during the Term of this Contract have the right to conduct the monitoring, reviewing, inspection, testing, reporting, auditing and other oversight functions set forth in the Contract Documents, including monitoring and auditing Contractor and its books and records to determine compliance with requirements of the Contract Documents.

30. Cooperation, Transition, End of Contract Responsibilities.

30.1. Cooperation. In the event that THE COUNTY enters into any agreement at any time with any other vendor(s) as allowed pursuant to Section 44.15 (No Exclusivity) of this Contract or for additional Service related to the Services, Contractor agrees to cooperate fully with such other vendors in order to facilitate the performance of service by such other vendor(s) and/or provision of the Services by the Contractor and to refrain from any activity which would interfere with performance of service by such other vendor(s) and/or provision of the Services by the Contractor.

- 30.2. Transition. Upon expiration or earlier termination of this Contract, Contractor shall accomplish a complete transition of the Services from Contractor to THE COUNTY, or to any replacement provider designated by THE COUNTY, without any interruption of, or adverse impact on the Services, any component thereof or any other work provided by third parties as set forth in the transition plan required in Section 7 of the RFP (Turnover/Contract Completion). All Services related to such transition shall be performed at no additional cost.
- 30.3. End of Contract. The Contractor shall perform the end of Contract responsibilities as specified in the Contract Documents or as otherwise directed by THE COUNTY.
- 30.4. Failure to Comply. The Parties acknowledge and understand that Contractor's failure to comply with the terms and conditions as stated in this Section 30 may adversely affect THE COUNTY and result in monetary loss to THE COUNTY. THE COUNTY shall assess, audit, and certify to the Contractor monetary losses resulting from the Contractor's failure to comply with the provisions of Section 30. THE COUNTY's reasonable determination as to the amount of the monetary loss suffered shall be conclusive and, unless an action is brought by Contractor in a court of law pursuant to Section 42.3 (Governing Law/Venue) of this Contract within thirty (30) Days of THE COUNTY's determination of monetary loss and THE COUNTY's determination is deemed unreasonable by such court, Contractor shall compensate THE COUNTY for any undisputed loss within thirty (30) Days of such a determination by THE COUNTY or by the court of competent jurisdiction, as applicable. If Contractor challenges THE COUNTY's actions taken pursuant to this Section 30.4, and the court does not find that THE COUNTY's actions are unreasonable, then Contractor shall also pay to THE COUNTY interest at the rate of one percent (1%) per month on the amount due to THE COUNTY under this Section 30.4, from the date THE COUNTY forwarded notice to Contractor of the amount of monetary loss until the date payment is received by THE COUNTY.
- 31. Conflicts of Interest; Public Officials.** The Contractor represents and warrants that it, its principals, its employees, and all others in close association with it, have no conflict of interest or of time, directly or indirectly, that would prevent timely performance of the Services or the performance of Services in a manner that is free of appearance or fact of impropriety. The Contractor promises not to allow such conflict to arise and promises to disclose such a conflict in the event that, nevertheless, one develops. No member, officer, or employee of THE COUNTY during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- 32. Data Ownership/Access/Security.** All data (including maintenance data, customer data, system database, other logs, and any other data that is collected by the Contractor or to which Contractor has access) is the property of THE COUNTY. If the data is organized and stored using COTS database or proprietary database software then the Contractor must provide a secure network path and web service connection to the database with appropriate permissions and credentials to extract data from the database. This includes, but not limited

to, newly inserted or updated data in the database, database backups, and archives (offline backups). In addition to Contractor's obligations in Section 22 (Confidential Information), Contractor shall ensure that no unauthorized personnel will have access to individual Facilities, cabinets, data and records, any personal information of existing or potential customers of THE COUNTY.

33. **Ownership of Documents.** CONTRACTOR agrees that all reports, drawings, computer disks, specifications, survey notes, estimates, maps, computations and other data prepared by or for it under the terms of this Contract shall be delivered to, become and remain the property of the AUTHORITY upon termination or completion of the Services. THE COUNTY shall have the right, at its sole risk, to use the same without restriction or limitation and without compensation to CONTRACTOR other than that provided for in this Contract. CONTRACTOR shall not have the right to use same for sale or other benefit without express written permission from THE COUNTY.
34. **Copyrighting.** The Contractor and THE COUNTY agree that any papers, interim reports, forms, and any other material which are part of Services under this Agreement are to be deemed a "work for hire," as such term is defined in the Copyright Laws of the United States. As a "work made for hire," all copyright interests in said works will vest in THE COUNTY upon creation of the copyrightable work. If any papers, interim reports, forms or other material which are a part of Services under this Agreement are deemed by law not to be a "work for hire," any copyright interests of the Contractor are hereby assigned completely and solely to THE COUNTY. Publication rights to any works produced under this Agreement are reserved by THE COUNTY.
35. **Licenses, Permits and Filing Fees.** With the exception of vehicle registrations and license plates, Contractor is solely responsible for obtaining all other licenses or authorizations required by law to perform the Services required under the Contract. The cost of all licenses and permits necessary to operate each vehicle and other equipment under all such applicable laws and regulations shall be the responsibility of Contractor. These permits and licenses shall include, but shall not be limited to, all necessary Georgia motor vehicle driver licenses and certificates.

