

**CONSTRUCTION CONTRACT**  
**For Xpress Park and Ride Lots State of Good Repair**

**BETWEEN**

**THE ATLANTA-REGION TRANSIT LINK AUTHORITY**

**AND**

---

## CONSTRUCTION CONTRACT

**THIS CONSTRUCTION CONTRACT** (“Contract”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), between the ATLANTA-REGION TRANSIT LINK AUTHORITY, a body corporate and politic and an instrumentality and public corporation of the State of Georgia (“ATL”), and insert Contractor name authorized to do business in the state of Georgia (the “Contractor”). ATL and Contractor may be referred to individually, as “Party” or collectively, as “Parties.”

**WHEREAS**, pursuant to O.C.G.A. §50-39-11(a)(3), ATL is authorized to contract for all Work that in the judgment of ATL is necessary for completion of the design and construction of the Project under the Contract Documents and includes, without limitation, all plant, labor, Materials, Equipment, systems, taxes, insurance, bonds, services and other facilities, installation, testing, operations and maintenance and other things necessary or proper for or incidental to the carrying out and completion of the terms of the Contract Documents.

**WHEREAS**, ATL desires to engage a qualified and experienced contractor to furnish and deliver all Materials and perform all Work as more fully described in ATL Solicitation ITB No. 24-014, and this Contract;

**WHEREAS**, the Contractor has represented to ATL that it is experienced and qualified and willing to provide all of the labor, Materials, and expertise needed to successfully provide the Work as described in the ITB;

**WHEREAS**, ATL has relied upon such representations and selected the Contractor to furnish the Work; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated into the Contract.
2. **Definitions.** Certain capitalized terms used herein shall have the meanings assigned to them as set forth in **Exhibit A (Definitions)** to this Contract. Other capitalized terms used but not defined in the Contract have the respective meanings set forth in the ITB.
3. **Incorporation and Priority of Contract Documents.** The ITB, including the Construction Documents, the Plans, the Special Provisions, the Standard Specifications, Supplemental Specifications, and the Contractor’s Bid, are all integral parts of this Contract and are incorporated by herein by reference. The ITB, the Plans, the Special Provisions, the Contractor’s Bid, the Standard Specifications, the Supplemental Specifications, and this Contract (including all Change Orders, Amendments, documents and exhibits referenced in this Contract) shall be collectively referred to as the “Contract Documents.” In the event of a conflict among the Contract Documents the following order of precedence applies:

1. Amendments to the Contract
2. The Contract
3. The ITB
4. The Plans
5. The SRTA Special Provisions (SSP)
6. The Special Provisions
7. The Supplemental Specifications
8. The Standard Specifications
9. the Contractor’s Bid

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.

In the event of a conflict among the Construction Documents, ATL retains sole discretion to determine which provision applies and the Contractor is obliged to request in writing ATL’s determination of the order of precedence if it becomes aware of any such conflict.

In the case of the Construction Documents, the Work shall not be governed solely by the manuals and guidelines listed in the Contract Documents and it is the Contractor’s responsibility to locate and utilize the most current edition at the time of the ITB advertisement.

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

4. **Contractor’s General Responsibilities.** In addition to the obligations of Contractor listed elsewhere in the Contract Documents, Contractor’s responsibilities include:

- 4.1 Mitigation of Delay. Use commercially reasonable efforts to mitigate delay to the construction of the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating, or redeploying Contractor's and its subcontractors' forces to other Work, as appropriate.
- 4.2 Requests from Other Government Entities. Furnish to the appropriate Governmental Entities information required to be furnished by ATL and related to the Work or the Project pursuant to the Laws.
- 4.3 Project Delivery. Contractor shall construct the Project in accordance with the Contract Documents and the Construction Documents, and complete the Project according to the milestones and completion dates set forth in the ITB.
- 4.4 Progress Reports and Information. When required, the Contractor shall submit to ATL such schedule of quantities and costs, payrolls, bills, vouchers, correct copies of all subcontracts, statements, reports, correct copies of all agreements, correspondence, and written transactions with the surety on the performance bond that have any relevance to the Work, estimates, records, and other data as ATL may request that concerns the Work performed or to be performed under this Contract. When requested by ATL, the Contractor shall give ATL prompt access to its records relating to the foregoing. To the extent applicable, the above reports shall include (a) written notice of dates by which specified Work will have been completed, (b) written notice of dates by which nonconforming Work will be made good, (c) written notice that nonconforming Work has been made good, (d) written notice as to the date or dates by which Work that has not been performed as required by the Schedule shall have been brought into conformity with the Schedule, (e) date by which any undisputed claim of Contractor Parties shall have been paid, (f) written advice regarding the nature and amount of any disputed claim of Contractor Parties, and (g) information regarding Work performed under Change Orders.
- 4.5 FTA Mandated Clauses. Contractor shall comply with the FTA mandated terms set forth in **Exhibit B (FTA Clauses)** and shall compensate its employees and subcontractors according to the Davis Bacon Wages for the applicable county as set forth in **Exhibit F (Davis Bacon Wages)**.
- 4.6 Cooperation. Contractor shall coordinate and cooperate, and require its Contractor Parties to coordinate and cooperate, with ATL and the Designated Representatives to facilitate the full, efficient, effective and timely performance of all such inspection, sampling, measuring, testing, reporting, auditing, other oversight functions and all other aspects of the Work, as applicable. Contractor shall cause its representatives, Contractor Parties, as applicable, and other Project staff to be available at all reasonable times for consultation with ATL. The Parties and their representatives on the Project shall work as a project team to effect the commencement of and completion of construction in accordance with the Schedule, and to achieve Project Acceptance. Each team member shall communicate with all other team members to assure overall coordination, cooperation, and efficiency.
- 4.6.1 *With ATL and Designated Representatives.* ATL shall be entitled to full and prompt cooperation of the Contractor in all aspects of the Work. Contractor will respond to ATL's requests for information or other requests for which Contractor's input is needed within the timeframe reasonably requested by ATL.
- 4.6.2 *With Other Third Parties.* Contractor is required to cooperate, as applicable, with other subcontractors and suppliers, utility companies, other Government Entities, and all other entities required to perform Work on the Project or otherwise responsible for oversight, supervising, inspecting or performing any part of the Project.
- 4.6.3 *Between Contractors.* ATL reserves the right to contract for and perform other or additional Work on or near the Project. When separate contracts are let within the limits of the Project, Contractor shall conduct his Work so as not to interfere with or hinder the progress of completion of the Work being performed by other contractors. Contractor shall cooperate with other contractors as directed by ATL or its Designated Representative. The Contractor shall arrange his Work and shall place and dispose of the Materials being used so as not to interfere with the operations of the other contractors within the limits of the Project. The Contractor shall join his Work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.
- 4.6.4 *Performance of Work Directed by ATL Only.* Notwithstanding any provision to the contrary, Contractor shall only take direction from ATL or the Designated Representative regarding any and all aspects of the Work. No other party has the authority to amend or change any aspect of the Project or otherwise direct Contractor with regard to any and all aspects of the Work.
- 4.7 Comply with the Specifications. Specific provisions of the Standard Specifications are listed in this Contract for the Contractor to follow; however, the Contractor is still required to comply with all other provisions of the Standard Specifications, Supplemental Specifications and Special Provisions applicable to the Work to the extent they do not contradict provisions of the Contract Documents with a higher priority in the order of precedence.

5. Public Convenience. Contractor shall comply with section 107.07 of the Standard Specifications.

6. **Load Restrictions.** The Contractor shall comply with section 107.14 of the Standard Specifications.
7. **Contractor Personnel.**
  - 7.1 **Character of Workers, Methods and Equipment.** The Contractor shall comply with section 108.05 of the Standard Specifications
  - 7.2 **Immigration Act.** Contractor and its subcontractors shall comply with the Georgia Immigration & Compliance Act (“Immigration Act”), O.C.G.A. § 13-10-90, et seq. Contractor must certify compliance with the Immigration Act using the form attached as **Offer Document #7 to the ITB**. The required certificates and affidavits must be filed with ATL and copies maintained by Contractor and each of the Contractor Parties as of the Effective Date. State officials, including officials of the Georgia Department of Labor and ATL, retain the right to inspect and audit the Project and employment records of Contractor and its subcontractors without notice during normal working hours until the Work under the applicable Project is complete, and as otherwise specified by Law.
8. **Manner of Performance.** The Contractor shall do all the work and furnish all the materials, equipment, supplies and labor necessary to carry out this Contract in the manner and to the full extent as set forth in the ITB, Construction Documents, and the Proposal, under security as set forth in the attached bond, and to the satisfaction of the duly authorized representatives of ATL, who shall have at all times full opportunity to inspect the materials to be furnished and the work to be performed under this Contract.
  - 8.1 **Notice to Proceed.** The performance time will begin with the issuance of a Notice to Proceed, which shall be in writing and signed by ATL or its Designated Representative.
  - 8.2 **Plans and Specifications.** All Work furnished shall be in conformity with the lines, grades, grading sections, cross sections, dimensions, material requirements, and testing requirements that are specified (including specified tolerances) in the Contract Documents and the Construction Documents. If ATL finds the Materials furnished, Work performed, or the finished product not within conformity with the Contract Documents and the Construction Documents but that the portion of the Work affected will, in ATL’s opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to ATL, ATL will advise Contractor. In this event, ATL will execute a Change Order to reflect a corresponding reduction in the Contract price for the affected portion of the Work. If ATL finds the Work, or the finished product are not in conformity with the Construction Documents and have resulted in an unacceptable finished product, the affected Work shall immediately be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with ATL 's written orders.
  - 8.3 **Plans on Site.** The Contractor shall have available at the Project Site at all times one copy each of all Specifications, Plans, drawings, addenda, modifications, and shop drawings in good order and annotated currently to show all changes made during the construction process. These shall be available to ATL and the Designated Representative of ATL for review of record information thereon each month prior to approval of monthly application for payment, and shall be delivered to ATL upon completion of the Project. Record information shall include but not be limited to record dimensions, finished pavement grades, finished elevation of structures, record inverts, etc.
  - 8.4 **Notice of Commencement.** The Contractor shall, in accordance with O.C.G.A. § 44-14-361.1, properly record and post a Notice of Commencement for the construction of the Work, and shall promptly deliver a stamped recorded copy of such Notice of Commencement to ATL and shall otherwise comply with the requirements of Georgia’s lien laws.
9. **Pre-Construction Phase.**
  - 9.1 **Preconstruction Conference.** After the award of the Contract and prior to the issuance of the Notice to Proceed, a pre-construction conference will be held to discuss the following topics and/or additional items as needed:
    - 9.1.1 ***Introductions.*** Meet other personnel on the Project and become familiar with their areas of responsibility and extent of authority, and to establish a working understanding between the Parties involved in the Project.
    - 9.1.2 ***Responsibilities.*** Establish responsibilities on the Project level and permit any necessary discussion of matters pertaining to the order of Work, the Construction Documents, traffic control, erosion control, material sources, disposal sites, safety plans, placement of traffic control barricades, Contractor staging areas, access points, utility service adjustments or other items that may affect the Project.
    - 9.1.3 ***Procedures.*** Establish procedures for handling shop drawings, Contractor submittals, and procedures for processing applications for payment that may not already be addressed in the Contract Documents.
    - 9.1.4 ***Technical Requirements.*** Review the Contract Documents, establish progress of Work schedules, and discuss Construction Documents as needed.

The preconstruction conference should be scheduled no later than five (5) Business Days after NTP, to be held at either ATL’s offices or at the Site, and include, but not be limited to, representatives of the

following organizations: ATL, ATL's Designated Representatives, the Contractor, the Superintendent, major sub-contractors, major material suppliers, utility companies as needed, and other affected organizations as required.

9.2 Preconstruction Activities. The following shall be provided to ATL two (2) Business Days before the preconstruction conference:

9.2.1 *Schedule.* The Contractor shall submit the Schedule for review by the Designated Representative and approval by ATL. The Schedule shall be based upon the schedule provided in the ITB. The Schedule shall be prepared using a Critical Path Method process, showing dates for the delivery of Materials or Equipment requiring long lead-time procurement, and the proposed Project Acceptance Date. It should also include a Process Schedule Chart ("PSC") or Gantt chart, showing the dates for commencement and completion of the Work required by the Contract Documents, including a Work Breakdown Structure ("WBS") showing coordination and sequencing of all disciplines, as well as coordination of the various subdivisions of the Work within the Contract Documents. Milestones must be clearly indicated and sequentially organized to identify the Critical Path of the Project. The Schedule shall have the minimum number of activities required to adequately represent to ATL the complete scope of Work and define the Project's Critical Path and associated activities. Once approved by ATL, the Parties shall comply with the Schedule. The Contractor must provide the Designated Representative with weekly updates of the Schedule indicating completed activities and any changes in sequencing or activity durations, including approved change orders. However, no changes in milestone dates are to be made without written consent of ATL which includes approved change orders. If the Contractor falls behind the submitted schedule, the Contractor shall, upon ATL or its Designated Representative's request, submit a revised schedule for completion of the Work within the Contract time and modify his operations to provide such additional materials, Equipment, and labor necessary to meet the revised schedule. Should the prosecution of the Work be discontinued for any reason, the Contractor shall notify ATL or its Designated Representative's at least twenty-four (24) hours in advance of resuming operations. The Contractor shall not commence any Work prior to the date set forth in the Notice to Proceed.

