

**PROFESSIONAL SERVICES CONTRACT
FOR
SAFETY, SECURITY AND EMERGENCY MANAGEMENT CONSULTING**

THIS PROFESSIONAL SERVICES CONTRACT is made and entered into as of January 1, 2021 (the "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 (the "ATL"), the STATE ROAD AND TOLLWAY AUTHORITY, a body corporate and politic and an instrumentality and public corporation of the State of Georgia and _____, a _____ corporation, authorized to do business in the State of Georgia (the "Consultant"). ATL and SRTA may be referred to individually as "Authority" or collectively as "the Authorities" and ATL, SRTA and Consultant may be referred to individually, as "Party" or collectively, as "Parties."

WHEREAS, the Authorities desire to secure a qualified and experienced firm to perform professional services as more fully described in ATL Solicitation No. 21-089: RFP for Safety, Security and Emergency Management Consulting and any addenda thereto and any documents referenced therein (collectively, the "RFP"), and the Consultant's Proposal and any documents referenced therein; and

WHEREAS, Consultant has represented to the Authorities that it is experienced and qualified and willing to provide all of the expertise needed to successfully provide the work and services more fully described in the RFP (collectively, the "Services"); and

WHEREAS, ATL has the authority to make such contracts as the legitimate and necessary purposes of ATL require pursuant to O.C.G.A. § 50-39-3; and

WHEREAS, SRTA has the authority to make such contracts as the legitimate and necessary purposes of SRTA require pursuant to O.C.G.A. § 32-10-63(5); and

WHEREAS, the Authorities have relied upon such representations and selected the Consultant to furnish the Services; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt 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 this Contract.
2. **DEFINITIONS.** Certain capitalized terms used herein shall have the meanings assigned to them as set forth in **Exhibit A** to this Contract. Any other capitalized term not specifically defined in this Contract will have the same meanings assigned in the RFP to that term.
3. **INCLUSION AND PRIORITY OF DOCUMENTS.** The Scope of Services, which is incorporated herein by reference as **Exhibit B**, the RFP, which is incorporated herein by reference as **Exhibit C**, and the Consultant's Proposal (and any documents referenced therein) submitted in response to the RFP, which is incorporated herein by reference as **Exhibit D** (collectively, the "Consultant's Proposal"), are integral parts of the agreement between the Authorities and the Consultant. This Contract, including all Amendments, documents, and exhibits referenced in the Contract (collectively, the "Contract"), the RFP and the Consultant's Proposal shall be collectively referred to as the "Contract Documents."

In the event of a conflict or ambiguity among parts of the Contract Documents, the following order of precedence applies:

1. Any formally executed Amendments to the Contract,
2. The Contract,
3. The Scope of Services, and
4. The RFP, and
5. The Consultant'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 the Consultant's Proposal includes statement, 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 the Authorities than the other requirements of the other Contract Documents, as reasonably determined by the Authorities, then Consultant's obligations under the Contract Documents include compliance with all such statements, offers, terms, concepts and designs.

4. CONTRACT TERM AND RENEWAL. This Contract shall be effective upon the Effective Date and shall expire June 30, 2021, ending at 11:59 pm (the "Initial Term"). The Authorities may elect to renew this Contract on the same terms and conditions for up to two (2) renewal periods with a term of up to one (1) year each (each a "Renewal Term"). Renewal of this Contract shall be at the sole discretion of the Authorities. The Initial Term and any Renewal Term may be referred to collectively as the "Term." Any extension of the Term of the Contract must be in writing and signed by the Parties to the Contract.

5. CONSULTANT RESPONSIBILITIES.

5.1. General. In performing the Services, the Consultant shall use the industry standard degree of care and skill ordinarily exercised by skilled professionals in the field under similar conditions. The Services to be performed by the Consultant under this Contract shall encompass and include all detail work, services, materials, and equipment, supplies necessary to provide Services in accordance with the ordinary practices in the industry.

5.2. Personnel. The Consultant shall employ only persons qualified as applicable in the appropriate category of Services to be performed. The Consultant shall use the key personnel set forth in the Consultant's Proposal ("Key Personnel"), unless changes to the Consultant's staff are approved in writing by the Authority or Authorities, as applicable.

5.2.1. Right to Remove. The Authorities shall have the absolute right to require the Consultant to remove an employee from performing under this Contract based on cause or other reasonable standard. In the event of such removal, Consultant will replace the employee with the appropriate personnel within the time specified by Authority or Authorities, as applicable.

5.2.2. Consultant Project Manager. Consultant shall assign a Project Manager who shall interface with the Authority ("Consultant Project Manager"), and any other person or persons authorized by the Authorities to represent the Authorities in some or all dealings with the Consultant ("Authority-designated Representatives").

5.2.3. Key Personnel. A significant factor in the Authorities' decision to award this Contract to Consultant is the level of expertise, knowledge and experience possessed by employees of Consultant, particularly Key Personnel and Consultant's agreement to have employees possessing such expertise, knowledge and experience available at all times throughout the Initial Term and any Renewal Term, if applicable, to assist in the provision of the Services. Throughout the Initial Term and any Renewal Term, if applicable, Consultant shall employ individuals having significant training, expertise and experience in the areas or disciplines more particularly set forth in the Contract Documents, together with such other areas of expertise, knowledge and experience as may be designated by the Authorities from time to time during the Initial Term and any Renewal Term, if applicable. Consultant shall not substitute Key Personnel without the prior written approval of Authority or Authorities, as

applicable. Any desired substitution shall be noticed to the Authorities, accompanied by the names and references of Consultant's recommend substitute personnel. Notwithstanding any provision in the Contract Documents to the contrary, the Consultant's project manager proposed by Consultant, any other lead proposed by the Consultant, any other individual for whom a resume was included in Consultant's Proposal shall be considered Key Personnel.

- 5.3. Accuracy of Services.** The Consultant shall be responsible for the accuracy of the Services and shall promptly correct its errors and omissions without additional compensation from the Authorities. Acceptance of the Services by the Authorities will not relieve the Consultant of the responsibility for subsequent correction of errors, the clarification of any ambiguities, or for the costs associated with any additional work, which may include costs caused by negligent errors in, or negligent omissions from, the plans prepared by the Consultant.
- 5.4. Interpretation of Information.** At any time during the performance of any Services, the Consultant shall confer with the Authorities for the purpose of interpreting the information obtained and to correct any errors or omissions. These consultations, clarifications, or corrections shall be made without added compensation to the Consultant other than what has been provided for under the terms of this Contract. The Consultant shall give immediate attention to these changes so there will be minimum delay to others.
- 5.5. Safety.** The Consultant shall take all reasonable precautions in the performance of the Services and shall cause its employees, agents and sub-consultants to do the same. The Consultant alone shall be reasonable for the safety, efficiency, and adequacy of the Services, employees, agents and sub-consultants, and for any damage that may result from their actions or inactions.
- 6. PROJECT MANAGEMENT.** The Authorities shall identify a project manager ("Authority Project Manager") who shall act as and be the Authorities' representative between the Authorities and the Consultant.
- 7. SUBCONTRACTING AND ASSIGNMENT.**
- 7.1. Assignment.** Consultant 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 Authorities, which shall not be unreasonably withheld.
- 7.2. Subcontracting.** Nothing contained herein shall prevent Consultant from employing independent professional associates or subcontractors as Consultant may deem appropriate to assist in the performance of Services hereunder. However, Consultant shall not subcontract Services to subcontractors that are different from those subcontractors listed in the Consultant Proposal, without obtaining the Authorities' prior written approval, which approval is within the Authorities' sole discretion. The Authorities reserve the right to review all subcontracts prepared in connection with the Contract, and Consultant agrees that it shall submit to the Authorities any proposed subcontract documents together with subcontractors cost estimates for review and written concurrence of the Authorities no later than five (5) Business Days in advance of execution. Any contract between the Consultant and any subcontractors shall comply with all pertinent provisions to subcontractor's responsibilities in connection with the Services of this Contract. The Authorities' approval of any assignment, sublet, or transfer shall not release the Consultant of any obligation under this Contract or as otherwise required by Law. All subcontracts in the amount of \$10,000.00 or more shall include the provisions set forth in this Contract.

The Authorities shall have the right to require the Consultant to remove a subcontractor of Consultant from performing under this Contract, if in the Authority's or Authorities' sole opinion, such sub consultant (a) is not performing its portion of the Services satisfactorily, (b) is failing to cooperate as required in the Contract Documents, (c) is posing a security risk to any project or to Authority's or

Authorities' business, (d) is otherwise breaching a term of the Contract Documents that is applicable to that portion of the Services being performed by the subcontractor, or (e) presence on a project is not in the best interest of the Authority or Authorities. In the event of removal, Consultant will replace the subcontractor with a suitable replacement within the time specified by the Authority or Authorities, as applicable.