Contractor shall pay all filing fees and legal fees involved in submitting route, schedule, and rate changes. Contractor shall pay all federal, state and local taxes imposed on Contractor by reason of the ownership or leasing of any vehicle, equipment, inventory or operation of the Services. Contractor shall be responsible for obtaining all other licenses or authorizations required by law to perform the Services required under this Contract.

Meetings. Upon request of THE COUNTY, Contractor shall, at its own expense, attend public meetings to provide information concerning the Services. The General Manager, representing Contractor, shall attend, at a minimum, bi-weekly meetings with THE COUNTY Transit staff at times and locations to be determined.

Labor Disputes. Contractor shall have exclusive responsibility for conducting its labor relations including negotiating any labor Contract, if one is negotiated. In the event the Contractor has knowledge that an actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice, including all relevant information, to THE COUNTY's Transit Division Director. THE COUNTY shall not have responsibility or liability for labor disputes between the Contractor and its employees.

36. 49 USC Section 5333(b) Indemnity.

36.1. Contractor's Obligations. The Contractor will abide by and carry out on behalf of THE COUNTY the obligations and duties imposed on THE COUNTY by the certifications regarding the subject transportation services issued by the United States Department of Labor under 49 USC Section 5333(b) (formerly Section 13(c) of the Urban Mass Transportation Act of 1964), and any supplementary certification pertaining to same. In addition, the Contractor will cooperate fully in any negotiation by THE COUNTY, and will take all other such action reasonably requested by THE COUNTY, in connection with obtaining any other 49 USC Section 5333(b) certifications during the term of the Contract, and will abide by and carry out all obligations and duties imposed by THE COUNTY by such other certifications. The Contractor will be financially and administratively responsible for, and will indemnify, defend and hold harmless THE COUNTY and the Board of Commissioners from and against, any losses, liabilities, claims and expenses (including, without limitation, any reasonable attorneys' fees) incurred by THE COUNTY to the extent arising from Contractor's violation or non-compliance with any 49 USC Section 5333(b) certifications covered by this paragraph.

36.2. Non-Assistance. The Contractor shall not assist or encourage any employee to file or otherwise pursue a Section 5333(b) claim against THE COUNTY, or take any action which is contrary to the interests of THE COUNTY under Section 5333(b) or its Section 5333(b) arrangements or agreements, relating to the termination of services under the Contract, any future transition from the Contractor to another service provider, or any other action or event relating to the Contract. If the Contractor fails to comply with this obligation, the Contractor shall be financially liable for all costs incurred by THE COUNTY (including attorneys' fees) associated with any Section 5333(b) claims or any delays in the receipt of federal funds.

37. COUNTY Property.

37.1. COUNTY-Furnished Materials. THE COUNTY shall make available to Contractor all relevant materials and equipment specified in the scope of services. All such material furnished to the Contractor shall be used by the Contractor only in connection with the Contract and title thereto shall at all times remain in THE COUNTY. Upon termination or completion of this Contract, all such material shall be returned promptly to THE COUNTY. All COUNTY-furnished property is subject to the provisions of this article and is hereinafter sometimes collectively referred to as "County Property."

- 37.2. Contractor's Obligation to Maintain Program. The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, and preservation of County Property to assure its full availability and usefulness for the performance of this Contract. The Contractor shall take all steps to comply with all appropriate directions or instructions that the Contracting Officer may prescribe as reasonably necessary for the protection of County Property.
- 37.3. Notice of Loss. Upon the occurrence of loss or destruction of, or damage to, THE COUNTY Property, the Contractor shall notify the Contracting Officer, and shall take all reasonable steps to protect the County Property from further damage, separate the damaged and undamaged County Property, put all the County Property in the best possible order, and furnish to the Contracting Officer a statement of all the details concerning the loss or damage. The Contractor shall then take such action as the Contracting Officer shall direct.
- 37.4. Reimbursement; Cooperation; Access. In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the County Property, it shall use the proceeds to repair, renovate, or replace the County Property involved, or shall otherwise reimburse THE COUNTY, as directed by the Transit Division Director. The Contractor shall do nothing to prejudice THE COUNTY's right to recover against third parties for any such loss, destruction, or damage, and upon the request of Transit Division Director, shall, at THE COUNTY's expense, furnish to THE COUNTY all reasonable assistance and cooperation including the prosecution of suit and the execution of instruments of assignment in favor of THE COUNTY in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to County Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the County Property for the benefit of THE COUNTY.