9.2.2 *Construction Management Plan.* Contractor shall prepare and furnish to ATL a thorough and complete plan for the management of the Project from issuance of the Notice to Proceed through Project Acceptance. Such plan shall include, without limitation, an estimate of the manpower requirements for each trade and the anticipated availability of such manpower, a schedule prepared using the critical path method that will amplify and support the Schedule. The Contractor shall include in his plan the names and resumes of the Superintendent, Project Manager and the person in charge of safety.

9.2.3 *Safety Program.* The Contractor shall provide and maintain adequate safety measures. The Contractor shall prepare and furnish to ATL a specific safety program for the Work for the Project Site. The Contractor shall establish and require all Contractor Parties to establish reasonable safety programs. The specific safety program must include but is not limited to (1) identification of all vulnerabilities and known hazards anticipated to be used for the Work, (2) categorization of the hazards and vulnerabilities as to their potential severity and probability of occurrence, (3) analysis of the vulnerabilities and hazards for potential impact, and (4) prescribed resolution of the vulnerabilities and hazards by design, engineered features, warning devices, procedures, and training, or other methods. The Contractor shall also submit to the Designated Representative and ATL its monthly safety reports, that lists detailed safety incidents (what, who, where, when, how) encountered in the previous month, the course of actions taken to resolve them, and the measures taken to prevent them from happening again. A month without a safety incident shall be reported as such. No imposition of responsibility on the Contractor for safety under this Contract shall relieve any Contractor Party of its responsibility for safety of persons or property on or near the Project Site. The Contractor shall include in his plan the names of the person(s) in charge of Safety.

10. **RESERVED.**

11. **Project Meetings.** In addition to the preconstruction conference meeting detailed in **Section 9.1**, Contractor shall participate in the meetings set forth in this Section.

11.1 Project Progress Meetings. Contractor shall participate in all Project progress meetings, as needed or as otherwise requested by ATL to review, discuss and resolve matters relating to coordination, services, quality control, performance, payment and other matters arising under the Contract Documents. The Parties shall schedule all meetings at on-site at ATL's offices unless the Parties mutually agree otherwise. Additional meetings shall be held as often as ATL determines.

11.2 Other Internal Project Meetings. Contractor shall also participate in any other meetings as requested by ATL and/or the Designated Representative. The Parties shall cause their respective representatives to be available at all reasonable times (generally, during regular business hours) for consultation with one another.

12. **Surveys, Permits, and Regulations.** Contractor shall furnish all surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be obtained and paid for by the Contractor. The Contractor must pay any municipal or county occupational licenses, taxes, or fees, if any. The Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the Work. If the Contractor observes that the drawings or specifications are at variance with any such laws, ordinances, rules or regulations, he shall promptly notify ATL in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules or regulations without such notice to ATL, he shall bear all costs arising therefrom. Nothing in this paragraph shall be construed to impose design responsibility on the Contractor except as noted in the Contract Documents.
13. **Construction Documents.** Contractor represents that it has reviewed, carefully examined, studied, and analyzed the Construction Documents. The Construction Documents shall include the items necessary for proper execution and full and final completion of the Work. The Contract Documents and Construction Documents are complementary, and what is required by one is as binding as if required by all. Performance by the Contractor is required to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the design intent as expressed in the Contract Documents. It is the Parties' intention that the Contract Documents and Construction Documents include all labor and Materials, Equipment, and transportation necessary for the proper execution of the Work. It is not intended, however, that Materials or Work not covered by or properly inferable from any heading, branch, class, or trade of the specifications shall be supplied unless noted on the drawings.
- 13.1 **Construction Document Conflicts.** The following general principles shall govern the settlement of disputes that may arise over conflicts in the Construction Documents: (a) as between figures given on drawings and the scaled measurements, the figures shall govern; (b) as between large-scale drawings and small-scale drawings, the larger scale shall govern; and (c) as between the Contract and the Specifications, the requirements of the Contract shall govern. Conflicts noted shall be reported in writing to the Designated Representative. The principles set forth herein shall not alter the provisions of **Section 3 (Incorporation and Priority of Contract Documents)**.
- Calculated dimensions will govern over scaled dimensions.
- The Contractor shall take no advantage of any apparent error or omission in the Construction Documents. In the event the Contractor discovers such an error or omission, Contractor shall immediately notify the Designated Representative. The Designated Representative will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Construction Documents.
- 13.2 **Ownership of Documentation.** The drawings, Specifications and other documents prepared pursuant to the Contract Documents, are the property of ATL, whether or not the Project for which they are made commences or completes construction. Neither the Contractor nor any Contractor Parties shall own or claim a copyright in such drawings, Specifications, and other similar or related documents; ATL shall retain all common law, statutory, and other intellectual property rights with respect thereto.
14. **Safety Precautions.** The Contractor shall be solely responsible for security against theft of and damage to all tools, Equipment and Fixtures of every kind and nature used in connection with the Work, regardless of by whom owned. The Contractor shall also be solely and completely responsible for the safety of all Persons and property in any way related to the Work and comply with the rules and regulations of OSHA and any other Governmental Entity responsible for safety of labor, the Work performed in, on or about the Project, and/or Work performed at any other Work site related to the Project. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances, and methods, and for any damage which may result from their improper construction, maintenance, or operations. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, proper safeguards for the protection of workmen and the public and shall post danger warnings against any hazards created by Contractor's operations.
- 14.1 **Emergencies.** In an emergency affecting the safety of persons or property or the Work or of adjoining property, the Contractor shall take all precautions to prevent imminent damage, injury, or loss.
- 14.2 **Remedy Damages.** The Contractor shall promptly remedy damages and loss to any real or personal property caused by the Contractor or Contractor Parties at no additional cost to ATL.
- 14.3 **Written Programs.** Contractor shall have written environmental, quality control, crisis/emergency management, health and safety programs in place with a designated and qualified coordinator as the point of contact during the Project. Such plans shall be on the Site and the superintendent, Contractor and Contractor Parties shall be familiar with and utilize such programs.
- 14.4 **Sanitary Conditions.** The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements of the state and local Board of Health, or of other bodies or tribunals having jurisdiction.

14.5 Incident and Damage Reporting Requirements.

- 14.5.1 Notify the Designated Representative immediately by phone of any incident or accident that involves the Contractor while fulfilling this Contract.
- 14.5.2 Submit a written report to the Designated Representative within forty-eight (48) working hours after the incident or accident. Describe in full what occurred. Provide the names of those involved with their contact phone numbers and the extent of injury and damages.
- 14.5.3 Employees shall carry business cards that have the name, address, and phone number of the Contractor upon request of individuals involved in an incident or accident.
- 14.5.4 If vegetation removal operations cause damage to roadside obstacles, damage to other existing vegetation that is meant to remain in place, or damage to private property (including ground disturbance), repair or replace the damaged item with a like item at the Contractor's expense. Contractor is responsible for any damage and subsequent repair and replacement that occurs off the Site, including damage to underground utilities.
- 14.5.5 The Contractor will be financially responsible for any repair or replacement cost (including material and labor costs) for any damaged drainage or appurtenant structures caused by the Contractor while performing the Work. Any expenses incurred by ATL, directly or indirectly that are related to damages caused by the Contractor will be charged to the Contractor and deducted from monies due or to become due to the Contractor.

15. Site Conditions.

- 15.1 Site Investigation. Contractor has carefully and thoroughly visited and reviewed the Site conditions on and adjacent to where the Project is located. Contractor is satisfied as to all conditions that may affect cost, progress, performance or furnishing of the Work. Contractor agrees that the conditions at the Project are sufficient and no changes need to be made for Contractor to perform completely and fully the Work as set forth in the Contract Documents. Contractor has taken into account local conditions and observed conditions that affect the Project, the Work, or the cost thereof; investigated the labor situation related to the Project; reviewed the required time of completion, and other relevant matters; and has taken these into consideration in submitting its bid. The apparent silence of any specification as to any detail, or the apparent omission of detailed description concerning any point, shall be interpreted to mean that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used.
- 15.2 Differing Site Conditions. Contractor shall not proceed with performing Work or otherwise shall halt affected Work in progress upon discovering (a) subsurface or latent physical conditions at the Project site which differ materially from those indicated in the Construction Documents, or (b) unknown physical conditions at the Project site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in Work of the character provided for in the Contract Documents or Construction Documents to the extent that such Work may impact, interfere with or otherwise hinder Contractor's performance or quality of the Work. Immediately upon discovering any of the conditions described in this Section but no later than two (2) Business Days after such discovery, Contractor shall immediately and in writing notify Designated Representative. ATL shall investigate the site conditions promptly after receiving Contractor's notice. If the conditions do materially differ and as a direct result such materially changed conditions cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work, an equitable adjustment shall be made pursuant to this Section and the Contract shall be modified in writing accordingly. No request by the Contractor for an adjustment to the Contract price or for an extension of time under this clause shall be allowed, unless the Contractor had given the written notice required in this Section.

16. Inspection. All Materials and each part or detail of the Work shall be subject to inspection by ATL to assess compliance with the Contract Documents and Construction Documents. ATL or its Designated Representatives shall not review any Work in respect to safety. Designated Representatives will determine in the first instance all questions of any nature whatsoever arising out of, under, in connection with, or in any way related to or on account of, the Contract Documents or the construction methods. Decisions made by ATL or its Designated Representative shall be binding, subject only to **Section 29 (Dispute Resolution)** of this Contract. ATL or its Designated Representative shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed observation. If ATL or its Designated Representative requests it, the Contractor, at any time before acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by Specifications. Should the Work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for under a Change Order; but should the Work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor's expense. Any Work done or Materials used without supervision or inspection by a Designated Representative may be ordered removed and replaced at the Contractor's expense unless ATL's representative failed to inspect after having been given notice in writing at least 24 hours prior to the start of the Work that was to be performed. Should the Work include relocation, adjustment, or any other modification to existing facilities, not the property of the ATL, authorized representatives of the owners of such facilities shall have the right to inspect such Work. Such inspection shall in no sense make any facility owner a party to the Contract, and shall in no way interfere with the rights of the parties to this Contract.

- 16.1 Inspection Does Not Relieve Contractor. ATL shall, at all times, have the right to conduct the monitoring, reviewing, inspection, testing, reporting, auditing and other oversight functions set forth in the Contract Documents. Notwithstanding ATL's rights in the preceding sentence, the Contractor is responsible for furnishing all services, labor, supplies, and Materials for the entire Work in accordance with the Contract Documents. No provisions of this Section nor any inspection of the Work by ATL or ATL Designated Representatives shall in any way diminish, relieve, or alter said responsibility and undertaking of the Contractor. Neither shall the omission of any of the foregoing to discover or to bring to the attention of the Contractor the existence of any Work or Materials injured or done not in accordance with said Contract Documents in any way diminish, relieve, or alter such obligation of the Contractor nor shall the aforesaid omission diminish or alter the rights or remedies of ATL as set forth in the Contract Documents. Any and all Work that does not conform to the requirements of the Contract Documents and Construction Documents will be considered unacceptable.
- 16.2 Failure to Pass any Testing. If Contractor fails in whole or in part any test required by the Contract Documents, then ATL shall withhold approval and any associated payments due until the completion of any and all corrective action and the successful completion of any and all retests, and in the event of any re-testing, Contractor shall pay for (a) the costs of ATL employees to participate in and to attend each re-testing, (b) the consulting fees and the costs of ATL consultants to participate in and to attend, and (c) all of Contractor's costs and fees. Contractor shall make payment to ATL for these expenses within thirty (30) Days of Contractor's receipt of an invoice from ATL listing such expenses.
- 16.3 Limitations on Contractor's Right to Rely. No review, comment, objection, rejection, approval, disapproval, acceptance, certification (including certificates of acceptance and Project Acceptance), concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight by or on behalf of ATL or ATL Designated Representatives, and no lack thereof by ATL, or their representatives or agents, shall constitute acceptance of Materials or Work or waiver of any legal or equitable right under the Contract, at Law, or in equity. ATL shall be entitled to remedies for unapproved deviations and nonconforming Work and to identify additional Work which must be done to bring the Work and Project into compliance with the requirements of the Contract Documents, regardless of whether previous review, comment, objection, rejection, approval, disapproval, acceptance, certification, concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight were conducted or given by ATL, or its Designated Representatives. Regardless of any such activity or failure to conduct any such activity by ATL or Designated Representatives, Contractor at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents. Any approval by ATL shall not be deemed to relieve or otherwise waive any of the Contractor's obligations or requirements under the Contract Documents, unless the same is the subject matter of an Amendment, and in no case shall such approval or Amendment be deemed a waiver of any applicable rule, regulation or Law. Contractor agrees and acknowledges that any such activity or failure to conduct any such activity by ATL or the Designated Representative:
- 16.3.1 is solely for the benefit and protection of ATL;
  - 16.3.2 does not relieve Contractor of its responsibility for the selection and the competent performance of all Contractor Parties;
  - 16.3.3 does not create or impose upon ATL any duty or obligation toward Contractor to cause it to fulfill the requirements of the Contract Documents;
  - 16.3.4 shall not be deemed or construed as any kind of warranty, express or implied, by ATL;
  - 16.3.5 may not be relied upon by Contractor or used as evidence in determining whether Contractor has fulfilled the requirements of the Contract Documents; and
  - 16.3.6 may not be asserted by Contractor against ATL as a defense, legal or equitable, to, or as a waiver of or relief from, Contractor's obligation to fulfill the requirements of the Contract Documents.
- 16.4 Substantial Completion. The Work will not be completed until all Work provided for and contemplated by the Contract is found completed and accepted by ATL in accordance with the Contract Documents so that ATL and the public can safely occupy and utilize the Project for its intended use ("Substantial Completion"). The Work shall be complete except for Punch List items. Contractor shall provide written notice to ATL when Contractor believes it has achieved Substantial Completion and request an inspection by ATL. Within three (3) Business Days of ATL's receipt of Contractor's written notice, ATL will advise Contractor in a written notice of decision that it will perform the inspection or why ATL does not believe the Project is ready for inspection. If the Project is not ready for inspection, Contractor will perform the Work needed before Contractor makes another written request for inspection to ATL. If the Project is ready for inspection, ATL will perform the inspection within five (5) Business Days of ATL's notice of decision and notify the Contractor whether Contractor achieved Substantial Completion. ATL's conclusion that Contractor achieved Substantial Completion, however, shall not preclude or stop ATL from correcting any measurement, estimate, or certificate made before or after completion of the Work, nor shall ATL be precluded or stopped from recovering from the Contractor or his surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill his obligations under the Contract. If all Work provided for and contemplated by the Contract is found completed to ATL's satisfaction and all documents required in connection with the Project have been submitted by the Contractor to ATL, ATL will notify the Contractor that it has achieved Substantial Completion and provide the Contractor with a written Punch List that includes the necessary instructions for correction of Work. The Punch List will also include any remaining Work to be completed and any final reports and other documentation required to



be submitted by the Contractor. The Contractor shall immediately comply with and execute such instructions.