- 7.3. Consultant Remains Responsible.** If Consultant subcontracts any of the Services to be performed under this Contract, Consultant shall be as fully responsible to the Authorities for the acts, errors, or omissions of Consultant's subcontractor and of the persons employed by them as Consultant is for the acts and omissions of persons directly employed by Consultant. Consultant shall be obligated to assist the Authorities in the enforcement of any rights that the Authorities has against such subcontractor consultant. Notwithstanding any subcontract or agreement with any subcontractor, Consultant shall be fully responsible to the Authorities for all of the Services required pursuant to the Contract Documents. Notwithstanding any provision to the contrary, Consultant shall be responsible to the Authorities for all terms, conditions, liabilities, and responsibilities under the Contract Documents regardless of whether Consultant or its subcontractor, suppliers, independent consultants, agents or assigns perform any aspect of the Services.
- 7.4. Prompt Payments to Subcontractor.** Consultant represents and agrees that for the duration of any Term it shall make timely payments for Services properly performed to a subcontractor hereunder and Consultant shall indemnify and hold harmless the Authorities and the State for any liability for payment claimed by a subcontractor. All subcontract agreements between Consultant and subcontractor shall be in writing and shall contain all of the federal requirements and pertinent provisions of this Contract.
- 7.5. Failure to Comply.** Any assignments or subcontracts made in violation of **Sections 7.1 (Assignment)** and/or **7.2 (Subcontracting)** shall be null and void.

8. 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 venturer, or associate of the other Party. The employees, agents, partners or Consultants of one Party shall not be deemed or construed to be the employees, agents, partners or Consultants 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 Consultants. The Parties expressly understand and agree that Consultant is an independent Consultant of the Authorities in all manner and respect and that no 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. Consultant shall be solely responsible for all payments to its subcontractor, 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 Consultant's employees.

9. EMPLOYMENT OF AUTHORITY'S PERSONNEL. Consultant shall not employ any person or persons in the employ of the Authorities for any work required by the terms of this Contract without the written permission of the Authorities except as may otherwise be provided for herein.

10. PROCESS. The Authorities will order from the Consultant, all or a portion of the Services as such Services, in the Authorities' sole opinion, is needed. The expected Project deliverables are set forth in **Exhibit E (Schedule of Services)**. The final schedule for all Project deliverables shall be agreed upon by the Parties at the initial kick off meeting scheduled as the first Project deliverable pursuant to **Exhibit E**.

10.1. Project Schedule. The performance time of each Service shall be set in **Exhibit E (Schedule of Services)**. Any Services performed before or after the time set forth in **Exhibit E (Schedule of Services)** will be ineligible for payment. Unless an extension of time is granted by the applicable Authority pursuant to **Section 10.2 (Time Extensions)** of this Contract, Consultant will successfully, fully and entirely complete and otherwise perform all Services as required in the Contract Documents.

10.2. Time Extensions. The applicable Authority will only grant an extension of time if the Consultant is delayed in the progress of the Services by (i) any act or neglect of the applicable Authority, (ii) an event listed in **Section 28.3 (Time of the Essence; Force Majeure)**, or (iii) other governmental actions. If and when such event occurs, then the time of completion set forth shall be extended for such time equal to the time lost as a result of the delay. The Consultant expressly agrees that the Consultant's sole and exclusive remedy for such delay shall be an extension of time within which to perform the affected Services and that the Consultant shall not be entitled to any damages and shall make no demand for any damages. No such extension shall be made for delay occurring more than ten (10) Days before claim thereof is made in writing to the applicable Authority. In the case of a continuing cause of delay, only one claim is necessary, but no claim for a continuing delay shall be valid unless the Consultant, within ten (10) Days from the cessation of the delay, shall have given notice in writing to the applicable Authority as to the amount of additional time claimed.

In the event time for performance of a scheduled Service expires and the Consultant has not requested or if the applicable Authority has denied an extension of the completion date, Consultant must nevertheless continue Services until the same is complete. No payment shall be made for Services performed after the expiration of the Service completion date except where a time extension has been executed by the applicable Parties in accordance with this **Section**.

11. PAYMENT.

11.1. General.

11.1.1. For satisfactory performance of the Services, the Authorities hereby agree to compensate the Consultant for Services performed during the Initial Term in accordance with the prices set forth in **Exhibit F (Consultant Rates)** for each task set forth in **Exhibit B (Scope of Services)**. ATL shall only be responsible for compensation to the Consultant for Services performed for ATL. SRTA shall only be responsible for compensation to the Consultant for Services performed for SRTA.

11.1.2. During the Renewal Term(s), if applicable, the applicable Authority shall compensate Consultant for satisfactory performance of the Services performed under **Exhibit B (Scope of Services)**, as may be amended, in accordance with the hourly rate(s) set forth in **Exhibit F (Consultant Rates)**.

11.1.3. The applicable Authority will also reimburse the Consultant as set forth in **Section 11.15 (Expenses)** for reasonable, actual and documented costs of necessary expenses associated with the performance of the Services provided such costs are preapproved in writing by the applicable Authority.

11.2. Maximum Not To Exceed. The maximum not to exceed amount for all Services performed under this Contract for ATL during the Initial Term is \$ _____. The maximum not to exceed amount for all Services performed under this Contract for SRTA during the Initial Term is \$ _____.

11.3. Trust Funds. All payments made by the Authorities to Consultant for the Services under the Contract Documents shall be held in trust by the Consultant for the purpose of paying its employees, agents, assigns, subcontractors and suppliers who provided any part of the Services.

11.4. Overpayment. In the event an overpayment is made to Consultant under this Contract, Consultant shall immediately refund to the applicable Authority the full amount of any such erroneous payment or overpayment following Consultant's written notice of such erroneous payment or overpayment, as issued by the applicable Authority. If Consultant fails to refund the erroneous payment or overpayment

within a thirty (30) Day period, the applicable Authority shall be entitled to interest at one percent per month on the amount not repaid from the date of overpayment.

11.5. Reduction of Payment for Non-Conforming Services. If any defined action, duty or service or other item of Services required by the Contract Documents is not performed by the Consultant in accordance with the requirements of the Contract Documents, the value of such action, duty or service or other item of Services will be determined by the applicable Authority 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 Consultant will be notified and given the opportunity to correct any deficiencies within a time certain. Payment (for the non-conforming Services) will be withheld by the applicable Authority from any invoice until such time as the Services is corrected in accordance with the Contract Documents.

11.6. Withholding Payments. The Authorities reserves the right to withhold payment or payments in whole or in part, and to continue to withhold any such payments for Services not completed or not completed in accordance with the Contract Documents. The Authorities may withhold all or part of any amounts due Consultant to protect the Authorities from a loss, including but not limited to, losses caused by the following: (a) failure or alleged failure of Consultant to make proper payments to its subcontractors for Services; (b) failure of Consultant to carry out/or remedy the Services in accordance with the Contract; or (c) Consultant's breach of warranties.

Any and all such payment previously withheld shall be released and paid to Consultant promptly when the Services is subsequently performed in accordance with the Contract Documents.

11.7. Payment not Acceptance. Payment or use of any Services or portions thereof by the Authorities shall not constitute an acceptance of any Services not performed in accordance with the Contract Documents.

11.8. Net 30 Days. Provided all the conditions in this **Section 11** have been met to the applicable Authorities satisfaction, and Consultant is not otherwise in breach of this Contract, the Authorities agrees to pay Consultant in accordance with the Authorities' normal processes and procedures for all undisputed amounts within thirty (30) Days of the later of a review, if any, undertaken by the Authorities pursuant to **Section 16.1 (Review of Services)** or the Authorities' receipt of a valid invoice. If the Authorities object to any invoice submitted by Consultant, the Authorities shall so advise Consultant in writing giving reasons therefor within fourteen (14) Business Days of receipt of such invoice. If any invoice submitted by Consultant is disputed by the Authorities, only that portion so disputed may be withheld from payment.

11.9. Invoicing. The Consultant shall deliver to the Authorities an invoice on a monthly basis, as applicable, by the tenth (10) Day of the month following the month in which Services was performed. The ATL invoice must only include Services performed on behalf of ATL and the SRTA invoice must only include Services performed on behalf of SRTA. Each invoice shall only include a request for payment for a deliverable or other item of the Services that was completed and accepted as those requirements are set forth in the Contract Documents for such deliverable or other item of Services, the previous month. The Consultant shall submit separate invoices as each Service is completed. The Consultant may submit invoices for partial payment of Services in accordance with the requirements of **Exhibit F (Consultant Rates)**. The Consultant agrees to provide an accompanying monthly Project progress report in a format acceptable to the Authorities which will outline in written and, if requested, graphic form the various phases and the order of performance of the Services in sufficient detail so that the progress of the Services can easily be evaluated. Partial payments to the Consultant shall correspond to the progress of Services achieved. The Authorities will be entitled at all times to be advised at its request as to the status of Services being done by the Consultant and the details thereof.

Consultant shall also provide the following with each invoice: all other documents, records, correspondence and deliverables which Consultant and other persons performing the Services are required to provide the Authorities under the Contract.