THE COUNTY shall at all reasonable times have access to the premises where any of the County Property is located.

Directions of the Transit Division Director and communications of the Contractor issued pursuant to this article shall be in writing.

38. Turnover Process. THE COUNTY has established a turnover process for return of COUNTY vehicles and equipment at the end of the Contract as specified in Section 7 of the RFP (Turnover/Contract Completion). This turnover process shall be implemented toward the end of the Contract term with Contractor and prior to the commencement of any new Contract for COUNTY services. At THE COUNTY's option, a Turnover Inspection may be implemented with or without a change in Contractor.

39. Exhibits. The following Exhibits are attached hereto and incorporated into the Contract Documents:

39.1. Exhibit A- Definitions

39.2. Exhibit B-RFP

39.3. Exhibit C-Contractor's Proposal

39.4. Exhibit D- Contractor's Price Schedule

39.5. Exhibit E-Mandatory FTA Clauses

40. Miscellaneous Provisions.

40.1. Compliance with Laws. The Contractor shall perform its obligations hereunder, and shall ensure that all of its subcontractors perform their obligations, in accordance with all applicable federal, State, and local government Laws, rules, regulations, orders and approvals, including but not limited to procedures and requirements relating to labor standards, compliance with Americans with Disabilities Act, anti-solicitation Laws, Article VII (Purchasing), Code of Ordinances, Gwinnett County, Georgia, O.C.G.A. § 13-10-91, and auditing and reporting provisions, now or hereafter in effect, and any rules required by any federal grant funding payment by THE COUNTY. Any changes to applicable Laws, rules, or regulations that are enacted after contract award may be the subject of an Amendment only if a change to applicable Laws, rules, or regulations results in an actual and direct increase in cost to Contractor to comply with such changes. In such an event, the increased cost shall reflect the unit prices including labor and material set forth in the Contractor's Price Proposal included in the Contractor's Proposal.

40.2. ERISA. The Contractor shall comply with the provisions of the Employee Retirement Income Security Act of 1974, as amended, with respect to each of its employee benefit plans. The Contractor shall supply THE COUNTY with such information concerning the status of each of the Contractor's employee benefit plans, as THE COUNTY shall reasonably request.

40.3. Parties Bound. This Contract will bind the respective heirs, executors, administrators, legal representatives, successors, and assigns of each Party.

40.4. Force Majeure. Neither Party shall be liable to the other Party for any delay or failure of performance due to the occurrence of any of the following events that materially and adversely affects performance of either Party's obligations to the other, provided in the case of the Contractor's obligations to THE COUNTY that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by the Contractor: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Services, in each case occurring within the State; (b) any act of terrorism or sabotage that causes direct physical damage to the Services (c) nuclear explosion or contamination, in each case occurring within the State; (d) riot and civil commotion on or in the immediate vicinity of the Services; (e) fire, explosion, flood, earthquake, hurricane, or tornado, in each case that causes direct physical damage to the Services; (f) pandemic or

epidemic that warrants a state of emergency being called on a national, state, or county level that has an adverse impact on the services being rendered/provided; or (g) national or statewide (i.e., State) strike that has a direct adverse impact on the Contractor's ability to obtain materials, Equipment or labor for the Services.

40.5. Disputes.

40.5.1. Dispute Resolution. In the event of any dispute whatsoever arising out of or relating to the Contract Documents, or Services, the disputing Party must furnish a written notice to the other Party, setting forth in detail the dispute. Such notice must be addressed to THE COUNTY's Transit Division Director or Contractor's General Manager, as applicable. Within five (5) Days after the receipt of the notice by the receiving Party, THE COUNTY Transit Division Director and Contractor's General Manager shall meet in THE COUNTY's offices to attempt to resolve the dispute. If THE COUNTY Transit Division Director and Contractor's General Manager cannot resolve the dispute then, within fourteen (14) Days after the date of written notice by either THE COUNTY Transit Division Director or Contractor's General Manager to the GCDOT Director of THE COUNTY and the Chief Executive Officer of the Contractor, the GCDOT Director of THE COUNTY and the Contractor's Chief Executive Officer shall meet in THE COUNTY's offices to attempt to resolve the dispute. The decision of the Director of GCDOT for the determination of such dispute shall be final and conclusive. During course of any dispute resolution, the Parties shall continue to diligently perform their obligations under the Contract Documents.