16.4.1 *As-Built Documents.* Prior to Substantial Completion, the Contractor shall provide one complete set of Marked-Up Documents to ATL. The Marked-Up Documents shall consist of the Construction Documents annotated and changed to reflect the as-built condition of the Project, including all Change Orders, field instructions, answers to ITB's, clarifications, sketches, delegated contractor design drawings and locations of utilities and other hidden elements.

16.4.2 *Copies to ATL.* Upon ATL's request, the Contractor shall furnish ATL with copies of all Project related correspondence, letters of transmittal, etc.

16.5 Project Acceptance. Contractor shall provide written notice to ATL when Contractor believes it has achieved Substantial Completion of the Work, including Punch List items, and request a final inspection by ATL. Within three (3) Business Days of ATL's receipt of Contractor's written notice, ATL will advise Contractor in a written notice of decision that it will perform the inspection or why ATL does not believe the Project is ready for a final inspection. If the Project is not ready for final inspection, Contractor will perform the Work needed before Contractor makes another written request for final inspection to ATL. If the Project is ready for final inspection, ATL will perform the final inspection within three (3) Business Days of ATL's notice of decision. ATL shall notify the Contractor in writing of Project Acceptance as of the date of the final inspection. If, however, the review discloses any Work, in whole or in part, as being unsatisfactory, ATL will give the Contractor the necessary instructions for correction of same and the Contractor shall immediately comply with and execute such instructions. Upon correction of the Work, another inspection will be made which shall constitute the final inspection, provided the Work has been satisfactorily completed. In such event, ATL will notify the Contractor in writing of Project Acceptance as of the date of successful final inspection.

17. **Construction.**

17.1 Materials. The Contractor shall comply with sections 106 and 400 of the Standard Specifications.

17.2 Maintenance. The Contractor shall maintain the Work during construction and until the Work is accepted. This maintenance shall constitute continuous and effective Work prosecuted day by day, with adequate Equipment and forces so that the Work is maintained in satisfactory condition at all times. In the case of a contract for the placing of a course upon a course or Subgrade previously constructed, the Contractor shall maintain the previous course or Subgrade during all construction operations. All cost of maintenance Work during construction and before the project is accepted shall be included in the unit prices bid on the various Contract items, and the Contractor will not be paid an additional amount for such Work. Should the Contractor at any time fail to maintain the Work as set forth in this Section, the Designated Representative shall immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the condition that exists. Should the Contractor fail to respond to the Designated Representative's notification, the Designated Representative may suspend any Work necessary for ATL to correct such unsatisfactory maintenance condition, depending on the condition that exists. Any maintenance cost incurred by ATL, shall be deducted from monies due or to become due the Contractor.

17.3 Clean Up. The Contractor shall comply with section 104.07 of the Standard Specifications.

17.4 Clean Up. At all times, the Contractor shall keep the premises free from accumulations of waste material or rubbish caused by employees, Contractor Parties, or Work. Upon completion of the Work and before Project Acceptance and final payment will be made, the Contractor shall remove from the Site all machinery, Equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. Contractor shall cut all brush and woods within the limits indicated and shall leave the Site in a neat and presentable condition. Material may not be cleared from the Site and deposited on adjacent property.

17.5 Acceleration for failure to meet Schedule Requirements. In the event the Contractor shall be delinquent in respect to achieving the dates established in the Schedule, Contractor shall, within seven (7) Days after receipt of written demand of ATL, cause its employees and Contractor Parties to perform Work at an accelerated pace with hours and Days in addition to the normal working hours and working days, as necessary to promptly bring the Work into compliance with the Schedule. Fulfillment of this requirement as to overtime Work shall not relieve the Contractor from liability for breach of the covenant as to time. For account of recovery of lost time required of the Contractor for its breach of covenant as to time, the Contractor shall not be entitled to claim against ATL any payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, injury or damages.

18. **Defective Work.** All or part of any Work which does not conform to the requirements of the Contract Documents or the Construction Documents will be considered defective. Defective Work, whether the result of poor workmanship, use of defective Materials, damage through carelessness, or any other cause found to exist prior to the Project Acceptance, shall be removed immediately and replaced in an acceptable manner in accordance with the provisions of the Construction Documents or otherwise as directed by the Designated Representative. Work done contrary to the instructions of the Designated Representative, Work done beyond the lines shown on the Construction Documents, except as herein specified, or any work done without written permission, will be considered as unauthorized and will not be paid for under the provisions of the Contract. Work so done may be ordered removed or replaced at the Contractor's expense. Upon failure on the part of the Contractor to comply with any order of the Designated Representative made under the provisions of this subsection, the Designated Representative will have authority to cause unacceptable Work to be remedied or removed and replaced and unauthorized Work to be removed and to deduct the costs incurred by ATL from any monies due or to become due the Contractor.
- 18.1 **Duty to Promptly Correct Work.** The Contractor shall promptly correct Work rejected by the ATL or ATL Designated Representatives or known by the Contractor to be defective, damaged, or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not designed, fabricated, installed, or completed. The Contractor shall bear costs of correcting such rejected Work, including without limitation additional testing and inspections.
- 18.2 **Full and Complete Charge.** Notwithstanding the provisions of this Contract, and until Substantial Completion, the Contractor shall have full and complete charge and care of the Work or any portion thereof (including ATL-furnished supplies, material, Equipment, or other items to be utilized or incorporated in the Work). After Substantial Completion is achieved, the Contractor shall remain in complete charge and care of the items remaining to be completed on the initial Punch list until all are accepted by ATL on or before Project Acceptance.
- 18.3 **Correcting the Work.** The Contractor shall remove from the Project within the space of time designated in any notice provided by ATL or ATL Designated Representatives all Work determined by ATL as failing to conform to the Contract Documents, whether incorporated in the Work or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to ATL and shall bear the expense of making good all other Work destroyed by such removal or replacement. The Contractor shall supply any omitted Work and perform all unexecuted Work within the space of time fixed by the Designated Representative in any notices concerning nonconforming Work.
- 18.4 **ATL Remedies for Defective Work.** If the Contractor does not make good a deficiency within two (2) Business Days of receipt of a notice of nonconforming Work, or where otherwise required by the situation, within a reasonable space of time fixed in a notice of nonconforming Work, ATL may do any of the following:
- 18.4.1 If the Contractor should neglect to prosecute the Work properly or fail to correct non-compliant nonconforming Work or fail to perform any provision of the Contract Documents, ATL, after three (3) Days' written notice to the Contractor, may without prejudice to any other remedy available at law or in equity (including remedies against the Contractor's surety), make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.
- 18.4.2 The remedies stated in this Section are in addition to the remedies otherwise available to ATL, do not exclude such other remedies, and are without prejudice to any other remedies. Time limits stated in notices of nonconforming Work are of the essence of the Contract. Unless otherwise agreed to by ATL in writing, the making good of nonconforming Work shall physically commence at the Site in not more than two (2) Days after receipt of the notice of nonconforming Work, except that in case of emergency correction shall physically commence at the Site at once, and except that the Contractor shall in any event physically commence the correction at the Site early enough to complete within the space of time allowed in the notice of nonconforming Work. ATL shall give prompt consideration to reasonable requests for delay in commencement of the making good of notices of nonconforming Work. The making good of nonconforming Work shall be completed within the space of time allowed in the notice of nonconforming Work unless the Contractor shall have requested from the Designated Representative an increase in the amount of time allowed and the Designated Representative shall have given notice to the Contractor in writing, with copy to ATL, stating the additional amount of time, if any, allowed.
- 18.5 **Notice of Correction from Contractor.** The Contractor shall give prompt written notice to ATL, upon completion of the correction of the nonconforming Work. In the absence of such notice, it shall be and is presumed under this Contract that there has been no correction, supplying remedy, or performance of unexecuted Work.
- 18.6 **No Delay.** Work requiring correction shall be corrected immediately and shall be carried out in such a way not to delay the completion of the Project. If it is not feasible to correct said Work immediately, the corrective Work shall be done on a schedule acceptable to ATL.

- 18.7 Effect of Notice of Nonconforming Work. Notwithstanding anything contained in the Contract Documents to the contrary, in order to minimize delays in the completion of the Project, the Contractor shall continue working while responding to a notice of nonconforming Work and shall continue working while protesting any decision by the Designated Representative.
- 18.8 Deductions for Uncorrected Work. If the Designated Representative deem it inexpedient to correct Work damaged or done not in accordance with the Contract Documents, a deduction from the amount otherwise due Contractor shall be made. There is no duty on the part of ATL, however, to accept any Work damaged or done not in accordance with the methods and Materials designated in the Contract Documents, nor does the Contractor have the right to demand that there shall be acceptance of Work injured or done not in accordance with the methods and Materials designated in the Contract Documents.
19. Payment Terms. Rates on the pricing sheets included as **Exhibit C (Pricing Schedules)** include taxes, benefits, ancillary costs, overhead, profit and any other monetary component.
- 19.1 General. For satisfactory performance of the Work, ATL hereby agrees to compensate the Contractor in accordance with the prices set forth in **Exhibit C (Pricing Schedules)**.
- 19.2 Retention. Work to be performed shall be subject to a retainage of ten percent (10%) of the invoiced and paid amount associated with any aspect of the Work. The retainage shall be paid upon Final Invoice (defined below in **Section 19.15 (Final Payment)**), less any amounts due ATL pursuant to other sections of the Contract Documents. The Contractor shall not withhold retainage from a Contractor Party who is also a Disadvantage Business Enterprise.
- 19.3 Trust Funds. All payments made by ATL to Contractor for the Work under the Contract Documents shall be held in trust by the Contractor for the purpose of paying its employees and Contractor Parties who provided any part of the Work.
- 19.4 Stored. If Contractor's invoice includes Materials delivered and suitably stored at the Site but not incorporated in the Work, Contractor shall, if required by ATL or the Designated Representative, be conditional upon submission by the Contractor of Bills of Sale or such other procedure as will establish ATL's title to such Material or otherwise adequately protect ATL's interest. The Contractor is responsible for the existence, protection, and, if necessary, replacement of materials until execution of the Final Certificate of the Engineer. ATL shall not pay for any Materials stored off-site.
- 19.5 Measurement. All Work completed under the Contract will be measured in accordance with sections 109.01 and 109.02 of the Standard Specifications.
- 19.6 Overpayment. In the event an overpayment is made to Contractor under this Contract, Contractor shall immediately refund to ATL the full amount of any such erroneous payment or overpayment following Contractor's written notice of such erroneous payment or overpayment, as issued by ATL. Except in the case of a good faith dispute, if Contractor fails to refund the erroneous payment or overpayment within a 30-Day period, ATL shall be entitled to interest at one percent (1%) per month on the amount not repaid from the date of overpayment.
- 19.7 Reduction of Payment for Non-conforming Work. If any defined action, duty or service or part required by the Contract is not performed by the Contractor in accordance with the requirements of the Contract, the value of such action, duty or service or part thereof will be determined by ATL and deducted from any invoice claiming such items for payment. If the action, duty or service or part thereof has been completed and is not in conformance with the Contract Documents, the Contractor will be notified and given the opportunity to correct any deficiencies within a time certain. Payment (for the non-conforming Work) will be withheld by ATL from any invoice until such time as the Work is corrected in accordance with the Contract Documents.
- 19.8 Withholding Payments. ATL reserves the right to withhold payment or payments in whole or in part, and to continue to withhold any such payments for Work not completed or not completed in accordance with the Contract Documents. Any and all such payment previously withheld shall be released and paid to Contractor promptly when the Work is subsequently performed in accordance with the Contract Documents.
- 19.9 Payment not Acceptance. Payment or use of any Work or portions thereof by ATL shall not constitute an acceptance of any Work not performed in accordance with the Contract Documents nor shall payment waive any preceding or then-existing breach or default by the Contractor of any term, covenant or condition of the Contract Documents. Additionally, payment shall not extend or affect (a) the service of any notice, any dispute resolution procedures; (b) any time within which the Contractor is required to perform any obligation; or (c) any other notice or demand.
- 19.10 Net 30 Days. ATL agrees to pay Contractor in accordance with its normal processes and procedures for all undisputed amounts within thirty (30) Days of receipt of a valid invoice, provided ATL or ATL Designated Representatives, as applicable, received, approved and/or issued an acceptance for the particular component of Work or phase of Work and/or Contractor successfully completed the Project Acceptance testing set forth in the ITB.