All invoices to the ATL shall reference ATL Contract No. 21-089. The applicable invoice addresses for ATL is as follows:

ATLANTA-REGION TRANSIT LINK AUTHORITY

Attn: Accounts Payable
245 Peachtree Center Avenue, NE, Suite 2200
Atlanta, GA 30303-1426
Email: einvoices@atltransit.ga.gov

All invoices to SRTA shall reference ATL Contract No. 21-089. The applicable invoice addresses for SRTA is as follows:

STATE ROAD AND TOLLWAY AUTHORITY

Attn: Accounts Payable
245 Peachtree Center Avenue, NE, Suite 2200
Atlanta, GA 30303-1426
Email: einvoices@srta.ga.gov

- 11.10. End of Fiscal Year.** No later than the second Friday of July of each year, Consultant must submit to the Authorities outstanding invoices or progress reports for Services successfully completed or supplied during the period of July 1st – June 30th of that year. Progress reports shall include a description of the Services that has been successfully completed or supplied and an estimated cost for the Services. Failure to adhere to this requirement may result in non-payment for the Services. The Authorities reserve their right to dispute part or all of an invoice and to withhold payment for any Services that was not successfully completed or supplied.
- 11.11. Late Fees.** The Authorities shall not be liable for late fees, collection fees, attorney’s fees, interest, or other fees incurred by the Consultant as a result of non-payment or a delay in payment by the Authorities.
- 11.12. Right of Set Off.** The Authorities may retain or set off any amount owed to it by Consultant.
- 11.13. Full Compensation.** All Services performed by the Consultant in meeting the requirements of the Contract Documents shall be paid as set forth herein, which shall constitute full compensation for the Services, 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.
- 11.14. Overtime.** Unless otherwise authorized in writing by the Authorities, no premium pay or overtime will be considered compensable and will not be paid by the Authorities.

11.15. Expenses. Consultant shall include in each Invoice and the Authorities shall reimburse Consultant for reasonable, actual and documented out-of-pocket expenses that are pre-approved in writing by the Authorities and incurred in connection with the performance of the Services, including air fare, meals, ground transportation, parking), communication, reproduction and other such incidental and actual costs which are reasonable and customary pursuant to industry standards for such expenses incurred during the time period covered by such Invoice. Consultant will be reimbursed for travel necessary to perform the Services requested in this Contract in accordance with the State and the Authorities travel policies, procedures which may be found at <https://sao.georgia.gov/state-travel-policy> and prevailing per diem rates which may be found at <http://www.gsa.gov/portal/content/104877> and are incorporated herein by reference and made a part of this Contract. Consultant shall provide receipts or other proof of actual cost incurred prior to receiving reimbursement. Notwithstanding the above, the Authorities will not reimburse Consultant for time spent or costs incurred traveling to and from the Authorities' office and Consultant's Georgia office(s). The Authorities will not withhold any taxes on amounts paid to Consultant, and all federal, state and local taxes will be Consultant's responsibility to pay. The Authorities will not reimburse Consultant for any such taxes.

11.16. DBE Compliance. As of the Effective Date of this Contract, the Authorities have not established contract goals for DBE participation in this Contract. Consultant is still encouraged to employ reasonable means to obtain DBE participation and to retain records in accordance with these DBE specifications, if applicable.

Where Consultant has indicated its intent to perform some or part of the Services as a Disadvantaged Business Enterprise "DBE" Subcontractor in the Consultant Proposal, Consultant shall be required to submit to the Authorities a completed notice of intent to perform as a DBE subcontractor, as set forth in **Exhibit H - ATL Notice of Intent to Perform as Subcontractor Form**. Thereafter, for any invoice submitted to the Authorities, Consultant shall comply with and complete the necessary DBE Subcontractor Payment Report, where applicable, and as set forth in **Exhibit I (ATL DBE Subcontractor Payment Report)**. Upon conclusion of the Contract, Consultant shall submit the DBE/SBE contract close-out form and any applicable documentation, as set forth more fully in **Exhibit J - DBE/SBE Utilization Contract Close-Out Report**.

12. INDEMNIFICATION.

12.1. General Liability. The Consultant shall be responsible to the Authorities for those costs, expenses, liabilities, allegations, claims, bodily injuries, including death, or damage to real or personal property, arising out of or resulting from any wrongful and/or negligent act or omission, the breach of contract, the failure to perform, or other default regarding the Services by the Consultant, its employees, agents, or any of its subcontractors or others working at the direction of the Consultant or on its behalf.

12.2. General Indemnification. Consultant hereby agrees to indemnify and hold harmless the Authorities, the State of Georgia and its departments, other authorities, agencies 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, liabilities, losses, costs or expenses, including reasonable attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the negligent performance of this Contract or any negligent act, error or omission on the part of the Consultant, its agents, employees, subcontractors or others working at the direction of Consultant or on its behalf, or due to any breach of this Contract by the Consultant, or due to the application or violation of any pertinent Federal, State or local law, rule or regulation by the Consultant or its sub consultants.

This indemnification extends to the successors and assigns of the Consultant. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by law,

the bankruptcy of the Consultant. If and to the extent such damage or loss (including costs and expenses) 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 of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS") the Consultant agrees to reimburse the Funds for such monies paid out by the Funds.

12.2.1. DOAS. Risk Management will endeavor to notify affected insurers of claims made against the State that fall within this indemnity. In the event of litigation, the Authorities will request the Attorney General to endeavor to keep the Consultant and its general liability insurer as named on the insurance certificate informed regarding the claims and settlement.

12.3. Intellectual Property Indemnification. Contractor represents and warrants that all Services furnished by Contractor and that all Services, as a whole and each of its components shall not infringe any third party copyright, trademark, trade secret or other intellectual property right. In case the Services or any component of the Services is held to constitute an infringement of the 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 Authorities, 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 Authorities' 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 the Authorities, the Authorities may direct the Contractor to select another option or risk default. Nothing in this provision shall be deemed to limit or condition the Authorities' rights otherwise set forth in the Contract, including termination. Contractor shall indemnify and hold harmless the Authorities and the State from and against all suits or claims or loss for infringement of any intellectual property rights resulting from the use by the Authorities or any of its employees or agents of Services performed pursuant to the Contract Documents. This intellectual property infringement provision shall not apply to any infringement or alleged infringement which is the result of or arises out of the Authorities, its employees or agents modifying or altering any part or component of the Services, except as consented to by Contractor.

12.4. Disclaimer of Consequential Damages. Notwithstanding any provision to the contrary, in no event shall any Party be liable to another Party for any incidental, consequential, special, exemplary or indirect damages, lost business profits or lost data arising out of or in any way related to the Contract Documents.

12.5. Obligations Not Mutually Exclusive. The Consultant's obligations under this **Section 12** are in addition to Consultant's obligations under **Section 13 (Insurance)**.

13. INSURANCE.

13.1. Insurance Certificates. The Consultant shall procure the insurance coverages identified below at the Consultant's expense and shall furnish the Authorities an insurance certificate listing the Authorities as the certificate holder and an endorsement listing the Authorities as additional insureds for the acts or omissions of Consultant or the Consultant Parties in relation to the commercial general liability and business automobile liability insurance. Such additional insured requirement may be met on a blanket additional insured basis. Evidence of insurance coverages shall be provided on the standard ACORD form acceptable to the Authorities and the Georgia Office of the Insurance Commissioner. Should any of the policies described herein be cancelled before the expiration date thereof or revised in a material way, Consultant shall notify the Authorities within seven (7) Days of Consultant's notice of such

cancellation or change. The insurance certificate must provide the (a) name and address of authorized agent; (b) name and address of insured; (c) name of insurance company(ies); (d) description of policies; (e) policy number(s); (f) policy period(s); (g) limits of liability; (h) name and address of the Authorities as certificate holder; (i) Project Name and Number; (j) signature of authorized agent; and (k) telephone number of authorized agent.

13.2. 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 of Georgia 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:

13.2.1. Consultant shall provide at least thirty (30) Days prior written notice of cancellation or nonrenewal to the Authorities. Such notice shall be valid only as to the Project as shall have been designated by Project Number and Name in said notice. Consultant shall provide written notice of any material changes to the policy to the Authorities within three (3) Business Days of Consultant's receipt of notice of any changes or proposed changes from the insurance company;

13.2.2. 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");

13.2.3. each Insurer is hereby notified that the statutory requirement that the Attorney General of Georgia shall represent and defend the Indemnities 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 Consultant 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 Attorney General and such counsel. See O.C.G.A. § 45-15-12;

13.2.4. all deductibles shall be paid for by the Consultant.

13.3. Required Insurance Coverages. The Consultant also agrees to purchase insurance and have the authorized agent state on the insurance certificate that the Consultant 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:

13.3.1. **Workers' Compensation Insurance.** The Consultant agrees to provide at a minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. 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 Consultant qualifies to pay its own workers' compensation claims. The Consultant shall require all Subconsultants 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 Consultant in the following language:

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

13.3.2. **Commercial General Liability Insurance.** The Consultant shall provide Commercial General Liability Insurance (2001 ISO Occurrence Form or equivalent) of at least \$1,000,000.00 per Occurrence and \$2,000,000.00 General Aggregate.

13.3.3. **Commercial Business Automobile Liability Insurance.** If the Consultant will use or provide for the use of motor vehicles in performing the Services as set forth in the Contract, then Consultant 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 \$1,000,000 Combined Single Limits for each occurrence.

13.3.4. **Professional Liability (Errors and Omissions) Insurance.** Limits shall not be less than the following:

For Professionals – \$1,000,000 per claim and \$1,000,000 in aggregate coverage;

For Other Consultants – \$1,000,000 per claim and \$1,000,000 in aggregate coverage.

The Consultant shall maintain professional liability insurance that shall be either a practice policy or project-specific coverage. Professional liability insurance shall contain prior acts coverage for services performed by the Consultant for this Project. If project-specific coverage is used, these requirements shall be continued in effect for two years following issuance of the Certificate of Final Completion for the Project.