40.5.2. Director of GCDOT Decision. Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement shall be decided by the Director of GCDOT, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Director of GCDOT shall be final and conclusive unless, within fifteen (15) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Director of GCDOT a written appeal addressed to the Director of GCDOT. The decision of the Director of GCDOT or his/her duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this Contract as limiting judicial review of any such decision to cases where fraud by such official or his/her representative or board is alleged. Provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence in support of his/her appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Director of GCDOT.

40.5.3. Questions of Law. The Disputes clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a), above. Nothing

in this Contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

41. Federal Intellectual Property Bankruptcy Protection Act. THE COUNTY shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n) and any amendments thereto.

42. Disputes, Breaches, Defaults, and Litigation.

(a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

(b) Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the County must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the County is located. The County must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

(3) Additional Notice to U.S. DOT Inspector General. The County must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the County is located, if the County has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the County and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the County. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state,

or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the County . In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the County, including divisions tasked with law enforcement or investigatory functions.

(c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the County may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the County receives FTA’s prior written concurrence.

(d) Enforcement. The County must pursue its legal rights and remedies available under any Third-Party Agreement or any federal, state, or local law or regulation.

43. Governing Law and Venue.

43.1. Governing Law. This Contract is a Georgia agreement made under the Laws of the State of Georgia. It will be enforced according to Georgia Law without regard to its conflict of Laws rules or any other rules directing referral to foreign Law or forums.

43.2. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser (ATL) and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor’s failure to so comply shall constitute a material breach of this Contractor.

43.3. Uniform Commercial Code. Except to the extent provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted by the State shall govern this Contract. To the extent the Contract entails both the supply of goods and services such shall be deemed goods within the meaning of the Uniform Commercial Code, except when deeming such services as goods would result in a clearly unreasonable interpretation.

43.4. Venue. Any action arising out of or related to this Contract in any way shall be brought exclusively in the Superior Court of Gwinnett County, Georgia, and each Party hereby consents to the jurisdiction and venue of such Court and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum. Each Party hereby agrees to execute an acknowledgment of service of process at the request of the other Party in any litigation related to this Contract. In the event that a Party

does not provide an acknowledgment of service as agreed, each Party consents to service of process at that Party's address set forth in Section 44.4 (Notices) of this Contract.

43.5. Notices. All notices, notifications, requests, approvals, or other communications (excluding Invoices) required by or otherwise related to the Contract Documents shall be in writing and transmitted via hand delivery, overnight courier, or certified mail (return receipt requested), to the Parties at the respective addresses set forth below. Notices may also be sent by email provided that the recipient acknowledges receipt of the notice, notification, request, approval, or other communication, as applicable. Invoices shall be sent by U.S. Mail, postage prepaid, to THE COUNTY's address set forth at Section 6.6 (Invoicing). Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. (local Atlanta time) and all other notices received after 5:00 p.m. (local Atlanta time) shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m. (local Atlanta time)). Any technical communications pertaining to the Services shall be conducted between Contractor's Project Manager and THE COUNTY's Transit Division Director.

For THE COUNTY:

For the Contractor:

Transdev Services, Inc.

Jennifer Coyne, General Counsel

720 E. Butterfield Rd., Ste. 300

Lombard, IL 60148

Email: Jennifer.Coyne@transdev.com

Gwinnett County Director of Transportation

446 West Crogan St, Suite 410

Lawrenceville, Georgia 30046

Phone: (770)822-7400

Email: Lewis.Cooksey@gwinnettcountry.com

Transdev Services, Inc.

Bill Spraul, Vice President

With a copy to:

County Attorney

75 Langley Drive

Lawrenceville, Georgia 30046

Phone: (770)822-8700

Email: Mike.Ludwiczak@gwinnettcountry.com

720 E. Butterfield Rd., Ste. 300

Lombard, IL 60148

Email: William.Spraul@transdev.com

Transit Division Director

446 West Crogan St, Suite 410

Lawrenceville, Georgia 30046

Phone: (770)822-7400

Email: Karen.Winger@gwinnettcountry.com

43.6. Taxes. The Contractor will pay, prior to delinquency, all taxes lawfully imposed upon it that may arise with respect to this Contract.

43.7. Remedies Cumulative. With the exception of liquidated damages, the rights and remedies of THE COUNTY under this Contract are cumulative of one another and with those otherwise provided by Law or in equity.

43.8. Integration of the Contract Documents. THE COUNTY and Contractor agree and expressly intend that, subject to Section 3 (Precedence of Documents) of this Contract, this Contract, and the other Contract Documents constitute a single, non- severable, integrated agreement whose terms are interdependent and non-divisible.

43.9. Waiver. No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the obligee Party. The exercise by a Party of any right or remedy provided under the Contract Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy as such right or remedy is specifically allowed under this Contract. No waiver by any Party of any right or remedy under the Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given. Except as provided otherwise in the Contract Documents, no act, delay or omission done or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the Contract Documents. Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding.