- 19.11 Invoicing. The Contractor shall deliver to ATL an invoice on a monthly basis. Each invoice shall only include a request for payment for an item of Work that was completed, tested and accepted, as those requirements are set forth in the Contract Documents for such item. The Contractor will submit an itemized billing, identifying the date and a description of the Fixtures delivered, the address to where the Fixtures was delivered, the documentation furnished or the labor and services rendered the previous month, the status of any on-going Work (i.e., the percent to completion of task or milestone), a detailed account or description of the Work performed during the time period to further or complete a component of Work, and notification if a component of the Work or milestone has been completed. Along with each invoice, the Contractor will provide any necessary backup documentation, certifications and test results, as required in the Contract Documents.
- 19.12 No Disruption of Work. Except as specifically set forth in **Section 20.3 (Delay and Extensions of Time)**, under no circumstances whatsoever, shall Work to be provided by the Contractor be withheld, disrupted or delayed due to non-payment by ATL pursuant to any provision of **Section 19 (Payment Terms)** or for any other reason. Contractor's failure to comply with this Section shall be considered a Default as set forth in **Section 30.1.2**.
- 19.13 Right of Set Off. ATL may retain or set off any amount owed to it by Contractor.
- 19.14 Full Compensation. All Work performed by the Contractor in meeting the requirements of the Contract Documents shall be paid as set forth above, which shall constitute full compensation for the Work, including but not limited to (a) the cost of all insurance and bond premiums, taxes, home office, job site and other overhead, and profit relating to Contractor's performance of its obligations under this Contract; (b) the cost of performance of each and every portion of the Work (including all costs of all Work 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 progress payment schedule for the Work as provided herein; and (e) payment of any taxes, duties, permits and other fees and/or royalties imposed with respect to the Work and any Fixtures, Materials, supplies, documentation, labor or services included therein.
- 19.15 Final Payment. Final payment and retainage shall not be due to Contractor until Project Acceptance and each and every component of the Work is delivered to and accepted by ATL and there are no outstanding claims against Contractor. Contractor shall submit a final invoice to ATL within thirty (30) Days of the Project Acceptance ("Proposed Final Invoice"). All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. ATL will review Contractor's Proposed Final Invoice and respond with a written request for additional information or documentation, changes or corrections within sixty (60) Days of ATL's receipt, accompanied by any claims, if applicable. Based on ATL's response, Contractor shall submit a final invoice ("Final Invoice") incorporating any changes or corrections made by ATL, together with any additional requested information or documentation. If ATL agrees with all requests for compensation in the Final Invoice, ATL will pay the entire sum found due within thirty (30) Days of its receipt. If ATL disputes any amounts submitted for compensation, ATL shall notify Contractor within a thirty (30) Day period, identifying those items in the Final Invoice that ATL disputes, along with a written explanation of the basis of the dispute. If ATL fails or refuses to act on a Final Invoice within the required time period, the amount submitted for compensation shall be deemed to have been accepted by ATL on the last Day of the period within which ATL was required to respond. The provisions of **Section 19.10 (Net 30 Days)** shall not apply to the provisions of this Section and the Final Invoice.
- 19.16 Firm Price. The unit prices for this Project, as set forth in **Exhibit C (Pricing Schedules)**, shall be firm until the Project Acceptance.
- 19.17 Lien Waivers. The Contractor will notify ATL of any liens or levies against the Site of which it becomes aware. The Contractor shall cooperate with ATL and shall secure the release of any liens or levies of which it becomes aware, either by providing a bond as may be allowed by Law or as otherwise agreed to by ATL. Nevertheless neither the final payment nor any part of the retainage shall become due until the Contractor delivers to ATL a complete release of all liens and claims arising out of this Contract, or receipts in full in lieu thereof, and if required in either case, an affidavit that so far as he has knowledge or information, the releases and receipts supplied include all of the labor and Materials for which a lien could be filed. The Contractor may, if any sub-contractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to ATL, to indemnify ATL against any lien or claim. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to ATL all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and reasonable attorney's fees.
- 19.18 Omitted Work. ATL may omit from the Work any Contract item. Such omission of Contract items shall not invalidate the Contract any other Contract provision or requirement. Should a Contract item be omitted or otherwise ordered to be non-performed, the Contractor shall be paid pursuant to the terms of this Section for all Work performed toward completion of such item prior to the date of the order to omit such item and the Contract sum shall reflect the decrease, if any.
- 19.19 End of Fiscal Year. No later than the second Friday of July of each year, Contractor must submit to ATL outstanding invoices or progress reports for Work successfully completed or supplied during the period

of July 1<sup>st</sup> – June 30<sup>th</sup> of that year. Progress reports shall include a description of the Work that has been successfully completed or supplied and an estimated cost for the Work. Failure to adhere to this requirement may result in non-payment for the Work. ATL reserves its right to dispute part or all of an invoice and to withhold payment for any Work that was not successfully completed or supplied.

## 20 Contract Changes.

- 20.1 Allowable Changes. Contract changes will only be allowed to address (1) variances in the original quantities tabulated pursuant to Offer Document #5 of the ITB, provided (i) the variances are not due to Contractor's act or omission to act (by way of example and not by limitation, if the quantity increases because Contractor's solution as set forth in the Contractor's Bid or thereafter does not meet the requirements of the Contract Documents, then any increase in quantity shall not be subject to a Change Order) and (ii) the actual variance of any line item must exceed the good faith estimate shown in Offer Document #5 of the ITB by more than 25%, up or down, (2) variances in the scope of Work where there is a different functionality beyond that contained in the Contract Documents and for which there is no appropriate pay item or category (the Parties understanding that such additional Work may be subject to a new competitive procurement if deemed by ATL to be in its best interest), (3) a decrease in the scope of Work, regardless of whether there is an appropriate pay item or category, (4) the decision by ATL to cancel or otherwise reduce the scope of the Project, and (5) an extension of time to the extent a delay is caused by events listed in **Section 20.3 (Delay and Extensions of Time)**. No change in or modification, termination or discharge of the Work or any component thereof, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by Designated Representative and Contractor. Notwithstanding any provision to the contrary, Contractor shall perform at no additional cost to ATL, all such additions, deletions and other revisions, the need for which arises from the actions or inactions of the Contractor or Contractor Parties.
- 20.2 Change Order. A Change Order shall consist of only such additions, deletions or other revisions to the Work as set forth in **Section 20.1**. An increase or a decrease in the amount due to Contractor, if any, pursuant to the Contract Documents for the Work included in a Change Order shall be as set forth in the Change Order. A Change Order may result in acceleration or deceleration of the Schedule for performance of both the Change Order and any other Work directly affected by the Change Order, as agreed upon in writing by the Contractor and ATL, and included in the applicable Change Order. The execution by the Contractor of a Change Order shall be and operate as a release to ATL and its Designated Representatives of all claims by the Contractor and Contractor Parties of all liability owing to the Contractor for all things done or furnished in connection with the Work described in the Change Order. The execution of any Change Order by ATL shall not be an acceptance of any Work not in accordance with the Contract Documents, nor shall it relieve the Contractor of responsibility for faulty Materials or workmanship or operate to release the Contractor or his surety from any obligation arising under the Contract or the Performance Bond or Payment Bond.
- 20.2.1 *Change Order Proposal.* ATL may initiate the Change Order procedure by a notice to the Contractor setting forth the proposed Change Order. Within ten (10) Business Days thereafter, the Contractor shall provide a detailed proposal which includes proposed prices and a proposed schedule for performance ("Change Order Proposal"). The Change Order Proposal may be accepted by ATL or modified by negotiations between the Contractor and ATL, whereupon a written Change Order, governed by the terms and conditions of this Contract, shall be executed by both Parties.
- 20.2.2 *Disputed Work.* If the Parties fail to reach agreement with respect to the Change Order Proposal, ATL may nevertheless direct the Contractor to proceed with the Work included in the Change Order Proposal (which for purposes of **Section 20 (Contract Changes)** shall be hereinafter defined as "Disputed Work"). In the event of such Disputed Work, the Contractor shall be obligated to proceed immediately upon notice from ATL to perform the Disputed Work and shall be compensated by ATL in accordance with time, Materials and Equipment rates in **Exhibit C (Pricing Schedules)** of this Contract. If there are no applicable rates in **Exhibit C (Pricing Schedules)**, then ATL shall pay Contractor for the actual cost to obtain such Equipment and/or labor at the rate charged Contractor plus a 9% markup. The Contractor shall furnish weekly status reports regarding Disputed Work, including such documentation as ATL may require in order to support all costs of the Disputed Work. The Contractor agrees to maintain and furnish ATL with time and Materials records that will substantiate the Contractor's costs for Disputed Work.
- 20.3 Delay and Extensions of Time. Subject to any limitations, claims submission requirements and other conditions set forth in the Contract Documents, and provided that no relief will be available to the extent that (i) the events are within Contractor's or Contractor Parties' control, or are due to any wrongful act, wrongful omission, negligent act or negligent omission, recklessness, willful misconduct, breach of Contract or Law or violation of a Governmental Approval of Contractor or any of the Contractor Parties; or (ii) the events (or the effects of such events) could have been avoided by the exercise of reasonable caution, due diligence, or other reasonable efforts by Contractor or Contractor Parties, ATL will only grant an extension of time if the Contractor is delayed in the progress of the Work and the delay is the direct result of (1) a negligent act of ATL or ATL Designated Representatives, or (2) an event listed in **Section 42.4 (Time of the Essence/Force Majeure)**. If and when such event occurs, then the time of completion set forth in the Contractor's Schedule shall, unless otherwise agreed to in writing by the Parties, be extended equal to the time lost as a result of the delay. The Contractor expressly agrees that

the Contractor's sole and exclusive remedy for delay shall be an extension of Contract time and that the Contractor 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 ATL. 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 Contractor, within ten Days from the cessation of the delay, shall have given notice in writing to ATL, with copy to ATL, as to the amount of additional time claimed.

- 20.4 Minor Field Adjustments. If Contractor believes that a Minor Field Adjustment needs to be made, Contractor must provide a written request to, and receive prior written approval from, the Designated Representative before deviating from what the Contract Documents otherwise require.

21 **Fixtures.**

21.1 Fixtures. Contractor shall obtain in ATL's name and ATL shall own all of the Fixtures as required by the Contract Documents.

21.2 Bill of Sale. Any invoices furnished by Contractor to ATL for Fixtures shall have an original and signed Bill of Sale in ATL's name on a form substantially similar to that on **Exhibit E (Bill of Sale)** or other document reasonably acceptable to ATL that fully evidences ATL's ownership as required in the Contract Documents.

21.3 FOB Destination. Transportation of all Fixtures, supplies and any other item that must be transported so that Contractor may furnish the Work, shall be FOB Destination. Freight, handling, hazardous material charges, taxes, and distribution and installation charges shall be included in the total price of each item as set forth in **Exhibit C (Pricing Schedules)**. Any additional charges will not be honored for payment unless authorized in writing by ATL. If a party other than Contractor ships Materials against this Contract, the shipper shall be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment. A complete packing list shall accompany each shipment.

21.4 RESERVED.

22 **ATL Suspension of Work**. The Contractor shall comply with section 108.06 of the Standard Specifications.

23 **Warranties.**

23.1 Express Warranties. In addition to any express or implied warranties provided by Law and in the ITB, Contractor hereby expressly represents and warrants the following:

23.1.1 *Accuracy of Responses*. All of Contractor's responses included in the Contractor's Bid are true and correct in each and every instance as of the time each document, respectively, was submitted to ATL for review.

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

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

23.1.3.1 Contractor covenants and agrees that it will maintain its existence and will remain in good standing in the State of Georgia throughout the during the Term of the Contract and will maintain its existence for as long thereafter as any obligations remain outstanding under this Contract. The provisions of this Section shall survive the expiration or earlier termination of this Contract.