13.3.5. **Commercial Umbrella Liability Insurance.** The Consultant shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employers' Liability to satisfy the minimum limits set forth herein. The umbrella coverage shall follow form with the Umbrella limits required as follows:

\$2,000,000 per Occurrence/\$2,000,000 Aggregate

13.3.6. **Disposition of Insurance Documents.** One original certificate of insurance with all endorsements attached must be deposited with the Authorities for each insurance policy required.

14. CONSULTANT REPRESENTATIONS. The Consultant represents and warrants to the Authorities and agrees that throughout the Term that:

14.1. Licenses. The Consultant has and will maintain and keep in full force and effect during the term of the Contract all required licenses, certifications, and permits necessary to perform all or part of the Services; and

14.2. Organization. The Consultant is authorized to do business in the State of Georgia;

14.3. Authorization by Consultant. The Consultant has authorized the execution, delivery, and performance of this Contract;

14.4. Authorization of Signer. The person signing this Contract has been duly authorized by Consultant to execute and deliver same;

14.5. Valid Contract. This Contract is valid, enforceable, and legally binding obligation of the Consultant;

14.6. Cooperation. Consultant shall fully cooperate with the Authorities, the Authority-designated Representative, the Authorities' other consultants and vendors, and any other governing authority, in furnishing all the Services required by the Contract Documents.

14.7. Services/Labor. All deliverables, documentation, Services, services and labor shall (a) conform to the performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the Contract Documents, and (b) be performed per mutually agreed schedules, and in a workmanlike manner, and in accordance with the standard of care and skill exercised by other providers of similar labor and services under similar circumstances at the time the labor and services are provided.

14.8. 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. Consultant represents that Consultant, its agents, employees, subcontractors and assigns will neither violate nor in any way infringe upon the Intellectual Property rights of the Authorities or of any other third party.

15. COOPERATION. The Authorities shall be entitled to full and prompt cooperation of the Consultant in all aspects of the Services. Consultant shall also fully and promptly cooperate with the Authorities' consultants, vendors, and other consultants and other governmental entities, all as directed by the Authorities. Such cooperation shall include attendance at meetings, discussions, and hearings, as may be requested by the Authorities, furnishing plans and other data produced in the course of Services for the Authorities projects, as may be requested from time to time by the Authorities to effect such cooperation, and compliance will all directives issued by the Authorities. In the event the Consultant deems that any other of the Authorities' consultants/vendors or other third parties is delaying the Services or otherwise interfering with the Services, Consultant shall immediately notify the Authorities in writing of this matter, including a detailed explanation of such delay so that the Authorities may investigate the issue and assist with a resolution. Consultant's failure to furnish a detailed written notification within seven (7) Business Days after any consultant, vendor, and/or other third party first failed to cooperate with Consultant or otherwise improperly performed their work, shall result in the Authorities' denial of any future claim by Consultant that such third party failed to properly perform their work or failed to cooperate with Consultant and Consultant shall be deemed to have waived such claim and Consultant shall be held to any applicable requirement under the Contract Documents that Consultant alleges is affected thereby.

16. REVIEW/AUDITS.

16.1. Review of Services. The Authorities and their Authority-designated Representatives, may at all reasonable times have access to review and inspect the Consultant's activities and data collected under the terms of the Contract Documents. All books, documents, plans, papers, records, reports, drawings, studies, specifications, estimates, maps and computations, prepared by or for the Consultant under the terms of the Contract Documents, shall be available to the Authorities and their Authority-designated Representatives for inspection and review at all reasonable times in the Authorities' offices. Acceptance of any Services by the Authorities shall not relieve the Consultant of its obligation to correct, at its expense, any of its errors in the Services.

16.2. Records Retention. The Consultant and any sub consultants shall keep available for inspection and maintain all books, documents, papers, accounting records, and evidence pertaining to costs incurred as a result of the performance of Services under the Contract Documents and make available at all reasonable times to the Authorities and the State, for a period of five (5) years after receipt of final payment. Notwithstanding the preceding sentence, if any litigation, claim, or audit arising out of, in connection with, or related to this Contract is initiated before the expiration of the five-year period, the cost records and accounts shall be retained until such litigation, claim or audit involving the records is completed. Copies of these documents and records will be furnished to the Authorities upon request and may be audited by the Authority-designated Representatives.

16.3. Audit. The Authorities or Authority-designated Representatives may audit Consultant's books and records and perform any other review necessary in order to determine the accuracy of any Consultant invoice upon reasonable prior notice and during business hours. In the event such an audit reveals that the Authorities was overcharged by five (5%) percent or more during the time period covered by the audit, then Consultant shall pay for all costs and expenses incurred by the Authorities or Authority-designated Representatives in performing such audit.

17. OWNERSHIP OF DOCUMENTS. The Consultant agrees that all reports, drawings, studies, specifications, estimates, maps, computations, computer files and other data, prepared pursuant to the Contract Documents shall be delivered to, become and remain in the property of the Authorities upon the earlier of termination or completion of the Services. The Authorities shall have the right to use same without restriction or limitation and without compensation to the Consultant other than that provided for in this Contract. Any use of these documents by the Authorities on any project other than the Project which was the subject of the applicable Service under which the documents were prepared shall be done without liability by the Consultant. Notwithstanding the above, if any of the Services are based on Intellectual Property owned by Consultant prior to the Effective Date ("Consultant Intellectual Property"), then all such reports, drawings, studies, specifications, survey notes, estimates, maps, computations, computer files and other data, prepared pursuant to the Contract Documents shall be delivered to, become and remain in the property of the Authorities with the exception of such Consultant Intellectual Property, for which Consultant hereby grants the Authorities an irrevocable, non exclusive, non transferable and royalty free license to use such Consultant Intellectual Property. Consultant shall not publish or make public any of the Services or by-products therefore unless required by law or authorized in writing by the Executive Director of the Authorities. In such case Consultant shall notify the Authorities as far in advance as possible to allow the Authorities, if it deems appropriate, to seek legal redress to prevent such publication.

18. INTELLECTUAL PROPERTY.

18.1. Work Made for Hire. To the extent possible, any papers, interim reports, forms, and other material which are a part of the Services specifically developed and created by Consultant pursuant to the Contract Documents shall be deemed a "work made for hire" for the Authorities, with the Authorities being deemed the author thereof with all rights, title and interest in all such Services and other work product owned by the Authorities (collectively, "Work Product"). In the event that any such Work Product is deemed not to be a work made for hire for the Authorities, then with the exception of any pre-existing Intellectual Property rights owned by Consultant that were used in performing the Services, Consultant hereby irrevocably assigns to the Authorities all right, title and interest in all such work including, without limitation, all Intellectual Property rights with respect thereto, and further agrees to execute and deliver such other and further assignments, certificates of originality and other documents and instruments as reasonably requested by the Authorities in order for the Authorities to evidence and perfect its ownership of all rights with respect thereto. Consultant acknowledges and agrees that the provisions of this Section apply regardless of any disputes, payment issues or other claims that may exist between the Parties, and that the Authorities' ownership of all rights with respect to such Work Product is unconditional. Such Work Product shall include any and all modifications, improvements, adaptations, revisions, updates, releases, new versions, derivative works, and documentation (including any specifications, copies, notes, summaries or analyses) comprising, based on, derived from, or related to any work made for hire, including any of the foregoing that is conceived, discovered, invented, created, developed or made by Consultant or its agents, employees, sub consultants or suppliers, or any other entity or person with whom Consultant entered into an agreement to perform any portion of the Services required of Consultant under the Contract Documents (collectively, "Consultant Parties"). None of the Consultant Parties shall have any proprietary interest in such Work Product. The Consultant Parties shall not assert any ownership interest or conditions to executing assignments and other documents to evidence and perfect the Authorities' ownership of all rights in and to same, and any claims that the Consultant Parties may have against the Authorities

shall exclude claims challenging the Authorities' ownership of same. In the event this Contract is terminated, all Work Product whether completed or not shall be delivered to the Authorities within ten (10) Days from the date of termination. To the extent any Consultant Intellectual Property is incorporated into any Services, then Consultant agrees to and does hereby grant to the Authorities and to the State an irrevocable, non exclusive, non transferable and royalty free license to use such Intellectual Property.

18.2. Ownership of Data/Security. All data, records and operations history information in any way relating to this Contract, the Authorities, its customers, shall remain the property of the Authorities at all times during the Contract and after Contract termination for whatever reason.

19. TERMINATION.

19.1. Termination for Cause. Upon an Event of Default as defined in **Section 23.1 (Event of Default)**, the Authorities may, in their sole discretion, terminate this Contract, in whole or in part. Termination shall take effect on the date set forth in the Authorities' notice to Consultant, which shall be no less than fifteen (15) Days after the date of such notice, provided, however, that Consultant shall have an opportunity to cure from receipt of such notice for any such alleged Event of Default, or to submit a plan for cure acceptable to the Authorities, except in the case of financial improprieties, fraud or other criminal activity on Consultant's part in which case, termination shall be effective immediately upon notification. Upon such termination, the Authorities will have the right to appropriate or use any or all Services (whether or not complete) as the Authorities determine. Upon such termination the Authorities shall not be required to pay Consultant 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 aggregate of the Authorities' expenses incurred or anticipated to be incurred as a result of Consultant's breach are less than the Remaining Payment, the Authorities shall remit such differential to the Consultant. In the event the Authorities' expenses incurred or anticipated to be incurred as a result of Consultant's breach exceed the Remaining Payment, including any costs of the Authorities incurred by any delay (or from any reason attributable to the delay) then Consultant shall within five (5) Days written notice from the Authorities, make payment of the differential to the Authorities. In addition to the rights and remedies in this **Section**, the Authorities shall have all other rights and remedies against Consultant which are available at law or in equity. The Consultant acknowledges that the remedy set forth in this **Section** is the Consultant's sole and exclusive remedy against the Authorities for termination for cause and Consultant hereby waives all other rights and remedies it may have against the Authorities, whether at law or in equity.