43.10. Severability. The invalidity or unenforceability of any clause, provision, section or part of the Contract Documents shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.

43.11. No Third-Party Beneficiaries. Nothing contained in the Contract Documents shall be construed as conferring upon or giving to any person, other than the Parties hereto, any rights or benefits under or by reason of the Contract Documents.

43.12. Headings. The captions in this Contract are solely for convenience, and will not affect the interpretation of any terms of this Contract.

43.13. Counterparts. The Parties may execute this Contract in counterparts, each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

43.14. Construction of Contract. In the event this Contract must be interpreted by a court of competent jurisdiction as set forth in Section 42.1 and 42.3 (Governing Law and Venue), the Parties

expressly agree that this is a negotiated Contract that will not be construed against one Party over the other because such Party drafted the Contract.

43.15. Survival. In addition to those provisions, which by their terms would naturally survive termination of the Contract, Sections 6 (Payment), 9 (Liquidated Damages), 15 (Subcontracting and Assignment), 19 (Risk of Loss), 20 (Warranties), 20.6 (Defective Services Contractor Responsibility), 22 (Confidential Information), 23 (Indemnification), 24 (Insurance), 40.5.1 (Dispute Resolution, Defaults/Remedies), 27 (Termination), 28 (Performance Security), 29 (Records Retention and Audit Rights), 30 (Cooperation, Transition, End of Contract Responsibilities), 32 (Data Ownership/Access/Security), and 40 (Miscellaneous Provisions) of this Contract shall survive the termination for whatever reason of this Contract.

43.16. No Exclusivity. This is a non-exclusive Contract. This Contract in no way precludes THE COUNTY from obtaining like goods or services from other suppliers at any time. Such determination by THE COUNTY shall be made at the sole discretion of THE COUNTY, and shall be conclusive. Such determination shall only be made when it is deemed to be in the best interest of THE COUNTY or the State to do so.

43.17. Entire Contract; Amendment. This Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all other prior and contemporaneous contracts and understandings between the Parties, whether oral or written. THE COUNTY shall not be bound by any terms and conditions included in any packaging, invoice, catalog, brochure, technical data sheet, or other document prepared by the Contractor which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein. No amendment to this Contract shall be valid unless made in writing and signed by both Parties.

[Signatures to Follow]

IN WITNESS WHEREOF, the Parties have caused this Contract to be signed, sealed and delivered as of the Effective Date.

GWINNETT COUNTY, GEORGIA

By: _____

Nicole L Hendrickson, Chairwoman

The Gwinnett County Board of Commissioners

ATTEST:

Signature

Diane Kemp, County Clerk

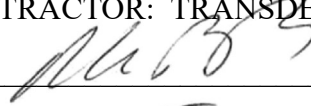
Board of Commissioners

APPROVED AS TO FORM:

Michael P. Ludwiczak

County Attorney

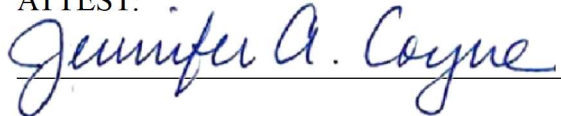
CONTRACTOR: TRANSDEV SERVICES, INC. _____

BY:  _____ Signature

_____ Print Name Mathieu Le Bourhis

_____ Title CFO

ATTEST:

 _____ Signature

_____ Print Name Jennifer A. Coyne

Corporate Secretary

(Seal)

EXHIBIT A

Definitions/Acronyms

Amendment shall mean a document that is properly signed by both Parties that changes the terms and conditions of the Contract Documents.

Americans with Disabilities Act of 1990 (ADA). The terms “Americans with Disabilities Act of 1990” and “ADA” mean the statute enacted by the United States Congress as public Law Number 101-366.

Business Day means Monday through Friday excluding COUNTY-recognized holidays.

Confidential Information shall have the meaning assigned to it in Section 22 (Confidential Information) of the Contract.

Contract Documents shall have the meaning assigned to it in Section 3 (Precedence of Documents) of the Contract.

Contractor shall have the meaning assigned to it in the Recitals.

Contractor Parties means the agents, employees, independent contractors, assigns, subcontractors, suppliers, or any other entity or Person with whom Contractor entered into an arrangement or agreement to perform services or supply materials and/or Equipment or any other item of Services required of Contractor under the Contract Documents; or any other Person acting for, in the name of, at the direction or supervision of or on behalf Contractor.

Contractor's General Manager means the individual designated by Contractor and approved in writing by THE COUNTY in the position to take full responsibility for the prosecution of the Services.

Contractor's Proposal shall have the meaning assigned to it in Section 3 (Precedence of Documents) of the Contract.