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

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

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

- 23.1.7 *No Default.* Neither the execution and delivery by Contractor of this Contract, nor the consummation of the transactions contemplated hereby, is in conflict with or has resulted or will result in a default under, or a violation of, the governing instruments of Contractor, any approvals or Laws applicable to Contractor or any other material agreement to which Contractor is a party.
- 23.1.8 *No Proceeding.* There is no action, suit, proceeding, investigation or litigation pending and served on Contractor which challenges Contractor's authority to execute, deliver or perform, or the validity or enforceability of, this Contract or which challenges the authority of the Contractor official executing this Contract; and Contractor has disclosed to ATL any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Contractor is aware.
- 23.1.9 *No Breach of Law.* Contractor is not in breach of any applicable Law that would have a material adverse effect on the operations of any Project or Contractor's ability to perform its obligations under this Contract.
- 23.1.10 *Real Party in Interest.* Contractor is the legal and valid holder of the interest attributed to Contractor under the Contract.
- 23.1.11 *Work/Labor.* Contractor represents and warrants that during the Term of the Contract all documentation, services and labor shall (1) conform to the performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the ITB, (2) the labor and services to be performed hereunder will be performed on time, and in a workmanlike manner, consistent with the highest level 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.
- 23.1.12 *Cooperation.* Contractor represents and warrants that Contractor shall fully cooperate with ATL, ATL Designated Representatives, and any other governing authority, in furnishing all the Work required by the Contract.
- 23.1.13 *Post-completion Warranty.* The Contractor shall provide only Materials and install Fixtures with warranties that are transferable to ATL. Upon Project completion, the Contractor shall transfer all warranties or guarantees normally furnished by the manufacturer to ATL. All manufacturer warranties shall commence on the date of Project Acceptance and state that they are subject to transfer to ATL.
- 23.1.14 *Compliance with Laws, Rules and Regulations.* Contractor represents and warrants that (1) the Work will not be in violation of any applicable Law, rule or regulation, and Contractor will obtain all permits and licenses required to comply with such Laws and regulations, (2) Contractor is registered with the Secretary of State and authorized to perform the Work in the State of Georgia, and (3) Contractor will comply in all respects with all other Laws, rules, regulations, ordinances of any governing authority that impact or relate in any way to the Project. Any changes to applicable Laws, rules, or regulations that are enacted after the Effective Date may be the subject of a Change Order only if a change to applicable Laws, rules, or regulations results in an actual and direct increase in cost to Contractor. In such an event, the increased cost shall reflect the unit prices set forth in **Exhibit C (Pricing Schedules)** of this Contract, and if the labor or material is not included in **Exhibit C (Pricing Schedules)** of this Contract, then the Change Order shall reflect an increase in price of Contractor's actual cost plus 9% markup.
- 23.1.15 *Timely Payments to Subcontractors.* Contractor warrants that it shall make timely payments for Work performed to any Contractor Party and Contractor shall indemnify, defend and hold harmless ATL and the State for any breach of this warranty.
- 23.2 Third Party Warranties. Contractor shall assign to ATL the manufacturers' or other third-party warranties not referenced above in this Section for any and all items of Work furnished to ATL.
- 23.3 No-waiver. The Contractor, without prejudice to the terms of the Contract, shall be liable to ATL for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards ATL's rights under any warranty or guaranty. Neither any provision of this Contract nor any decision of ATL shall relieve the Contractor of responsibility for faulty Materials, faulty workmanship, or omission of any Work. Any deviation in the Contract Documents that is evidenced by a Change Order signed by ATL will constitute an acceptance by ATL of such deviation from the applicable Contract requirement. Notwithstanding the preceding sentence, such deviation will still need to pass acceptance or other testing as may otherwise be required in the Contract Documents.
- 23.4 Contractor duty to Remedy. Contractor shall, within the time periods designated in the Contract Documents, correct, remedy, replace, re-execute, supply omitted or defective Work and pay for any damage to other Work resulting therefrom, without expense to ATL, including but not limited to shipping costs. If the ITB does not specify a warranty, then Contractor shall replace any defective item of Work, including Deliverables, furnished in breach of the Contract Documents, no later than five (5) Business Days after the date of ATL's written notification thereof.

- 23.5 ATL Cure. If the Contractor does not remove, make good the deficiency, correct, or remedy Defective Work, or supply any omitted Work within the time periods set forth under the Contract Documents, and if no time is set in the ITB then unless otherwise agreed to in writing by the Parties, within ten (10) Days, then ATL may, after five (5) Days written notice to the Contractor, remove the Work, correct the Work, remedy the Work or supply omitted Work at the expense of the Contractor. If ATL has not yet made payment to Contractor, then ATL may deduct the cost thereof from any payment then or thereafter due and owing the Contractor. If final payment has been made to Contractor, then Contractor shall reimburse the cost to ATL within thirty (30) Days of written demand therefore by ATL. In case of emergency involving health, safety of property or safety of life, ATL may proceed at once and without notice to Contractor and Contractor shall remain responsible for the cost thereof.
- 23.6 Defective Work Contractor Responsibility. Correction of defective Work or supplying of omitted Work whether or not covered by warranty of a manufacturer, Contractor Party, remains the primary, direct responsibility of the Contractor. Upon discovery of defective Work, Contractor shall be responsible to replace the defective Work at no additional cost to ATL.
- 23.7 Other Remedies. The remedies stated in **Section 23 (Warranties)** are in addition to the remedies otherwise available to ATL, do not exclude such other remedies, and are without prejudice to any other remedies at law or in equity.
- 24 **Risk of Loss.** Contractor shall have sole responsibility for risk of loss to Contractor and Contractor Party-owned facilities, Fixtures and other Work. Contractor shall have sole responsibility for risk of loss to the hardware, Fixtures, material and supplies set forth in **Section 21 (Fixtures)** of this Contract. Contractor shall assume the risk of loss for all Fixtures and Materials, until ATL's Project Acceptance of the applicable Work, unless damage is the sole result of ATL's gross negligence or willful misconduct.
- 25 **Environmental Considerations.** The Contractor shall comply with all federal, state, and local laws and regulations controlling pollution of the environment. Contractor shall take the necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful Materials and to prevent pollution of the atmosphere from particulate and gaseous matter. In the event of conflict between federal, State or local laws, codes, ordinances, rules and regulations concerning pollution control, the most restrictive applicable ones shall apply.
- 25.1 Erosion Control Work. The Contractor shall comply with section 107.13.B of the Standard Specifications. In addition, when Contractor submits his progress report in accordance with **Section 4.4 (Progress Reports and Information)**, Contractor shall also submit for acceptance of the Designated Representative, schedules for accomplishing temporary and permanent erosion control, as are applicable for clearing, grading, structures at watercourses, construction, and paving. All bituminous and Portland cement concrete proportioning plants shall meet State requirements.
- 25.2 Environmental, Pollution, Hazardous Materials and Archeological Specifications. The Contractor shall comply with sections 107.13, 107.22, 107.23 and all other environmental specifications of the Standard Specifications applicable to the Work unless more restrictive ones are specified by the Plans or Laws.
- 26 **Liquidated Damages.**
- 26.1 Time of the Essence. Time is an essential element of the Contract. ATL will assess Liquidated Damages for Contractor's failure to meet Project milestones according to **Table 26.2** below.
- 26.2 Difficulty of Ascertaining Certain Damages. The amount of Liquidated Damages as set forth in **Table 26.2** below, is fixed and agreed to by and between the Contractor and ATL because both Parties agree and acknowledge the impracticability and extreme difficulty of fixing and ascertaining the true value of the damages which ATL will sustain by failure of the Contractor to failure to meet Project milestones, such as loss of revenue, service charges, interest charges, harm and inconvenience to the public, delays caused to other activities of ATL by failure to perform this Contract, increase of inspection and administrative costs, harm to ATL's reputation and other damages, some of which are indefinite and not susceptible of easy proof, said amounts were actively negotiated between the Parties, and are in each instance agreed by both Parties to be a reasonable estimate of the amount of damages which ATL will sustain in each instance and said amount shall be deducted from any monies due or that may become due to the Contractor. Both Parties hereto acknowledge that any Liquidated Damages assessed by ATL and paid by Contractor to ATL shall limit and constitute Contractor's sole liability and ATL's sole remedy with respect to the milestones and the service levels for which Liquidated Damages are assessed as enumerated in **Table 26.2**.
- Liquidated Damages as specified in **Table 26.2** that are assessed by ATL will be deducted from any money due the Contractor, not as a penalty, but as a reasonable estimate of ATL's damages; provided however, that due consideration shall be taken of any adjustment of the time for performance granted under the provisions of **Section 20.3 (Delay and Extensions of Time)**.
- 26.2.1 Unenforceability of Liquidated Damages. If any Liquidated Damages are found for any reason to be void, invalid or otherwise inoperative so as to disentitle ATL from claiming all or part of the



Liquidated Damages, then ATL is entitled to claim against the Contractor damages at law or in equity for the Contractor's failure to complete or otherwise perform the Work as set forth in **Section 18 (Defective Work)** of the Contract.

Table 26.2

General Description of Milestone	Milestone Deadline	Liquidated Damages Amount
All Work, including Punch List items	Project Acceptance Date	\$1,000.00 per day

26.3 No Waiver. Permitting the Contractor to continue and finish the Work or any part of the Work after the expiration of the time allowed for completion or after any extension of time, shall not operate as a waiver of the rights of ATL under this Section or any of section of the Contract.

26.4 Deducted as Accrued. Liquidated Damages, may at ATL's sole option, be deducted from periodic payments as they accrue, and such deduction shall be in addition to the retainage provided for in the Contract. The remaining balance of any Liquidated Damages shall be deducted from any payment due to the Contractor or its surety. If the unpaid balance of the Contract Sum is less than the total amount to be deducted for Liquidated Damages as herein above provided, the Contractor shall promptly pay to ATL, upon ATL's demand, the amount by which such sum exceeds the unpaid balance of the Contract Sum.

26.5 Contractor and Surety Jointly and Severally Liable. Notwithstanding any other provision to the contrary, the Contractor's and the Contractor's surety shall be jointly and severally liable for the Liquidated Damages assessed by ATL pursuant to **Section 26 (Liquidated Damages)**. In the event the Contractor and/or the Contractor's surety litigates the validity of these liquidated damages provisions, the Contractor and the Contractor's surety, jointly and severally, shall also be liable for including, without limitation, legal fees, expert fees, professional fees, costs, other expenses and/or damages incurred by ATL. In the event the Contractor and/or the Contractor's surety litigates the assessment of any Liquidated Damages by ATL, the Contractor and the Contractor's surety, jointly and severally, shall also be liable for including, without limitation, legal fees, expert fees, professional fees, costs, other expenses and/or damages incurred by ATL if the imposition of any Liquidated Damages are upheld.

27 **Indemnification.**

27.1 Contractor Liability for Contractor Parties, etc. The Contractor shall be responsible to ATL for all injury or damage of any kind to person or to real or personal property resulting from any negligent act or omission to act, or breach, failure or other default by the Contractor, or its Contractor Parties.

27.2 Indemnification. Contractor hereby agrees to indemnify, defend and hold harmless ATL, the State of Georgia and its departments, agencies, authorities 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 attorneys' fees (a) 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 performance of this Contract or any act or omission on the part of the Contractor, its agents, employees or others working at the direction of Contractor or on its behalf, or (b) due to any breach of this Contract by the Contractor or Contractor Parties, (c) due to the application or violation of any pertinent Federal, State or local Law, rule or regulation or (d) due to the acts or omissions to act by Contractor or Contractor Parties. This indemnification extends to the successors and assigns of the Contractor. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by Law, the bankruptcy of the Contractor. If and to the extent such damage or loss (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 Contractor agrees to reimburse the Funds for such monies paid out by the Funds.

27.3 Intellectual Property Indemnification. The Contractor shall defend, indemnify and hold ATL harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted Materials, methods, or systems used by the Contractor.

27.4 Obligations not Mutually Exclusive. The Contractor's obligations under this Section are in addition to Contractor's obligations under **Section 32 (Insurance)**.

28 **Limitation of Liability.** ATL shall not, under any circumstances, be liable for any incidental, consequential, special, punitive, exemplary or indirect damages, lost business profits or lost data arising out of this Contract, even if ATL is informed of the possibility of such damages. ATL's liability to Contractor, if any, shall be limited to direct damages and in such case, only to the extent of the amount ATL has paid to or owes Contractor under this Contract for the twelve months immediately preceding Contractor's claim.

29 **Dispute Resolution.** In the event of any dispute whatsoever arising out of or relating to the Contract Documents, Construction Documents, the Work or the Project, 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 Designated Representative or the Superintendent, as applicable. Within five (5) Days after the receipt of the notice by the recipient, the Designated Representative and the Superintendent shall meet in ATL's offices to attempt to resolve the dispute. If the Designated Representative and the Superintendent cannot resolve the dispute then, within fourteen (14) Days after the date of written notice by either the Designated Representative or the Superintendent to the Executive Director of ATL and the President/Owner of the Contractor, the Executive Director of ATL and the President/Owner shall meet in ATL's offices to attempt to resolve the dispute. If the Executive Director of ATL and the President/Owner 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 as allowed under this Contract.

30 **Default; Damages/Remedies.**

30.1 **Default.** Subject to relief from its performance obligations pursuant to **Section 20.3 (Delay and Extensions of Time)** of this Contract, Contractor shall be in Default under this Contract upon the occurrence of any one or more of the following events or conditions:

- 30.1.1 the Contractor (a) fails to begin the applicable Work within fourteen (14) Days following issuance of NTP, (b) fails to satisfy all conditions to commencement of the applicable Work or (c) fails to commence such Work with diligence and continuity, by each deadline set forth in **Part 2, Section III** of the ITB;
- 30.1.2 the Contractor has withheld, disrupted or delayed Work due to non-payment by ATL, except as provided in **Section 30.3 (ATL Default)** of the Contract;
- 30.1.3 the Contractor has failed to deliver the Work on a timely basis;
- 30.1.4 the Contractor has assigned its rights and obligations under this Contract in violation of this Contract;
- 30.1.5 the Contractor has failed to provide "adequate assurances" within five (5) Days of ATL's notice, when, in the opinion of ATL, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform any of its obligations under this Contract;
- 30.1.6 the Contractor has failed to remedy defective Work in accordance with **Sections 18 (Defective Work)** or **23 (Warranties)** of this Contract;
- 30.1.7 the Contractor has failed to maintain bonds and insurance policies and coverages or fails to provide proof of bonds and insurance or copies of bonds and insurance policies, or fails to comply with any requirement of this Contract pertaining to the amount, terms or coverage of the same as required by **Sections 32 (Insurance)** and **33 (Bonds)** of this Contract;
- 30.1.8 the Contractor becomes insolvent or the Contractor has taken advantage of any insolvency statute or debtor/creditor Law or the Contractor's property or affairs have voluntarily been put in the hands of a receiver; or any case, proceeding or other action against the Contractor was commenced in bankruptcy, or seeking reorganization, liquidation or any relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution or other similar act or Law of any jurisdiction;
- 30.1.9 the Contractor has failed to fully comply with the schedule or specific elements of, or actions required under any approved remedial plan furnished to ATL pursuant to this Contract or otherwise;
- 30.1.10 the suspension or revocation of any license, permit, or registration necessary for the performance of the Contractor's obligations under this Contract;
- 30.1.11 the Contractor has suspended or failed to proceed with any properly authorized part of the Work;
- 30.1.12 the default in the performance or observance of any of the Contractor's other obligations under the Contract Documents;
- 30.1.13 any representation or covenant in the Contract Documents made by Contractor, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Contractor to ATL pursuant to the Contract Documents is materially false, materially misleading or materially inaccurate when made or omits material information when made; or
- 30.1.14 after exhaustion of all rights of appeal, there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State

department or agency of (a) Contractor, (b) any member of Contractor with a material financial obligation owing to Contractor for equity or shareholder loan contributions, (c) any affiliate of Contractor for whom transfer of ownership would constitute a Change of Control, or (d) any Key Contractor whose Work is not completed.