19.2. Termination for Convenience. The Authorities may terminate this Contract, in whole or in part, for convenience and in writing at least five (5) business days before the effective date of such termination. Consultant will be paid for all Services performed in accordance with the terms and conditions of this Contract prior to termination, less amounts due the Authorities pursuant to the Contract Documents. The Authorities will compensate Consultant for partially completed tasks based on a signed statement of completion to be submitted by the Consultant which shall itemize each task element and state in detail the Services that have been completed and what work remains to be done. All Services performed shall remain the property of the Authorities. The Authorities shall not be responsible to Consultant for, and Consultant hereby waives any right to any other costs, fees and expenses of any nature whatsoever including, but not limited to, administrative fees, legal fees, costs to set up or shut down operations, salary, overhead, or any other cost or expense, whether direct or indirect, whether foreseen or unforeseen. The Consultant acknowledges that the remedy set forth in this **Section** is the Consultant's sole and exclusive remedy against the Authorities for termination for convenience and Consultant hereby waives all other rights and remedies it may have against the Authorities, whether at law or in equity.

19.3. Termination in General. Under no circumstances shall a proper termination by the Authorities (with or without cause) constitute a default by the Authorities. In the event of a termination for convenience or for cause the Authorities shall notify Consultant of such action and with instructions as to the effective date of termination or suspension, in accordance with the time frames set forth in this **Section**. In the event of a termination for convenience or for cause, Consultant shall comply with the terms and conditions of **Section 24.2 (Transition)**. Consultant shall not be paid for, and Consultant hereby waives any claim to special, indirect, consequential or undocumented expenses, lost profit, overhead or any other type of payment (except payment for Services actually performed) regardless of the reason for termination. Consultant shall not be liable for any errors or omissions contained in deliverables which are incomplete as a result of suspension or termination where Consultant is deprived of the opportunity to complete Consultant's Services.

19.4. Compliance with Contract. Consultant shall comply with all of the terms and conditions of the Contract Documents including, but not limited to, the provisions of **Section 24 (Cooperation, Transition of Services, and End of Contract Responsibilities)**, in the event the Authorities exercises any of its rights under this **Section 19**.

20. CHANGES IN CONSULTANT ORGANIZATION. The Consultant shall notify the Authorities in writing within five (5) Business Days upon any action that changes Consultant's corporate structure, including company mergers, company acquisitions, changes in corporate names, changes in corporate officers, changes in corporate governing structure, and similar relevant information, which may affect the performance of Services under this Contract. Such notification shall identify how the change in corporate business structure will impact the Authorities, including payments to the Consultant, and Consultant shall identify how these impacts to the Authorities will be mitigated. Consultant shall immediately notify the Authorities of any material adverse change since the Effective Date in Consultant's financial condition, business, affairs or operations, or of the existence of any material impairment of rights or ability of Consultant to carry on as its business and operations as are currently conducted.

21. CONFIDENTIALITY. Consultant acknowledges that in order to perform the Services called for in this Contract, it will be necessary for the Authorities to disclose to Consultant certain trade secrets, and confidential information concerning the Services, the Authorities' respective customers, operations, projects, procurements and any confidential and/or proprietary information of any of the Authorities' vendors (collectively, "Confidential Information"). Consultant agrees that it shall use its best efforts to keep the Confidential Information strictly confidential and 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 Consultant to perform the Services, and who have executed a nondisclosure agreement with either Consultant or the Authorities consistent with the provisions hereof.

21.1. No Obligation of Confidentiality. Consultant shall not have any obligation of confidentiality with respect to any Confidential Information which: (i) can be conclusively demonstrated by the Consultant to have been in its possession or known by it prior to receipt of the Confidential Information under this Contract; (ii) is disclosed by the Consultant with the written approval of the Authorities; (iii) is developed independently by the Consultant without reference in any way to the Confidential Information provided under this Contract; or (iv) is obligated to be disclosed by order of a court of competent jurisdiction or is subject to disclosure under the Georgia Open Records Act.

21.2. Use of Confidential Information. Consultant and its representatives 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 the Authorities or their Customers.

21.3. Return of Confidential Information. The Consultant shall return to the Authorities any Confidential Information immediately on request but no later than upon the termination for whatever reason of this Contract.

22. DISPUTE RESOLUTION. In the event of any dispute whatsoever arising out of or relating to the Contract Documents, the 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 Authority Project Manager and the Consultant Project Manager, as applicable. Within five (5) Days after the receipt of the notice by the receiving party, Authority Project Manager and the Consultant Project Manager shall meet in the Authorities' offices to attempt to resolve the dispute. If the Authority Project Manager and the Consultant Project Manager cannot resolve the dispute or otherwise agree to extend the time within which to attempt to resolve the dispute then, within five (5) Days after the date of written notice by either individual to the Executive Director of the Authorities and Consultant's Managing Principal, the Executive Director of the Authorities and Consultant's Managing Principal shall meet in the Authorities offices to attempt to resolve the dispute. If the Executive Director of the Authorities and Consultant's Managing Principal cannot resolve the dispute or otherwise agree to extend the time within which to attempt to resolve the dispute, then either Party may pursue those remedies only as allowed under this Contract.

23. EVENT OF DEFAULT; DAMAGES/REMEDIES.

23.1. Event of Default. The following shall constitute an Event of Default on the part of the Consultant:

- 23.1.1. The Consultant withheld, disrupted or delayed Services due to non-payment by the Authorities, if such withholding of payment is allowed under **Section 11 (Payment)**;
- 23.1.2. The Consultant has failed to deliver the Services or a component thereof on a timely basis, except to the extent of an excusable delay in accordance with **Section 10.2 (Time Extensions)** and the continuance thereof for a period of five (5) Business Days after notice is given to the Consultant by the Authorities;
- 23.1.3. The performance of the Consultant is not satisfactory, and the continuance thereof for a period of ten (10) Days after notice is given to the Consultant by the Authorities;
- 23.1.4. The performance of the Consultant is not completed in accordance with the terms and conditions of this Contract;
- 23.1.5. The Consultant becomes insolvent (other than pursuant to a case, proceeding, or other action pursuant to subparagraph (a)(xii)), or has assigned the proceeds of the Contract for the benefit of the Consultant's creditors (except any assignment of proceeds as collateral for any loan), or the Consultant has taken advantage of any insolvency statute or debtor/creditor law or the Consultant's property or affairs have voluntarily been put in the hands of a receiver; or any case, proceeding or other action against the Consultant is 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, which case, proceeding or other action remains undismitted, undischarged or unbonded for a period of thirty (30) Days;
- 23.1.6. The Consultant failed to provide "adequate assurances" within five (5) Days of the Authorities' notice, when, in the opinion of the Authorities, reasonable grounds for uncertainty exist with respect to the Consultant's ability to perform any of its obligations under this Contract;
- 23.1.7. The suspension or revocation of any license, permit, or registration necessary for the performance of the Consultant's obligations under this Contract;

- 23.1.8. The Consultant suspended or failed to proceed with any part of the Services;
- 23.1.9. The default in the performance or observance of any of the Consultant's other obligations under the Contract Documents.

23.2. Damages/Remedies. Upon the occurrence of an Event of Default, the Authorities 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:

- 23.2.1. Withhold any money then due and/or thereafter due to Consultant;
- 23.2.2. Perform or cause to be performed for the account of Consultant any contractual obligation, the performance of which the Consultant is in default, or make any payment for which the Consultant is in default. The Consultant shall pay to the Authorities upon demand any amount paid or incurred by the Authorities in the performance of such obligation. Any amounts which have been paid or incurred by reason of failure of the Consultant to comply with any obligation or provision of this Contract shall bear interest at the Default Rate, which shall be defined as the Prime Rate plus five (5) percent, but in no case higher than the highest rate permitted by law, from the date of payment by the Authorities until paid by the Consultant; and
- 23.2.3. Obtain the Services, or a portion thereof, from a third party under substantially similar terms of this Contract, and recover from Consultant all additional costs and expenses paid or incurred by the Authorities as a result of the Event of Default, plus all additional costs paid or incurred by the Authorities to obtain the replacement Services as set forth in this **Section 23.2.**