Contractor's Intellectual Property means Intellectual Property created by or on behalf of Contractor or Contractor Parties and used, applied or reduced to practice in connection with the Services that derives commercial value from its protection as a trade secret under State Law or from its protection under U.S. patent Law

Day(s) shall mean calendar days unless otherwise specified in the Contract as a Business Day. Periods of time referred to in this Contract shall be deemed to begin on the first Day (or Business Day as the case may be) that began the period and ending at 5:00 pm on the last day of the period unless otherwise specified in this Contract.

Deadhead shall mean the hours that a vehicle travels when out of revenue service and shall include leaving or returning to a maintenance facility or changing routes when there is no expectation of carrying revenue passengers. It shall not include charter service, operator training or maintenance training.

Effective Date shall have the meaning assigned to it in the first paragraph of the Contract.

Event of Default shall have the meaning assigned to it in Section 26 (Default /Remedies) of the Contract.

FTA means the Federal Transit Administration.

Governmental Approval means any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, special provision, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by governmental entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Services.

Governmental Entity(ies) means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than THE COUNTY.

Including shall be deemed, wherever the word “including” “includes” or “include” is used in this Contract, to be followed by the words “without limitation.”

Immigration Act means the Georgia Immigration & Compliance Act, O.C.G.A. § 13-10-90, et seq. as set forth in Section 10.6 (Immigration Act) of the Contract.

Indemnities shall have the meaning assigned to it in Section 23 (Indemnification) of the Contract.

Initial Term shall have the meaning assigned to it in Section 4 (Contract Term and Renewal) of the Contract.

Intellectual Property shall have the meaning assigned to it in Section 23.5 (Intellectual Property) of the Contract.

Key Personnel shall have the meaning assigned to it in Section 10.4 (Key Personnel) of the Contract or Section 3.6.2 (Qualifications and Experience of Key Personnel) of the RFP.

Laws means:

- (a) any statute, law, code, regulation, ordinance, rule or common law,
- (b) any binding judgment,
- (c) any binding judicial or administrative order or decree
- (d) any written directive, guideline, policy requirement or other governmental restriction, or
- (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by any Governmental Entity, in each case which is applicable to or has an impact on the Services, whether taking effect before or after the Effective Date, including environmental laws but excluding Governmental Approvals.

Liquidated Damages means the damages as may accrue and be due and payable by Contractor to THE COUNTY for failure to meet the Performance Standards as set forth under Section 9 (Liquidated Damages) of the Contract.

Losses shall have the meaning ascribed to it in Section 23 (Indemnification) of the Contract.

Major Service Change(s) means a change to routes, schedules, or both routes and schedules made by THE COUNTY that increases or decreases the current total annual Vehicle Revenue Hours by 15% or more.

Minor Service Change(s) means a change to routes, schedules or both routes and schedules made by THE COUNTY that increases or decreases the current total annual Vehicle Revenue Hours by less than 15%.

Non-revenue Vehicle means vehicles other than Revenues Vehicles that are used by Contractor to perform the Services.

North Facility means the operations and maintenance facility currently located at 2880 Remington Park Court, Norcross, GA 30071 to be utilized for providing Services to both Gwinnett County Transit and ATL in the Northeast Atlanta-metro area as set forth in the Contract Documents.

Notice to Proceed means the written authorization from THE COUNTY to Contractor notifying Contractor that Services may begin.

O.C.G.A. means the Official Code of Georgia Annotated.

On-Time Performance shall have the meaning ascribed to it in Table 10.2 (Damages for NonCompliance with Performance Standards) of the RFP.

Open Records Act means O.C.G.A 50-18-70 et seq.

Operator means a person who drives vehicles professional for the contractor.

Performance Standard(s) shall have the meaning ascribed to it in Section 8 (Performance Standards) of this Contract and Section 10 of the RFP

Person means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust or other commercial enterprise.

Pull-in refers to the time a bus is scheduled to return to its designated maintenance facility.

Pull-out refers to the time a bus is scheduled to depart its designated maintenance facility.

Renewal Term shall have the meaning assigned to it in Section 4 (Contract Term and Renewal) of the Contract.

Revenue Hours means the hours when a revenue vehicle is made available to the general public and there is an expectation of carrying fare paying passengers. Revenue Hours shall not include Deadhead, vehicle maintenance testing or charter service.

RFP means the Transit Operations and Maintenance RFP No. 21-083 and any addenda thereto.

Services shall have the meaning assigned to it in the Recitals of the Contract.

THE COUNTY-designated Representatives means the Person or Persons authorized by THE COUNTY to represent THE COUNTY in some or all dealings with the Contractor.

State means the State of Georgia.

Term shall have the meaning assigned to it in Section 4 (Contract Term and Renewal) of the Contract.

Trip means the complete route for a Revenue Vehicle from starting time to end time as indicated on the corresponding schedule.