- 30.2 ATL Damages/Remedies. Upon the occurrence of a Default, ATL may, in addition to and without prejudice to all other contractual remedies and/or remedies allowed at Law or in equity, proceed to take any or all of the following actions:
- 30.2.1 withhold any money then due and/or thereafter due to Contractor;
  - 30.2.2 perform or cause to be performed for the account of Contractor any contractual covenant in the performance of which the Contractor is in default or make any payment for which the Contractor is in default. The Contractor shall pay to ATL upon demand any amount paid or incurred by ATL in the performance of such covenant. Any amounts which have been paid or incurred by reason of failure of the Contractor to comply with any covenant or provision of this Contract shall bear interest at the Default Rate, which shall be defined as the Prime Rate plus five percent (5%), but in no case higher than the highest rate permitted by Law, from the date of payment by ATL until paid by the Contractor. Upon request, ATL will provide reasonable documentation substantiating any claim for payment under this Subsection;
  - 30.2.3 ATL or ATL Designated Representatives shall have the right to immediately take possession of any or all of the Materials, tools, technical specifications, drawings, Fixtures, supplies and property of every kind, provided, purchased, maintained, leased, owned, or rented by the Contractor, including but not limited to the Source Code, and the Fixtures and hardware either paid for by ATL, used by Contractor to perform Work or otherwise stored by ATL or at the Project site; make available any or all of the foregoing items to a third party provider and/or procure other Materials, plant, tools, Fixtures, and supplies and charge the Contractor therefor and the Contractor shall be liable to ATL for the expense of said labor, Materials, plant, tools, Fixtures, supplies and property;
  - 30.2.4 obtain the Work, or a portion thereof, from a third party under substantially similar terms of this Contract, and recover from Contractor all additional costs and expenses paid or incurred by ATL as a result of the Default, plus all additional costs paid or incurred by ATL to obtain the replacement Work;
  - 30.2.5 terminate the Contract, in whole or in part; and
  - 30.2.6 reduce the scope of Work.
- 30.3 ATL Default. Subject to ATL's exercise of its withholding rights and other remedies and rights under the Contract, if ATL fails to pay Contractor undisputed invoices when due under the Contract and fails to make such payments within ninety (90) Days of receipt of written notice from Contractor of the failure to make such payments ("ATL Default"), Contractor may, by giving written notice to ATL, terminate this Contract as of a date specified in the notice of termination for ATL Default. Contractor shall not have the right to terminate the Contract for ATL's breach of the Contract except as specifically provided in this Section. In the event of termination of this Contract by Contractor for ATL Default as provided in this Section, ATL shall be liable only for payments required by the terms of this Contract for Work which has been performed satisfactorily according to the Contract Documents, any restocking fees actually and reasonably incurred by Contractor for any Work ordered but not used on the Project, and reasonable and actual wind down costs. ATL prior to the effective date of termination, subject to ATL's exercise of its rights and remedies under the Contract.

## 31 Termination.

- 31.1 Termination for Cause. Upon Default, ATL may, in its sole discretion, terminate this Contract in whole or in part. Termination shall take effect on the date set forth in ATL's notice to Contractor. Upon such termination ATL shall not be required to pay Contractor any amounts for Work performed prior to the date of termination for which payment may be due and owing but not yet paid ("Remaining Payment"). In the event ATL's expenses incurred or anticipated to be incurred as a result of Contractor's breach are less than the Remaining Payment, ATL shall remit such differential to the Contractor. In the event ATL's expenses incurred or anticipated to be incurred as a result of Contractor's breach exceed the Remaining Payment, then Contractor shall within thirty (30) Days of written notice from ATL, make payment of the differential to ATL. In addition to the rights and remedies in this Section, ATL shall have all other rights and remedies against Contractor which are available at Law or in equity.
- 31.2 Termination for Convenience. ATL may terminate this Contract, in whole or in part, for convenience upon 30 Days written notice, which shall commence upon the date included in the notice. All Work, including Deliverables, shall at ATL's option become the property of ATL upon receipt of payment by Contractor for the amount owed for such item of Work. In the event of a termination for convenience, ATL shall only pay the Contractor for Work performed through the termination date, any restocking fees actually and reasonably incurred by Contractor for any Work ordered but not used on the Project, and reasonable and

actual wind down costs. ATL will consider reimbursing the Contractor for actual cost of Mobilization (when not otherwise included in the Contract) including moving equipment to the Project site where the volume of the Work that the Contractor has completed is too small to compensate the Contractor for these expenses under the Contract unit prices. However, the ATL Designated Representative's decision as to whether to reimburse for Mobilization, and in what amount, shall be final. ATL shall not be responsible for any other costs, fees and expenses of any nature whatsoever, including but not limited to administrative fees, legal fees, salary, or any other cost or expense, whether direct or indirect, whether foreseen or unforeseen. The Contractor acknowledges that the remedy set forth in this Section is the Contractor's sole and exclusive remedy against ATL for termination for convenience and Contractor hereby waives all other rights and remedies it may have against ATL for termination for convenience.

- 31.3 Termination for Lack of Funding. Contractor acknowledges that institutions of the State of Georgia are prohibited from pledging the credit of the State so as to prevent incurring a financial obligation unless funds to honor the obligation have been lawfully appropriated. Consequently, as may be the case, if the sources of payment for the Contract no longer exist or are determined to be insufficient, ATL will notify Contractor promptly (and in any event within thirty (30) days) after ATL becomes aware of such and may immediately terminate this Contract upon notice to Contractor without any further obligation, other than payment for Work performed through the termination date. The determination of ATL as to the occurrence of the events stated in this paragraph will be conclusive.
- 31.4 Pre-existing Liability. No termination of this Contract shall excuse either Party from any liability arising out of any default as provided in this Contract that occurred prior to termination.
- 31.5 Compliance with Contract. Both Parties shall comply with all of the terms and conditions of the Contract Documents, including but not limited to the provisions of **Section 35 (Cooperation, Transition of Deliverables, End of Contract Responsibilities)** of this Contract, in the event ATL exercises any of its rights under this Section.
- 31.6 Termination Procedures and Duties. Upon expiration of the Term or earlier termination of this Contract for any reason, the provisions of this Section shall apply. Contractor shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due Contractor or ATL on account of such termination.
- 31.6.1 Within three (3) Business Days after receipt of a notice of termination or upcoming expiration, as applicable, Contractor shall meet and confer with ATL for the purpose of developing an interim transition plan for the orderly transition of Work, demobilization and transfer of the Project control to ATL. The Parties shall use diligent efforts to complete preparation of the interim transition plan within a reasonable timeframe, taking into consideration ATL's business needs. The Parties shall use diligent efforts to complete a final transition plan within thirty (30) Days after such date. The transition plan shall be in form and substance acceptable to ATL in its good faith discretion and shall include and be consistent with the other provisions and procedures set forth in this Section, all of which procedures Contractor shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan.
- 31.6.2 On the termination date, or as soon thereafter as is possible, Contractor shall relinquish and surrender full control and possession of the Project to ATL, and shall cause all persons and entities claiming under or through Contractor to do likewise, in at least the condition required by the termination turnover requirements set forth in the transition plan. On the later of the termination date or the date Contractor relinquishes full control and possession, ATL shall assume responsibility, at its expense, for the Project, subject to any rights to damages that ATL has against Contractor where the termination is due to a Default.
- 31.6.3 Within thirty (30) Days after notice of termination is delivered, Contractor shall provide ATL with true and complete list of all Materials, goods, machinery, Fixtures, parts, supplies and other property in inventory or storage (whether held by Contractor or any person or entity on behalf of or for the account of Contractor) for use in or respecting the Work or the Project, or on order or previously completed but not yet delivered from supplier(s) for use in or respecting the Work or the Project. In addition, on or about the termination date, Contractor shall transfer title and deliver to ATL or ATL's designee, through bills of sale or other documents of title, as directed by ATL, all such Materials, goods, machinery, Fixtures, parts, supplies and other property, provided ATL assumes in writing all of Contractor's obligations under any contracts relating to the foregoing that arise after the termination date.
- 31.6.4 Contractor shall take all action that may be necessary, or that ATL may direct, for the protection and preservation of the Project, the Work and such Materials, goods, machinery, Fixtures, parts, supplies and other property.
- 31.6.5 On or about the termination date, Contractor shall execute and deliver to ATL the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to ATL, acting reasonably, assigning and transferring to ATL all of Contractor's right, title and interest in and to the following:

31.6.5.1 all completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, design documents, as-built and record plans, surveys, and other documents and information pertaining to the design or construction of the Project or the Utility Adjustments;

31.6.5.2 all books, records, reports, test reports, studies and other documents of a similar nature relating to the Work, the Project;

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

32 **Insurance.**

32.1 **Insurance Certificates.** The Contractor shall procure the insurance coverages identified below at the Contractor's expense and shall furnish ATL an insurance certificate listing ATL as the certificate holder and an endorsement listing ATL as an additional insured for the acts or omissions of Contractor or the Contractor 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 ATL 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, Contractor shall notify ATL within seven (7) Days of Contractor'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 ATL as certificate holder; (i) project Name and Number; (j) signature of authorized agent; and (k) telephone number of authorized agent.

32.2 **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:

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

32.2.2 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");

32.2.3 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 Contractor and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnities, in which case there will be mutual cooperation between the Attorney General and such counsel. See O.C.G.A. § 45-15-12;

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

32.2.5 self-insured retention, except for qualified self-insurers or group self-insurers, in any policy shall not exceed \$50,000.00.

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

32.3.1 ***Workers' Compensation Insurance.*** The Contractor agrees to provide at a minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State 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 Contractor qualifies to pay its own workers' compensation claims. The Contractor shall require all Subcontractors performing Work under this Contract to obtain an insurance certificate showing proof of

Workers' Compensation Coverage and shall submit a certificate on the letterhead of the Contractor in the following language:

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

32.3.2 *Employers' Liability Insurance.* The Contractor shall also maintain Employer's Liability Insurance Coverage with limits of at least:

32.3.2.1 Bodily Injury by Accident \$1,000,000 each accident; and

32.3.2.2 Bodily Injury by Disease \$1,000,000 each employee.

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

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

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

<b>Coverage</b>	<b>Limit</b>
1. Premises and Operations	\$ 1,000,000.00 per Occurrence
2. Products and Completed Operations	\$ 1,000,000.00 per Occurrence
3. Personal Injury	\$ 1,000,000.00 per Occurrence
4. Contractual	\$ 1,000,000.00 per Occurrence
5. General Aggregate	\$ 2,000,000.00

Additional Requirements for Commercial General Liability Insurance are shown below at **Section 32.3.6.**

32.3.4 *Commercial Business Automobile Liability Insurance.* The Contractor shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each occurrence.

32.3.5 *Commercial Umbrella Liability Insurance.* The Contractor shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and 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

32.3.6 *Additional Requirements.* The insurance provided in **Sections 32.3.3, 4, and 5** shall also meet the following additional requirements:

32.3.6.1 the policy shall name as additional insureds the officers, members, and employees of ATL; and

32.3.6.2 the policy must be on an "occurrence" basis.

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

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

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

32.6 Ongoing Coverage. Contractor is responsible for tracking insurance coverages for itself and its subcontractors, for ensuring that coverages remain in force throughout the duration of the Contract, and for demonstrating to ATL ongoing compliance with this **Section 32 (Insurance).**

32.7 General. The Contractor's obligations under this **Section 32** are in addition to Contractor's obligations under **Section 27 (Indemnification) of this Contract.**

33 **Bonds.** The Contractor shall furnish the bonds required in this **Section 33.**

33.1 Payment and Performance Bond. The Contractor shall furnish both a performance bond and a payment bond in the exact form set forth in **Exhibit D (Bond Forms).**

33.2 Required Qualifications for Surety. The surety and insurance companies must be acceptable to ATL. Only those sureties listed in the Department of Treasury's Listing of Approved Sureties (Department Circular 570) are acceptable to ATL. All bonds at the time of issuance must be issued by a company authorized by the Insurance Commissioner to transact the business of suretyship in the State of Georgia, and shall have a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger.

33.3 Penal Amount of Bonds, State Law. The provisions of O.C.G.A. §§ 13-10-2, 13-10-40 and 13-10-60, shall be deemed to govern the requirements of the performance and payment bonds required under this Contract. Therefore pursuant to O.C.G.A. §§ 13-10-2, 13-10-20, 13-10-40 and 13-10-60, the bonds must be in a penal amount equal to at least 100% of the Contract Sum plus any Change Orders, less maintenance fees for the hardware, software and network services. Accordingly, the Contractor warrants and agrees that, for any Change Order increasing the Contract Sum by five percent (5%) or more, it shall obtain a written amendment to each bond increasing the penal amount to 100% of the Contract Sum, effective as of the date of the Change Order. The premium increase, if any, may be properly included in the cost of the Change Order.