24. COOPERATION, TRANSITION OF SERVICES, AND END OF CONTRACT RESPONSIBILITIES.

- 24.1. Cooperation.** In the event that the Authorities enters into any agreement at any time with any other consultant(s) for work related to the Services, Consultant agrees to cooperate fully with such other consultant(s) in order to facilitate the performance of the Services and/or provision of work by such other consultant(s) and to refrain from any activity which would interfere with performance of the Services and/or provision of work by such other consultant(s).
- 24.2. Transition.** Upon expiration or earlier termination of this Contract, Consultant shall accomplish a complete transition of the Services from Consultant to the Authorities, to the Authorities-designated Representative or to any replacement provider designated by the Authorities, without any interruption of, or adverse impact on the Services any component thereof or any other Services provided by third parties. Consultant shall cooperate fully with the Authorities, Authorities-designated Representative, or such replacement provider and promptly take all steps required to assist in effecting a complete transition. All Services related to such transition shall be performed at no additional cost beyond what would be paid for the Services hereunder and any other work for which there are no labor or equipment rates set forth in **Exhibit F (Consultant Rates)** shall be set forth in a writing signed by both Parties.
- 24.3. End of Contract.** The Consultant shall perform the end of Contract responsibilities as reasonably specified by the Authorities upon the expiration or earlier termination of this Contract.
- 24.4. Failure to Comply.** The Parties acknowledge and understand that Consultant's failure to comply with the terms and conditions as stated hereinabove shall adversely affect the Authorities and result in monetary loss to the Authorities. The Authorities shall assess, audit, and certify to the Consultant the Authorities' monetary losses resulting from the Consultant's failure to comply with the provisions of this **Section 24.**

25. CONFLICTS OF INTEREST. The Consultant represents and warrants that it, its principals, its employees, and all others in close association or otherwise affiliated with it, have no conflict of interest or of time, directly or indirectly, that would prevent timely performance of the Services in a manner that is free of appearance or fact of impropriety. The Consultant promises to allow no such conflict to arise and promises to disclose such a conflict in the event that, nevertheless, one develops. Such disclosure must be made in writing to the Authorities Project Manager no later than five (5) Days after such conflict arises.

26. MANDATORY FTA CLAUSES. Consultant shall comply with the requirements set forth in **Exhibit G (Mandatory FTA Clauses)**, attached hereto and incorporated herein. To the extent there is any conflict between the Contract Documents and Exhibit G, the terms of **Exhibit G** shall control.

27. EXHIBITS. The following Exhibits are attached hereto and incorporated into and made a part of the Contract Documents:

Exhibit A - Definitions

Exhibit B - Scope of Services

Exhibit C - RFP

Exhibit D - Consultant's Proposal

Exhibit E - Schedule of Services

Exhibit F - Consultant Rates

Exhibit G - Mandatory FTA Clauses

Exhibit H - ATL Notice of Intent to Perform as Subcontractor Form

Exhibit I - ATL DBE Subcontractor Payment Report

Exhibit J - DBE/SBE Utilization Contract Close-Out Report

28. MISCELLANEOUS.

28.1. Compliance with Laws. The Consultant shall perform its obligations hereunder in accordance with all applicable federal, state, and local government laws, rules, regulations, orders, ordinances and approvals, including but not limited to procedures and requirements relating to labor standards, compliance with Americans with Disabilities Act, anti-solicitation, O.C.G.A. §50-5-82, O.C.G.A. §13-10-91, immigration (O.C.G.A. §13-10-91 et seq.), and auditing and reporting provisions, now or hereafter in effect, and any rules required by any federal grant funding payment by the Authorities.

28.1.1. Federal Changes. Consultant 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 Purchaser (ATL) and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Consultant's failure to so comply shall constitute a material breach of this Contract.

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

28.3. Time of the Essence; Force Majeure. Time is of the essence for all Services performed pursuant to the Contract Documents. The Consultant shall perform its responsibilities for the Services in accordance with the schedule set forth herein. However, neither Party shall be liable to the other Party for any delay or failure of performance due to fires or other casualties, acts of God, unusual weather conditions, strikes or labor disputes, war, or any cause beyond the reasonable control of either Party. Consultant's exclusive remedies for force majeure are set forth in **Section 10.2 (Time Extensions)**.

28.4. Non-disparagement. Each Party agrees not to make any statement, written or oral, to any third party which disparages or criticizes the other Party or the other Party's respective officers, directors,

employees, agents or management and business practices, in each case in connection with the performance or administration of the Services, this Contract, any other work/relationship between the other Parties under separate agreement, or any matter related thereto. The provisions of this **Section 28.4** shall not apply to any truthful statement required to be made by either Party, or such Party's officers, directors or agents, as the case may be, in any legal proceeding or governmental or regulatory investigation or to any internal discussions or communications between the Parties.

28.5. Trading with State Employees. The Consultant represents that the provisions of O.C.G.A. §§45-10-20 et seq. have not and will not be violated under the terms of this Contract.

28.6. Registered Lobbyists. Consultant represents and warrants that the Consultant and its lobbyists, if any, are in compliance with the Lobbyist Registration Requirements in accordance with the Georgia Procurement Manual, incorporated herein by reference.

28.7. Governing Law and Venue. This Contract is a Georgia agreement made under the laws of the State. 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. Any action 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 agreement. 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 28.8 (Notices)**.

28.8. Notices. All notices, notifications, approvals, acceptances, requests, permission, waivers or other communications (excluding invoices that will be handled as set forth in **Section 11 (Payment Terms)**) hereunder shall be in writing and transmitted via hand delivery, overnight courier, or certified mail to the Parties at the respective addresses set forth below. Invoices may also be sent by U.S. Mail, postage prepaid. Notices will be deemed to have been given when received, unless otherwise noted in the Contract. If a Party refuses to accept delivery or fails to take delivery, notice shall be deemed given on the day delivery is first attempted. Notice may also be given by email, provided a hard copy of the notice is also transmitted via hand delivery, overnight courier, or certified mail to the Parties at the respective addresses set forth below.

For Authorities:
The Atlanta-region Transit Link Authority
Attn:
245 Peachtree Center Ave. NE, Ste. 2200
Atlanta, GA 30303
Phone:
Email:

For Consultant:

Attn:

Phone:
Email:

28.9. Taxes. The Consultant will pay all taxes lawfully imposed upon it that may arise with respect to this Contract.

28.10. Safety and Health/No Discrimination. Consultant shall at all times comply with and require that all of its subcontractors performing Services under this Contract comply with all applicable federal and State occupational safety and health standards, rules, regulations and federal and State orders. Consultant shall not and shall cause any sub-consultant to not discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the Services under the Contract Documents. Consultant shall carry out and shall cause its subcontractors to carry out, applicable

requirements of 49 CFR Part 26. Consultant shall include this provision in every subcontract pertaining to the Services.

28.11. Publicity. Consultant shall not issue a press release or otherwise publicize the Services or this Contract without the prior written permission of the applicable Authority's Government and External Affairs Director. Consultant acknowledges and agrees that all records of the Services and work, including records of contractors 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 (b)(2) regarding the records of private entities in the performance of a service or function for or on behalf of a state agency, public agency or public office. The Consultant shall include this language or similar language in all contracts with its subcontractors.

28.12. Drug-Free Workplace. Consultant certifies that (i) a drug free workplace will be provided for the Consultant's employees during the performance of this Contract, and (ii) it will secure from any sub-consultant, agent or assign hired to work in a drug free workplace the following written certification: "As part of the subcontracting agreement with (Consultant's Name), (Subcontractor's Name), certifies to the Consultant 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." Consultant may be suspended, terminated, or debarred if it is determined that (i) the Consultant has made false certification hereinabove, or (ii) the Consultant has violated such certification by failure to carry out the requirements of O.C.G.A. § 50-24-3.

28.13. Remedies Cumulative. The rights and remedies of the Authorities under this Contract are cumulative of one another and with those otherwise provided by law or in equity.

28.14. Waiver and Severability. The waiver by the Authorities of a breach of any provision of this Contract shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision of this Contract. Any such waiver must be in writing in order to be effective, and no such waiver shall establish a course of performance between the Parties contradictory to the terms hereof. All provisions of this Contract are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed so as to carry out the full intention of the Parties.

28.15. 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 this Contract.

28.15.1. Federal Government not a Party. Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to either the Authorities, Consultant, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract.

28.15.2. Subcontract Language. Consultant agrees to include the language in **Section 29.15.1** 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 sub-consultant who will be subject to its provisions.

28.16. Captions. The captions in this Contract are solely for convenience and will not affect the interpretation of any terms of this Contract.

28.17. Counterparts. The Parties may execute this Contract in counterparts.

28.18. Construction of Contract. In the event this Contract must be interpreted by a court of competent jurisdiction as defined in **Section 28.7 (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.

28.19. 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 Consultant 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.

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

- Consultant 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>;
- Consultant 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, Consultant will provide documentation substantiating the completion of sexual harassment training.

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

- Consultant 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>;

- Consultant 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 Consultant 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, Consultant 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.

- 28.20. Survival.** In addition to those provisions, which by their terms would naturally survive termination of the Contract, **Sections 3 (Inclusion and Priority of Documents), 7 (Subcontracting and Assignment), 11 (Payment), 12 (Indemnification), 13 (Insurance), 14 (Consultant Representations), 15 (Cooperation), 16 (Review/Audits), 17 (Ownership of Documents), 18 (Intellectual Property), 19 (Termination), 21 (Confidentiality), 22 (Dispute Resolution), 23 (Event of Default; Damages/Remedies), 24 (Cooperation, Transition of Services and End of Contract Responsibilities), 25 (Conflicts of Interest), 27 (Mandatory FTA Clauses) and 28 (Miscellaneous)** shall survive the termination for whatever reason of this Contract.
- 28.21. Non-exclusivity.** This Contract is entered into solely for the convenience of the Authorities and the State, and in no way precludes the Authorities from obtaining like goods or services from other consultants at the Authorities' sole discretion.
- 28.22. 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 Authorities 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 Consultant 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.