Vehicle Revenue Hour means the scheduled hours of service as set forth in the current County schedules or any revisions thereto, plus or minus adjustments for schedule deviations, trippers or other service level changes as specifically authorized by THE COUNTY under this Contract.

Wherever a period of time is referred to in this Contract, it shall be deemed local Atlanta time.

EXHIBIT B

RFP

EXHIBIT C

CONTRACTOR'S PROPOSAL

EXHIBIT D

CONTRACTOR'S PRICE SCHEDULE

EXHIBIT E

MANDATORY FTA CLAUSES

1. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.
2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.
3. ACCESS TO RECORDS.
4. FEDERAL CHANGES.
5. CIVIL RIGHTS AND EQUAL OPPORTUNITY.
6. DISADVANTAGED BUSINESS ENTERPRISES (DBE).
7. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.
8. PROMPT PAYMENT OF SUBCONTRACTORS.
9. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS:
10. SUSPENSION, DEBARMENT, INELIGIBILITY AND VOLUNTARY EXCLUSION.
11. ENERGY CONSERVATION.
12. LOBBYING.
13. CERTIFICATION AND RESTRICTION ON LOBBYING
14. CLEAN AIR REQUIREMENTS.
15. CLEAN WATER REQUIREMENTS.
16. RECYCLED PRODUCTS.
17. FLY AMERICA.
18. COVENANT AGAINST CONTINGENT FEES.
19. NATIONAL ITS CONFORMANCE CLAUSE.
20. ADA ACCESS.
21. SAFE OPERATION OF MOTOR VEHICLES.
22. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (NON_ CONSTRUCTION EMPLOYEE PROTECTIONS)
23. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS.
24. CHARTER SERVICE OPERATIONS.
25. SCHOOL BUS OPERATIONS.
26. SUBSTANCE ABUSE REQUIREMENTS-DRUG USE AND TESTING.

MANDATORY FTA CLAUSES

1. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.

- 1.1. THE COUNTY and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to THE COUNTY, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.
- 1.2. Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

- 2.1. Contractor acknowledges that the provisions of the Project Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Project Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Project Fraud Civil Remedies Act of 1986 on Consultant to the extent the Federal Government deems appropriate.
- 2.2. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under THE COUNTY of 49 U.S.C. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(I) on Contractor, to the extent the Federal Government deems appropriate.
- 2.3. Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. ACCESS TO RECORDS.

- 3.1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-

agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

- 3.2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto
- 3.3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- 3.4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

4. FEDERAL CHANGES. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Contract between THE COUNTY and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contractor.

5. CIVIL RIGHTS AND EQUAL OPPORTUNITY.

THE COUNTY is an Equal Opportunity Employer. As such, THE COUNTY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, THE COUNTY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Contractor, Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- 5.1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 5.2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Agreement:

5.2.1. Race, Color, Religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. §

5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., and Executive Order 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

5.2.2. Age - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5.2.3. Disabilities - In accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5.3. Subcontracts. Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. DISADVANTAGED BUSINESS ENTERPRISES (DBE).

6.1. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. THE COUNTY’s goal for DBE participation in this federally funded Contract to be awarded during FY’21 is 6.7%.

6.2. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49

CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as THE COUNTY deems appropriate. Each subcontract Contractor signs with a subcontractor or purchase order with a vendor must include the assurance in this paragraph (see 49 C F R 26.13(b)).

- 6.3. Contractor will be required to report its DBE participation obtained through race-neutral means throughout the Term of Agreement.
- 6.4. Contractor is required to pay its subcontractor(s) and vendor(s) performing work related to this Agreement for satisfactory performance of that work no later than fifteen (15) calendar days after Contractor's receipt of payment for that work from THE COUNTY. In addition, Contractor may not hold retainage from its subcontractors or vendors.
- 6.5. The Contractor shall not terminate any DBE subcontractor(s) or vendor(s) without THE COUNTY's prior written consent. THE COUNTY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor or vendor of its intent to terminate and the reason for the request. The Contractor shall give the DBE firm five days to respond to the notice and advise of the reasons why it objects to the proposed termination.
- 6.6. When a DBE subcontractor or vendor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor or vendor to substitute for the original DBE and immediately notify THE COUNTY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement.
- 6.7. Should the Contractor fail to comply with the requirements of sub-Sections 6.5 and 6.6, THE COUNTY may withhold from the Contractor's next monthly payment the amount the Contractor paid the terminated DBE firm in the previous month and continue to do so each month until the Contractor comes into compliance.

7. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA)

TERMS. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any THE COUNTY requests which would cause THE COUNTY to be in violation of the FTA terms and conditions.