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

35 **Cooperation, Transition, End of Contract Responsibilities.**

35.1 Cooperation. In the event that ATL enters into any agreement at any time with any other vendor(s) as allowed pursuant to **Section 42.20 (No Exclusivity)** of this Contract or for additional Work related to the Work, Contractor agrees to cooperate fully with such other vendors in order to facilitate the performance of Work by such other vendor(s) and/or provision of the Work by the Contractor and to refrain from any activity which would interfere with performance of Work by such other vendor(s) and/or provision of the Work by the Contractor.

35.2 Transition. Upon expiration or earlier termination of this Contract, Contractor shall accomplish a complete transition of the Work from Contractor to ATL, or to any replacement provider designated by ATL, and not cause through any act or omission of the Contractor or the Contractor Parties any interruption of, or adverse impact on the Work any component thereof or any other Work provided by third parties. Contractor shall cooperate fully with ATL or such replacement provider and promptly take all steps required to assist in effecting a complete transition. All Work related to such transition shall be performed at no additional cost.

35.3 End of Contract. The Contractor shall perform the end of Contract responsibilities as specified in the Contract Documents or as otherwise directed by ATL.

35.4 Failure to Comply. The Parties acknowledge and understand that Contractor's failure to comply with the terms and conditions as stated in this **Section 35** may adversely affect ATL and result in monetary loss to ATL. ATL shall assess, audit, and certify to the Contractor monetary losses resulting from the Contractor's failure to comply with the provisions of this **Section 35**. ATL's reasonable determination as to the amount of the monetary loss suffered shall be conclusive and, unless an action is brought by Contractor in a court of law pursuant to **Section 42.6 (Governing Law and Venue)** of this Contract within forty-five (45) Days of ATL's determination of monetary loss and ATL's determination is deemed unreasonable by such court, Contractor shall compensate ATL for any undisputed loss within thirty (30) Days of such a determination by ATL or by the court of competent jurisdiction, as applicable.

- 36 **Utilities.** Pending the extension and connection of permanent water, permanent gas, permanent sewer taps, and permanent electric power, the Contractor shall obtain temporary water, temporary gas, temporary electric power, and provide sewage disposal at his own expense. In the absence of provisions to the contrary, the Contractor shall pay for all utilities services until Project Acceptance has been achieved. The Contractor shall comply with sections 105.06 and 107.21 of the Standard Specifications.
- 37 **Disruption to Residential/Commercial Property.** The Contractor shall comply with section 107.13 and 107.25 of the Standard Specifications.
- 38 **Subcontracting and Assignment.** With regard to subcontracting and assignment, the Contractor shall comply with section 108.01 of the Standard Specifications.
- 38.1 **Subcontracting.** ATL shall have the right to require the Contractor to remove a subcontractor and/or supplier of Contractor from performing under this Contract, if in ATL's reasonable opinion, such subcontractor and/or supplier:
- 38.1.1 is not performing its portion of the Work satisfactorily;
- 38.1.2 is failing to cooperate as required in the Contract Documents;
- 38.1.3 is posing a security risk to the Project or to ATL's business; or
- 38.1.4 is otherwise breaching a term of the Contract Documents that is applicable to that portion of the Work being performed by the subcontractor and/or supplier.
- In the event of such removal, Contractor will replace the Contractor Party with a suitable replacement within a reasonable time specified by ATL.
- 38.2 **Failure to Comply.** Any assignments or subcontracts made in violation of this **Section** shall be null and void.
- 39 **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 contractors of one Party shall not be deemed or construed to be the employees, agents, partners or contractors of the other Party for any purposes. Neither Party shall assume any liability of any type on behalf of the other Party or any of such other Party's employees, agents, partners or contractors. The Parties expressly understand and agree that Contractor is an independent Contractor of ATL in all manner and respect and that neither Party to this Contract is authorized to bind the other Party to any liability or obligation or to represent in any way that it has such authority. Contractor shall be solely responsible for all payments to its subcontractors, agents, consultants, suppliers, employees, partners or any other parties with which it does business including, but not limited to, paying all benefits, taxes and insurance, including workmen's compensation insurance, for its employees.
- 39.1 **Joint Venture/Partnership.** If Contractor is a joint venture or partnership then each member of the joint venture or partnership shall be jointly and severally liable to ATL and to the State for any and all obligations, responsibilities, liabilities, damages, Liquidated Damages, warranties or otherwise arising under the Contract Documents.
- 40 **Conflicts of Interest.** The Contractor represents and warrants that it, its principals, its employees, and all others in close association with it, have no conflict of interest or of time, directly or indirectly, that would prevent timely performance of the Work or the performance of Work in a manner that is free of appearance or fact of impropriety. The Contractor promises not to allow such conflict to arise and promises to disclose such a conflict in the event that, nevertheless, one develops.
- 41 **Exhibits.** The following Exhibits are attached hereto and incorporated into the Contract Documents:
- Exhibit A-** Definitions  
**Exhibit B-** FTA Clauses  
**Exhibit C-** Pricing Schedules  
**Exhibit D-** Bond Forms  
**Exhibit E-** Bill of Sale  
**Exhibit F-** Davis Bacon Wages – Multiple Counties as identified in ITB.  
**Exhibit G-** DBE Notice of Intent to Perform as Subcontractor  
**Exhibit H-** DBE Subcontractor Payment Report  
**Exhibit I-** DBE Utilization Contract Closeout Report
- 42 **Miscellaneous Provisions.**
- 42.1 **Compliance with Laws.** The Contractor shall perform its obligations hereunder, and shall ensure that all of its subcontractors perform their obligations, in accordance with all applicable federal, State, and local government Laws, rules, regulations, orders and approvals, including but not limited to procedures and requirements relating to labor standards, compliance with Americans with Disabilities Act, anti-



solicitation Laws, O.C.G.A. § 50-5-82, O.C.G.A. § 13-10-91, and auditing and reporting provisions, now or hereafter in effect, and any rules required by any federal grant funding payment by ATL. Any changes to applicable Laws, rules, or regulations that are enacted after contract award may be the subject of a Change Order only if a change to applicable Laws, rules, or regulations results in an actual and direct increase in cost to Contractor to comply with such changes. In such an event, the increased cost shall reflect the unit prices set forth in the Contractor's Price Proposal included in the Contractor's Bid, and if the labor or material is not included in the Contractor's Price Proposal, then the Change Order shall only reflect an increase in price of Contractor's actual cost.

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

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

42.2.1.1 Contractor has received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy>;

42.2.1.2 Contractor has completed sexual harassment prevention training in the last year and will continue to do so on an annual basis; or will complete the Georgia Department of Administrative Services' sexual harassment prevention training located at this direct link <https://www.youtube.com/embed/NjVtODDnc2s?rel=0> prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and

42.2.1.3 Upon request by the State, Contractor will provide documentation substantiating the completion of sexual harassment training.

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

42.2.2.1 Contractor will ensure that such employees and subcontractors have received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy>;

42.2.2.2 Contractor has provided sexual harassment prevention training in the last year to such employees and subcontractors and will continue to do so on an annual basis; or Contractor will ensure that such employees and subcontractors complete the Georgia Department of Administrative Services' sexual harassment prevention training located at this direct link <https://www.youtube.com/embed/NjVtODDnc2s?rel=0> prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and

42.2.2.3 Upon request of the State, Contractor will provide documentation substantiating such employees and subcontractors' acknowledgment of the State of Georgia's Statewide Sexual Harassment Prevention Policy and annual completion of sexual harassment prevention training.

- 42.3 Parties Bound. This Contract will bind the respective heirs, executors, administrators, legal representatives, successors, and assigns of each Party.
- 42.4 Time of the Essence/Force Majeure. Time is of the Essence for this Contract. However, neither Party shall be liable to the other Party for any delay or failure of performance due to the occurrence of a Force Majeure Event. Contractor's exclusive remedies for Force Majeure are set forth in **Section 20.3 (Delay and Extensions of Time)** of this Contract.
- 42.5 Trading with State Employees. The Contractor warrants that the provisions of O.C.G.A. §§ 45-10-20 et seq. have not and will not be violated during the Term or any Renewal Term of this Contract.
- 42.6 Governing Law and Venue.
- 42.6.1 *Governing Law.* This Contract is a Georgia agreement made under the Laws of the State of Georgia. It will be enforced according to Georgia Law without regard to its conflict of Laws rules or any other rules directing referral to foreign Law or forums.
- 42.6.2 *Venue.* Any action arising out of or related to this Contract in any way shall be brought exclusively in the Superior Court of Fulton County, Georgia, and each Party hereby consents to the jurisdiction and venue of such Court and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum.
- 42.7 Notices. All notices, notifications, requests, approvals, or other communications (excluding Invoices) required by or otherwise related to the Contract Documents shall be in writing and transmitted via hand delivery, overnight courier, or certified mail (return receipt requested), to the Parties at the respective addresses set forth below. Notices may also be sent by email or facsimile transmission provided that the recipient acknowledges receipt of the notice, notification, request, approval, or other communication, as applicable. Invoices shall be sent by U.S. Mail, postage prepaid, to the attention of Accounts Payable at ATL's address set forth below. Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other person making the delivery. Any technical communications pertaining to the Work shall be conducted between Superintendent and Designated Representative.
- |                                                                                                                          |                                                                   |
|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| <p>For ATL:</p> <p>Att:<br/>245 Peachtree Center Avenue, Suite 2200<br/>Atlanta, Georgia 30303<br/>Phone:<br/>Email:</p> | <p>For the Contractor:</p> <p>Att:<br/><br/>Phone:<br/>Email:</p> |
|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
- With a copy to:
- Chief Legal Officer
- 42.8 Taxes. The Contractor will pay, prior to delinquency, all taxes lawfully imposed upon it that may arise with respect to this Contract.
- 42.9 Publicity. Contractor shall not issue a press release or otherwise publicize the Work or this Contract without the prior written permission of ATL's Chief Communications Officer.
- 42.10 Drug-Free Workplace. Contractor hereby certifies that (a) a drug free workplace will be provided for the Contractor's employees during the performance of this Contract, and (b) it will secure from any subcontractor hired to Work in a drug free workplace the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name), certifies to the Contractor that a drug free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection B of Code Section 50-24-3." Contractor may be suspended, terminated, or debarred if it is determined that (a) the Contractor has made false certification hereinabove, or (b) the Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. § 50-24-3.
- 42.11 Remedies Cumulative. With the exception of Liquidated Damages, the rights and remedies of ATL under this Contract are cumulative of one another and with those otherwise provided by Law or in equity.
- 42.12 Integration of the Contract Documents. ATL and Contractor agree and expressly intend that, subject to **Section 42.14 (Severability)** of this Contract, this Contract, and the other Contract Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

- 42.13 Waiver. No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the obligee Party. The exercise by a Party of any right or remedy provided under the Contract Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy as such right or remedy is specifically allowed under this Contract. No waiver by any Party of any right or remedy under the Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given. Except as provided otherwise in the Contract Documents, no act, delay or omission done or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the Contract Documents. Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding.
- 42.14 Severability. The invalidity or unenforceability of any clause, provision, section or part of the Contract Documents shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.
- 42.15 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 the Contract Documents.
- 42.16 Headings. The captions in this Contract are solely for convenience and will not affect the interpretation of any terms of this Contract.
- 42.17 Counterparts. The Parties may execute this Contract in counterparts.
- 42.18 Construction of Contract. In the event this Contract must be interpreted by a court of competent jurisdiction as set forth in **Section 42.6 (Governing Law and Venue)**, the Parties expressly agree that this is a negotiated Contract that will not be construed against one Party over the other because such Party drafted the Contract.
- 42.19 Survival. In addition to those provisions, which by their terms would naturally survive termination of the Contract, **Sections 4 (Contractor's General Responsibilities), 13 (Construction Documents), 14 (Safety Precautions), 15 (Site Conditions), 16 (Inspection), 18 (Defective Work), 19 (Payment Terms), 23 (Warranties), 24 (Risk of Loss), 25 (Environmental Considerations), 26 (Liquidated Damages), 27 (Indemnification), 28 (Limitation of Liability), 29 (Dispute Resolution), 30 (Default; Damages/Remedies), 31 (Termination), 32 (Insurance), 33 (Bonds), 34 (Records Retention and Audit Rights), 35 (Cooperation, Transition, End of Contract Responsibilities), 38 (Subcontracting and Assignment) and 42 (Miscellaneous Provisions)** of this Contract shall survive the termination for whatever reason of this Contract.
- 42.20 No Exclusivity. This is a non-exclusive Contract. This Contract in no way precludes ATL from obtaining like goods or services from other suppliers at any time. Such determination by ATL shall be made at the sole discretion of ATL and shall be conclusive. Such determination shall only be made when it is deemed to be in the best interest of ATL or the State to do so.
- 42.21 Entire Contract; Amendment. This Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all other prior and contemporaneous contracts and understandings between the Parties, whether oral or written. ATL shall not be bound by any terms and conditions included in any packaging, invoice, catalog, brochure, technical data sheet, or other document prepared by the Contractor which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein. No Amendment to this Contract shall be valid unless made in writing and signed by both Parties.
- 42.22 Registered Lobbyists. Contractor represents and warrants that the Contractor and its lobbyists, if any, are in compliance with the Lobbyist Registration Requirements in accordance with the Georgia Vendor Manual, which is incorporated herein by reference.
- 42.23 Replacement of Terms in the Specifications. Whenever the terms "Department" and "Engineer" are used within the Standard Specifications and Supplemental Specifications, the terms "ATL" and "ATL's Designated Representative" respectively, will replace those terms for purposes of this Contract.