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

Atlanta-region Transit Link Authority
and
State Road and Tollway Authority

(Consultant)

By: _____
Christopher Tomlinson
Executive Director

By: _____
(Name)
(Title)

Attest: _____

Attest: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A DEFINITIONS

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

ATL shall mean the Atlanta-region Transit Link Authority.

ATL-designated Representatives shall have the meaning assigned to it in **Section 5.2.2 (Consultant Project Manager)** of the Contract.

Authority Project Manager shall have the meaning assigned to it in **Section 6 (Project Management)** of the Contract.

Authority(ies) shall have the meaning assigned to it in the preamble of the Contract.

Business Day(s) means Monday through Friday excluding State recognized holidays.

Confidential Information shall have the meaning assigned to it in **Section 21 (Confidentiality)** of the Contract.

Consultant shall have the same meaning assigned to it in the preamble of the Contract.

Consultant Intellectual Property shall have the meaning assigned to it in **Section 17 (Ownership of Documents)** of the Contract.

Consultant Parties shall have the meaning assigned to it in **Section 18.1 (Work Made for Hire)** of the Contract.

Consultant Project Manager shall mean the Consultant's designated representative who has been assigned to interface with the Authorities.

Consultant's Proposal shall mean those documents contained herein as Exhibit D.

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

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

Day(s) shall mean calendar days unless otherwise specified in the Contract as a Business Day.

Default Rate shall have the same meaning assigned to it in **Section 23.2 (Damages/Remedies)** of the Contract.

DOAS shall have the meaning assigned to it in **Section 12.2 (General Indemnification)** of the Contract.

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

Event of Default shall have the meaning assigned to it in **Section 23.1 (Event of Default; Damages/Remedies)** of the Contract.

FTA shall mean Federal Transit Administration of the U.S. Department of Transportation. When used to designate a person, FTA shall mean the Administrator or his duly authorized representative.

Funds shall have the meaning assigned to it in **Section 12.2 (General Indemnification)** of the Contract.

Georgia Open Records Act shall refer to O.C.G.A § 50-18-70.

Indemnitees shall have the meaning assigned to it in **Section 12.2 (General 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 14.8 (Intellectual Property)** of the Contract.

Key Personnel shall have the meaning assigned to it in **Section 5.2 (Personnel)** of the Contract.

Law shall include all local, state, and federal, including FTA regulations and rules.

O.C.G.A shall mean the Official Code of Georgia Annotated.

Project shall mean 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.

Remaining Payment shall have the meaning assigned to it in **Section 19.1 (Termination for Cause)** of the Contract.

RFP shall have the same meaning assigned to it in the preamble of the Contract.

Separation of Insureds shall have the meaning assigned to it in **Section 13.2.2 (No Invalidation)** of the Contract.

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

SRTA shall mean the State Road and Tollway Authority.

State shall mean the state of Georgia.

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

Work Made for Hire shall have the meaning assigned to it in **Section 18.1 (Work Made for Hire)** of the Contract.

Work Product shall have the meaning assigned to it in **Section 18.1 (Work Made for Hire)** 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.*"

EXHIBIT B
Scope of Services
Begins on Next Page

EXHIBIT C
RFP

Incorporated By Reference Herein

EXHIBIT D
CONSULTANT'S PROPOSAL
Begins on Next Page

**EXHIBIT E
SCHEDULE OF SERVICES**

**EXHIBIT F
CONSULTANT RATES
Begins on Next Page**

EXHIBIT G
MANDATORY FTA CLAUSES

1. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.

- 1.1 ATL and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to ATL, Consultant, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.
- 1.2 Consultant 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 Consultant 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 Contract. Upon execution of the underlying Contract, Consultant 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 Contract or the FTA assisted project for which this Contract 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 Consultant 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 ATL of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Consultant, to the extent the Federal Government deems appropriate.
- 2.3 Consultant 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 Consultant agrees to provide to ATL, Georgia Office of Treasury and Fiscal Services, U.S. Secretary of Transportation, and the Comptroller General of the United States or their duly authorized representatives, access to all contract records, including those required by 49 U.S.C. § 5325(g), for the purpose of examining, auditing, and copying them. Consultant further agrees to require and assures that its subcontractors shall provide sufficient access to procurement records as needed for compliance with State and Federal laws and regulations or to assure proper project management as determined by FTA.
- 3.2 During the course of the Services and for three (3) years thereafter from the date of final payment, Consultant agrees to maintain intact and readily accessible all data, books, documents, reports, records, subagreements, leases, third party contracts, and supporting materials related to the Services as the State and Federal governments may require.

- 4. FEDERAL CHANGES.** Consultant 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 Purchaser (ATL) and FTA, as they may be amended or promulgated from time to time

during the term of this Contract. Consultant's failure to so comply shall constitute a material breach of this Contract.

5. CIVIL RIGHTS.

- 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, Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Consultant 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 Contract:
- 5.2.1 *Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Consultant 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, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Consultant agrees to comply with any implementing requirements FTA may issue.
- 5.2.2 *Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Consultant agrees to comply with any implementing requirements FTA may issue.
- 5.2.3 *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Consultant 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Consultant agrees to comply with any implementing requirements FTA may issue.
- 5.3 Subcontracts. Consultant 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 Contract 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. ATL's overall goal for DBE participation in federally funded contracts awarded during FY'20-FY'22 (October 1, 2019 and September 30, 2022) is 9.62%. ATL has not established a separate DBE goal for this project.

- 6.2 Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ATL deems appropriate. Each subcontract Consultant signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- 6.3 Consultant will be required to report its DBE participation obtained through race-neutral means throughout the Term of Contract.
- 6.4 Consultant is required to pay its subcontractor(s) performing work related to this Contract for satisfactory performance of that work no later than fifteen (15) calendar days after Consultant's receipt of payment for that work from ATL. In addition, Consultant may not hold retainage from its subcontractors.
- 6.5 Consultant must promptly notify ATL whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Consultant may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of ATL.

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, 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 Contract. Consultant shall not perform any act, fail to perform any act, or refuse to comply with any ATL requests which would cause ATL 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 ATL.
- 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 ATL at the time of final inspection. If Consultant fails to take corrective action, ATL 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 ATL.
- 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 Contract is satisfactorily completed. ATL discourages Consultant from withholding retainage from its subcontractors.

9. SUSPENSION AND DEBARMENT.

- 9.1 This Contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 1200. As such, ATL is required to assure that Consultant, its subcontractors, and other participants at any tier of the Project are not excluded or disqualified as defined in 2 CFR Part 180 Subpart I.
- 9.2 Consultant 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.

10. ENERGY CONSERVATION. Consultant 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.

11. LOBBYING.

11.1 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.

12. CLEAN AIR REQUIREMENTS. Consultant 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. Consultant agrees to report each violation to ATL and understands and agrees that ATL will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13. CLEAN WATER REQUIREMENTS. Consultant 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. Consultant agrees to report each violation to ATL and understands and agrees that ATL will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

14. FLY AMERICA. Consultant 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 301-10, 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. Consultant 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. Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

15. COVENANT AGAINST CONTINGENT FEES. Consultant shall comply with all relevant requirements of all Federal, State, and local laws. Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, ATL shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

16. NATIONAL ITS CONFORMANCE CLAUSE. To the extent applicable, Consultant 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."

**EXHIBIT H
ATL NOTICE OF INTENT TO PERFORM AS SUBCONTRACTOR FORM**



**Disadvantaged Business Enterprise
NOTICE OF INTENT TO PERFORM**

AS A SUBCONTRACTOR AND/OR MATERIAL SUPPLIER

NAME OF PROJECT _____

ATL CONTRACT/SOLICITATION NUMBER _____

CHECK ONE:

- Subcontractor (Fully complete Parts I and III) Subcontractor with Lower-Tier Subcontractors (Fully complete Parts I, II and III)

PART I: SUBCONTRACTOR PARTICIPATION

1. TO: _____
(Name of Prime Contractor)

FROM: _____
(Name of Subcontractor)

2. The undersigned Subcontractor/Supplier intends to perform work with the above project as (Check one):

- an individual I sole proprietorship a partnership
 a corporation a joint venture

3. The undersigned Subcontractor/Supplier (check applicable statements):

- is a Non-DBE.
 has been certified as a DBE by with GDOT or MARTA.
 has been certified as an SBE

NOTE: DBE firms participating in the Disadvantaged Business Enterprises (DBE) Program must have "current" certification status through the Georgia Uniform Certification Program (GUCP) prior to contract award. DBE Firms must be fully certified through our Georgia Department of Transportation ("GDOT") to be counted towards the DBE goals on this project. Evidence of DBE certification must be attached to this form.

4. The undersigned Subcontractor/Supplier is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) and at the following price \$ _____.