8. PROMPT PAYMENT OF SUBCONTRACTORS.

- 8.1. Consultant shall pay its subcontractors for satisfactory performance of their contracts no later than fifteen (15) calendar days from receipt of each payment received by Consultant from THE COUNTY.
- 8.2. Failure to comply with the terms and conditions of this Article shall constitute a breach of contract and further payments for any work performed may be withheld until such time as corrective action is taken. Consultant shall be responsible for any corrective action required by THE COUNTY at the time of final inspection. If Consultant fails to take corrective action, THE COUNTY reserves the right to terminate the contract.
- 8.3. Any delay or postponement of payment among Consultant and its subcontractors may take place only for good cause, with prior written approval from THE COUNTY.
- 8.4. All subcontract agreements between Consultant and subcontractors shall be in writing and shall contain all of the federal requirements and pertinent provisions of the prime contract.
- 8.5. Consultant is required to return any and all retainage payments to its subcontractors within thirty (30) calendar days after the subcontractor's work related to this Agreement is satisfactorily completed. THE COUNTY discourages Consultant from withholding retainage from its subcontractors.

9. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS:

- 9.1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- 9.2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

10. SUSPENSION, DEBARMENT, INELIGIBILITY AND VOLUNTARY EXCLUSION.

- 10.1. Contractor shall comply and comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension

(Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by THE COUNTY. If it is later determined by THE COUNTY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to THE COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10.2. Contractor is required to comply with 2 CFR Part 180 and 2 CFR Part 1200 and must include the requirement to comply with Subpart C of 2 CFR 180 as supplemented by 2 CFR Part 1200 in any lower tier covered transaction.

11. ENERGY CONSERVATION. Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

12. LOBBYING.

12.1. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, “New Restrictions on Lobbying” with their bid. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of

Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

13 CERTIFICATION AND RESITRCTION ON LOBBYING

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

Lobbying Restrictions

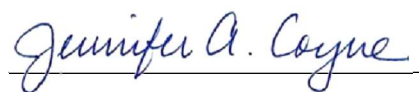
The undersigned certifies, to the best of his or her knowledge and belief, that:

13.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

13.2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

13.3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Signature of Contractor's Authorized Official

Jennifer A. Coyne, General Counsel _____ Name and Title of Contractor's
Authorized Official

_____ Date 07/27/2021

14. CLEAN AIR REQUIREMENTS. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Contractor agrees to report each violation to THE COUNTY and understands and agrees that THE COUNTY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

15. CLEAN WATER REQUIREMENTS. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor agrees to report each violation to THE COUNTY and understands and agrees that THE COUNTY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

16. RECYCLED PRODUCTS. The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource

Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

17. FLY AMERICA. Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 30110, which provide that recipients and subrecipients of Federal funds and their vendors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

18. COVENANT AGAINST CONTINGENT FEES. Contractor shall comply with all relevant requirements of all Federal, State, and local laws. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely

for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, THE COUNTY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

19. NATIONAL ITS CONFORMANCE CLAUSE. To the extent applicable, Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, “FTA National ITS Architecture Policy on Transit Projects” 66 FR 1455 et seq., January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.”

20. ADA ACCESS. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

21. SAFE OPERATION OF MOTOR VEHICLES.

21.1. **Seat Belt Use.** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “companyowned” and “company-leased” refer to vehicles owned or leased either by the Contractor or THE COUNTY.

21.2. **Distracted Driving.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**22. CONTRACT WORK HOURS AND SAFETY STANDARS ACT
(NON_CONSTRUCTION EMPLOYEE PROTECTIONS)**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts

Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

23. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS.

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

23.1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

23.2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

23.3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

24. CHARTER SERVICE OPERATIONS. Contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- 1) Federal transit laws, specifically 49 U.S.C. § 5323(d);
- 2) FTA regulations, “Charter Service,” 49 C.F.R. part 604;
- 3) Any other federal Charter Service regulations; or
- 4) Federal guidance, except as FTA determines otherwise in writing.

Contractor agrees that if it engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- 1) Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
- 2) Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
- 3) Any other appropriate remedy that may apply.

Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

25. SCHOOL BUS OPERATIONS. Contractor agrees to comply with 49 U.S.C. § 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- 1) Federal transit laws, specifically 49 U.S.C. § 5323(f);
- 2) FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;
- 3) Any other Federal School Bus regulations; or
- 4) Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

- 1) Bar the Contractor from receiving Federal assistance for public transportation; or
- 2) Require the Contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the Contractor may not use federally funded equipment, vehicles, or facilities.

Contractor shall include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

26. SUBSTANCE ABUSE REQUIREMENTS-DRUG USE AND TESTING. Contractor

agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Georgia, or THE COUNTY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. Contractor agrees further to certify annually its compliance with parts 655 before March 1st of each year and to submit the Management Information System (MIS) reports before March 1st of each year to Craig Southern, Director of Human Resources. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.