PART II: LOWER-TIER SUBCONTRACTOR PARTICIPATION

With respect to the proposed subcontract described above, the following lower-tier subcontract(s) will be sublet and/or awarded to lower-tier subcontractor(s):

Name of Firm Receiving Lower-Tier Subcontract _____

Work to Be Performed _____

Contract Amount \$ _____

(List DBE and Non-DBE Firms) DBE (Y/N)

Subcontract \$ _____ ()

Company _____

Address: _____ DUNS _____ CCR: _____

Contact Person: _____ Phone No: _____ Insurance ___(Y/N)

Subcontract \$ _____ ()

Company _____

Address: _____ DUNS _____ CCR: _____

Contact Person: _____ Phone No: _____ Insurance ___(Y/N)

Subcontract \$ _____ ()

Company _____

Address: _____ DUNS _____ CCR: _____

Contact Person: _____ Phone No: _____ Insurance ___(Y/N)

Total amount to be subcontracted out to DBE: \$ _____

Total amount to be subcontracted out to non-DBE/SBE: \$ _____

PART III: SIGNATURES

_____ BY: _____ PHONE: _____

(DATE: _____)

(Name of Prime Contractor) (Signature of Authorized Representative)

_____ BY: _____ PHONE: _____

(DATE: _____)

(Name of Sub-Contractor) (Signature of Authorized Representative)

PART IV: DBE PARTICIPATION VERIFICATION

To be completed by ATL DBE Representative:

Total DBE Participation: Amount: \$_____ Overall %_____

Reviewed for Content and Completeness:

Compliance Manager/DBE Liaison Officer

**EXHIBIT I
ATL DBE SUBCONTRACTOR PAYMENT REPORT FORM**



**DISADVANTAGED BUSINESS ENTERPRISE "DBE" PARTICIPATION
SUBCONTRACTOR PAYMENT REPORT**

To be completed by subcontractor and included in each Contractor/Consultant/Vendor's (the "Prime Contractor") Payment Request

Subcontractor's Name: _____

Report: Month _____ Year _____

DBE Certification #: _____

Contact Person: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Subcontractor Services Provided _____

| |
|-------------------------------|
| DBE Subcontract Amount: _____ |
| Contract Begin Date: _____ |
| Contract End Date: _____ |

List all payments received from Prime Contractor in Preceding 30 Days:

| Invoice # | Subcontractor Invoice Date | Amount | Date Payment Received from Prime Contractor |
|-----------|----------------------------|--------|---|
| | | | |
| | | | |
| | | | |

Total Amount Received \$ _____

List dates and amounts of any outstanding invoice payments due from Prime Contractor:

| Subcontractor Invoice # | Subcontractor Invoice Date | Amount |
|-------------------------|----------------------------|--------|
| | | |
| | | |
| | | |

Total Dollars Unpaid \$ _____

Prime Contractor Name: _____ Contact Person: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

RETURN COMPLETED FORM AND ANY ADDITIONAL INFORMATION AS REQUIRED TO:

CATHY GESICK, COMPLIANCE MANAGER/DBE LIAISON OFFICER

Atlanta-region Transit Link Authority

245 Peachtree Center Avenue NE, Suite 2200,

Atlanta, GA 30303-1426

Email: cgesick@ATLtransit.ga.gov

Telephone: (404)-893-6177

Signature of DBE: _____ **DATE:** _____

EXHIBIT J
DBE/SBE UTILIZATION CONTRACT CLOSE-OUT REPORT



DBE/SBE UTILIZATION CONTRACT CLOSE-OUT REPORT

The Contractor/Consultant/Vendor must complete the DBE/SBE Utilization Contract Close-Out Report ("Close-Out Report") and submit it to the ATL Project Manager after completion of all work on the Contract. The Compliance Manager/DBE Liaison Officer will verify the information included in the report. Contractor/Consultant/Vendor may be asked for additional documentation upon ATL's review of the Close-Out Report. If you have questions regarding the preparation of this report, contact Cathy Gesick at cgesick@ATLtransit.ga.gov or (404) 893-6171.

Part I: Summary Information

Contract Amount: State the total amount of the original Contract awarded to the Contractor/Consultant/Vendor, the total amount of all approved changes to the Contract, the total amount of the final contract (i.e. the total of the original contract amount plus the amount of all approved changes), and the total amount that has actually been paid to the Contractor/Consultant/Vendor to date.

DBE/SBE Amounts: Report the total dollar amount and percentage of the Contract committed to DBEs as stated in the original approved Utilization Plan, the total of all approved changes to amounts committed to DBEs, and the final total dollar amount and percentage of the final Contract amount DBEs will be paid on the Contract (i.e. the total amount paid to DBEs to date).

Part II: Contractor/Consultant Participation

Complete Part 2 *only* if the Contractor/Consultant/Vendor is a DBE. Report the Contractor/Consultant/Vendor's own participation (total dollar amount and percentage of the contract), less any amount subcontracted, as reported in the original approved Utilization Plan, report the total dollar value of approved changes to the amount of the Contractor/Consultant/Vendor's participation, less any amount subcontracted, and report the final total of the Contractor/Consultant/Vendor's participation (total dollar amount and percentage of the contract), less any amount subcontracted.

Part III: Subcontractor Participation

List each subcontractor/subconsultant/supplier (including DBEs) contained in the original approved Utilization Plan. Also, list any other subcontractors/subconsultants/supplier used in the performance of the Contract. Give the complete name of each subcontractor/subconsultant/supplier and provide:

- a) the dollar amount committed to the subcontractor/subconsultant/supplier in the original Utilization Plan;
- b) the dollar amount of any approved changes to the commitment that subcontractor/subconsultant/supplier;
- c) the actual amount paid to the subcontractor/subconsultant/supplier to date; and
- d) the amount of retainage due to the subcontractor/subconsultant/supplier.

For each subcontractor/subconsultant/supplier, explain any difference in the amount contained in the original Utilization Plan and the final total. The final total is the actual amount paid to the subcontractor/subconsultant/supplier to date plus the amount of retainage due to the

subcontractor/subconsultant/supplier (i.e., c + d).

If a subcontractor/subconsultant/supplier was substituted with another subcontractor/subconsultant/supplier, or if a subcontractor/subconsultant/supplier was added or deleted, attach a copy of the approval letter from ATL. If an unapproved substitution was made, please indicate and attach any relevant information.

Part IV: Signature and Notarization

The completed document must be signed by an authorized representative of the Contractor/Consultant/Vendor firm and notarized by a public notary prior to submission to ATL.



DBE/SBE UTILIZATION CONTRACT CLOSE-OUT REPORT

Instructions: This form must be signed by an authorized representative of the Contractor/Consultant/Vendor and notarized. Detailed instructions are provided on the previous page.

ATL Contract No.: _____

Project Name: _____

Contractor/Consultant/Vendor Name: _____

Contractor/Consultant/Vendor is:

- Non-DBE
- DBE
- SBE

Part I: Summary Information

| | Original Contract and Utilization Plan | Approved Changes | Final Total | Actual Amount Paid |
|-----------------|---|-------------------------|--------------------|---------------------------|
| Contract Amount | \$ | \$ | \$ | \$ |
| DBE Amounts | \$ | \$ | \$ | \$ |
| | % | | % | % |

| DBE Race | Original Contract and Utilization Plan Percentage | Approved Changes | Final Total | Actual Amount Paid |
|------------------|--|-------------------------|--------------------|---------------------------|
| African American | % | | | |
| Hispanic | % | | | |
| Native American | % | | | |
| Asian American | % | | | |
| Other | % | | | |

Part II: Contractor/Consultant/Vendor Participation

If Contractor/Consultant/Vendor is a DBE, contractor's participation, less any amount subcontracted

| Original Contract and Utilization Plan | Approved Changes | Final Total |
|--|------------------|-------------|
| \$ | \$ | \$ |
| (%) | | (%) |

Part III: Subcontractor Participation

List below all subcontractors/subconsultants/suppliers (DBEs as well as non-DBEs) used in performance of the contract.

Subcontractor: _____

| Utilization Plan | Approved Changes | Actual Amount Paid | Amount of Retainage Due |
|------------------|------------------|--------------------|-------------------------|
| \$ | \$ | \$ | \$ |

Reasons for any difference between the Utilization Plan and the Final Total (Actual Amount Paid + Amount of Retainage Due): _____

Subcontractor: _____

| Utilization Plan | Approved Changes | Actual Amount Paid | Amount of Retainage Due |
|------------------|------------------|--------------------|-------------------------|
| \$ | \$ | \$ | \$ |

Reasons for any difference between the Utilization Plan and the Final Total (Actual Amount Paid + Amount of Retainage Due): _____

Subcontractor: _____

| Utilization Plan | Approved Changes | Actual Amount Paid | Amount of Retainage Due |
|------------------|------------------|--------------------|-------------------------|
| \$ | \$ | \$ | \$ |

Reasons for any difference between the Utilization Plan and the Final Total (Actual Amount Paid + Amount of Retainage Due): _____

Part IV: Affidavit

The above information is true and complete to the best of my knowledge and belief.

Name and Title (Print) _____

Signature: _____ Date: _____

State of _____

County of _____

On the _____ day of _____, 20____, personally appeared _____ and having been duly sworn by me subscribed to the foregoing affidavit and has stated therein are true and correct.

Printed Name of Notary

FOR INTERNAL USE ONLY

Signature: _____

ATL Technical Lead

Date: _____

Printed Name: _____