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

Atlanta-region Transit Link Authority

\_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
Jannine Miller  
Executive Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Merryl Mandus  
Chief Legal Officer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**Definitions**

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

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

**Change Order** means a written approval by ATL, counter-signed by Contractor, which shall set forth any adjustments to the Contract Sum and/or the Contract time as further described in **Section 20.2 (Change Order)** of the Contract.

**Construction Documents** mean those documents set forth in the ITB as **Attachment 1** (Construction Plan), (GDOT Standard Specifications and GDOT Supplemental Specifications), GDOT Construction Details and SRTA Construction Details and all drawings, plans, material and hardware descriptions, construction quality control reports (submitted by Contractor), construction quality assurance reports (submitted by Contractor) and samples necessary or desirable for construction of the Project, in accordance with the ITB.

**Contract** means this Construction Contract between ATL and Contractor.

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

**Contract Sum** means the total amount due to the Contractor under the terms of the Contract.

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

**Contractor Party(ies)** means the Contractor's agents, employees, independent contractors, assigns, contractors, subcontractors, suppliers, or any other entity or Person with whom Contractor entered into an agreement to perform services or supply Materials and/or Fixtures or any other item of Work required of Contractor under the Contract Documents.

**Contractor's Bid** means the bid submitted by the Contractor in response to the ITB.

**Critical Path** means the sequence of activities that must be completed on schedule for the entire Project to be completed on in accordance with the Schedule milestone deadlines. This is the longest duration path through the Work plan, in terms of time, of logically connected activities on the Schedule ending with the relative Schedule milestone deadlines in respect thereof.

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

**Default** shall consist of those events and conditions listed in **Section 30.1 (Default)** of the Contract.

**Designated Representative(s)** shall mean the individual(s), consultant, partnership, firm, or corporation authorized by ATL to represent ATL's interests in the Project.

**Disputed Work** shall have the meaning assigned to it in **Section 20.2.2 (Disputed Work)** of the Contract.

**Equipment** means all machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the Work.

**Fixtures** means any hardware, supplies, items, and/or physical property that is permanently attached to real property.

**FTA.** The 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.

**Force Majeure Event** means the occurrence of any of the following events that materially and adversely affects performance of Contractor's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Contractor (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, in each case occurring within the State; (b) any act of terrorism or sabotage that causes direct physical damage to the Project; (c) nuclear explosion or contamination, in each case occurring within the State; (d) riot and civil commotion on or in the immediate vicinity of the Project; (e) fire, explosion, flood, earthquake, hurricane, or tornado, in each case that causes direct physical damage to the Project; or (f) national or statewide (i.e. State of Georgia) strike that has a direct adverse impact on the Contractor's ability to obtain materials, Fixtures or labor for the Project.

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

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

**GDOT** means the Georgia Department of Transportation.

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

**Intention of Terms.** Whenever, in these Specifications or on the Plans, the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of the like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Designated Representative is intended; and similarly, the words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Designated Representative, subject in each case to the final determination of ATL.

**Invitation to Bid (ITB)** means the ATL Solicitation No. 24-014 and any addenda thereto and any documents referenced therein.

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

**Liquidated Damages** means the damages assessed by ATL and payable by Contractor to ATL for failure to meet the Project milestones as set forth under **Section 26 (Liquidated Damages)** of the Contract.

**Lump Sum** means when used as an item of payment will mean complete payment for the Work described in the Contract.

**Material(s).** Any substance specified for use in the construction of the Contract Work.

**Minor Field Adjustment** shall mean deviations from the Material(s) quantities provided in ITB that do not result in an increase in cost to ATL as well as deviations ATL approved deviations from the construction schedule that do not result in an extension of the Final Completion date.

**Mobilization** means preparatory Work and operations to mobilize for beginning Work on the project. Mobilization shall include, but not be limited to, those operations necessary for the movement of personnel, equipment, supplies and incidentals to the project site, and for the establishment of temporary offices, buildings, utilities, safety equipment, including barriers, and first aid supplies, sanitary and other facilities, as required by these specifications and State and local laws and regulations. The costs of bonds and any required insurance and any other pre-construction expense necessary for the start of the Work, excluding the cost of construction materials, may also be included in Mobilization.

**Notice to Proceed** means a written notice to the Contractor to begin the actual Contract Work on a previously agreed to date. If applicable, the Notice to Proceed shall state the date on which the Contract time begins.

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

**Park & Ride** means the Xpress Park & Ride lots identified in the ITB, Part II. Scope of Work.

**Person** means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization, Governmental Entity, or ATL.

**Plans.** The official drawings or exact reproductions which show the location, character, dimensions and details of the Park & Ride and the Work to be done and which are to be considered as a part of the Contract, supplementary to the Specifications.

**Progress Schedule Chart (PSC)** means the GDOT maintained form that depicts the project critical path schedule as the basis for establishing the controlling items of work and as a check of the progress of the Work. A template can be accessed here: <http://www.dot.ga.gov/PartnerSmart/Business/Forms/PROGRESS%20%20SCHEDULE%20%20CHART3.doc>

**Project.** The scope of Work for accomplishing specific construction, development, and maintenance Work, as specified in the Contract Documents and Construction Documents.

**Project Acceptance** means successful completion of all deliverables required by the scope of Work, Part 2 of the ITB, closure of all punch-list items, completion and submission of all required documents and meeting of other conditions as specified in the Contract Documents as acknowledged in writing by ATL.

**Project Acceptance Date** means the date by which Project Acceptance is achieved as set forth in the Schedule.

**Project Management Plan (PMP)** means the document that describes the system of management, staff, and measurable controls that will be utilized to meet the specifications of this ITB and will enable ATL to monitor the progress and quality of the Work performed on the Project(s). The PMP will include all aspects of change management, communications

management, configuration management, human resources management, requirements management and will incorporate the quality management plan, risk management plan, and cost, Schedule and scope baselines.

**Punch List** means an itemized list of Construction Work that remains to be completed following Substantial Completion but as a condition to Project Acceptance, provided that the nature of any such incomplete Work, and the correction and completion of same, will have no material or adverse effect on the normal and safe use and operation of the Project.

**Schedule** means the Contractor's Schedule approved in writing by ATL, as may be adjusted pursuant to a Change Order, including on account of any permissible extensions of time pursuant to **Section 20.3 (Delay and Extensions of Time) of this Contract**.

**Site** means the physical boundaries on which the Project is located.

**Special Provisions** means additions or revisions by GDOT to the Standard Specifications or Supplemental Specifications, as applicable to the Project.

**ATL Default** shall have the meaning ascribed to that term in **Section 30.3** of this Contract.

**Standard Specifications** means a publication titled: "Department of Transportation, State Of Georgia Standard Specifications, Construction Of Transportation Systems" which can be found at <http://www.dot.ga.gov/PartnerSmart/Business/Source/specs/2021StandardSpecifications.pdf>

**Substantial Completion** shall have the meaning ascribed to it in **Section 16.4 of the Contract**.

**Supplemental Specifications** means the GDOT approved additions to or revisions of the Standard Specifications, which can be found at <http://www.dot.ga.gov/PS/Business/Source>.

**State** means the State of Georgia.

**Subcontractor** means any individual, partnership or corporation supplying the Contractor with labor, materials, and supplies, used directly or indirectly by the said Contractor or subcontractor in the prosecution of the Work.

**Superintendent** means the individual designated by the Contractor and approved in writing by ATL in the position to take full responsibility for the prosecution of the Work, who is present on the Work during progress, authorized to receive and fulfill instructions from the Designated Representative, and will act as a single point of contact on all matters on behalf of Contractor as described in the approved Project Management Plan.

**Supplemental Agreement** means a written agreement entered into by and between ATL and the Contractor covering modifications or alterations to the original Contract, and establishing any necessary new Contract Items, any other basis of payment, and any time adjustments for the Work affected by the changes. This Agreement becomes a part of the Contract when properly executed and approved.

**Work** shall mean without limitation all plant, labor, materials, equipment, systems, taxes, services and other facilities, installation, testing, operations and maintenance and other things necessary or proper for or incidental to the carrying out and completion of the terms of the Contract Documents.

**Work Breakdown Structure (WBS)** means a chart that depicts all the Project deliverables that Contractor must complete, which is organized into multiple levels and displayed graphically.

**EXHIBIT B**  
**MANDATORY FTA CLAUSES**

**1. NO GOVERNMENT OBLIGATION TO THIRD PARTIES.**

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

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

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

**3. ACCESS TO RECORDS.**

- 3.1 Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- 3.2 Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Agreement for a period of at not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- 3.3 Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- 3.4 Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

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

**5. CIVIL RIGHTS AND EQUAL OPPORTUNITY.**

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

Under this Contractor, Contractor shall at all times comply with the following requirements and shall include



these requirements in each subcontract entered into as part thereof.

- 5.1 Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 5.2 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Agreement:
- 5.2.1 *Race, Color, Religion, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., and Executive Order 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- 5.2.2 *Age* - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 5.2.3 *Disabilities* - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 5.3 Subcontracts. Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## 6. DISADVANTAGED BUSINESS ENTERPRISES (DBE).

- 6.1 This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. All Proposers qualifying under the subject solicitation are encouraged to submit proposals. The requirements of this solicitation apply for all Proposers, including those who qualify as a DBE. ATL's overall goal for DBE participation in federally funded contracts awarded during FFY'20-FFY'22 (October 1, 2020 and September 30, 2023) is 9.62%. **ATL has established a separate DBE goal for this Project of 10%.**
- 6.2 Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as ATL deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- 6.3 Contractor will be required to report its DBE participation obtained through race-neutral means throughout the Term of Agreement.
- 6.4 Contractor is required to pay its subcontractor(s) performing work related to this Agreement for satisfactory performance of that work no later than fifteen (15) calendar days after Contractor's receipt of payment for that work from ATL. In addition, Contractor may not hold retainage from its subcontractors.

- 6.5 Contractor must promptly notify ATL whenever a DBE subcontractor performing work related to this Agreement 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. Contractor 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, as may be amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any ATL requests which would cause ATL to be in violation of the FTA terms and conditions.

**8. PROMPT PAYMENT OF SUBCONTRACTORS.**

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

**9. SUSPENSION, DEBARMENT, INELIGIBILITY AND VOLUNTARY EXCLUSION.**

- 9.1 Contractor shall comply and comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:
- a) Debarred from participation in any federally assisted Award;
  - b) Suspended from participation in any federally assisted Award;
  - c) Proposed for debarment from participation in any federally assisted Award;
  - d) Declared ineligible to participate in any federally assisted Award;
  - e) Voluntarily excluded from participation in any federally assisted Award; or
  - f) Disqualified from participation in any federally assisted Award.

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

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

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

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

and Conservation Act.

## **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.] - Contractors 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.** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Contractor agrees to report each violation to 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. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**13. CLEAN WATER REQUIREMENTS.** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor agrees to report each violation to 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. Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

**14. RECYCLED PRODUCTS.** The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

**15. FLY AMERICA.** Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 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. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

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

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

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

**19. TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.** Pursuant to 2 CFR 200.216 the Contractor shall not procure or obtain, enter into a contract, or extend or renew a contract to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) as described in Public Law 115-232, Section 889.

- 19.1 For the purposes of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company (or any subsidiary or affiliate of such entities).
- 19.2 Telecommunications or video surveillance services provided by such entities using such equipment.
- 19.3 Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

## **20. NOTIFICATION TO FTA; DISPUTES, BREACHES, DEFAULTS AND LITIGATION.**

- 20.1 Contractor agrees that it will promptly notify the ATL, the FTA Chief Counsel, and FTA Regional Counsel in which the ATL is located of any current or prospective legal matter that may affect the Federal Government. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or legal disagreement in any forum for any reason. Matters that may affect the federal government include, but are not limited to, the Federal Government's interest in the Award, the accompanying underlying agreement, and any amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- 20.2 *Additional Notice to U.S. DOT Inspector General.* The Contractor must promptly notify the U.S. DOT Inspector General in addition to the ATL, the FTA Chief Counsel, and FTA Regional Counsel for the Region in which the ATL is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act 32 U.S.C. § 3729, et seq., or has or may have committed a crime or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the project subject to this Agreement or another agreement between the ATL and Contractor, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the ATL. It also applies to subcontractors of any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change.
- 20.3 Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA.

**21. SOLID WASTE DISPOSAL.** Pursuant to 2 CFR 200.323, the Contractor agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**22. PREVAILING WAGE AND ANTI-KICKBACK.** For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

**23. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or

transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

**24. VETERAN'S PREFERENCE.** Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C Section 2108) who have the requisite skills and abilities to perform the construction work required under this contract. This provision shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with disability, or former employee.

**AGREED TO BY:**

Contractor: \_\_\_\_\_

ATL Contract No. \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C**  
**PRICING SCHEDULES**

**METHOD OF COMPENSATION**

Contractor shall invoice for lump sum items in the month following the month in which such item was delivered, installed and received Project Acceptance, as determined by ATL. Invoicing for Fixtures or other items of Work that are priced on a unit price basis, will be made to the Contractor for the units of Work completed, delivered, installed, tested (if applicable) and received Project Acceptance, as determined by ATL, multiplied by the Contract unit price for such items.

**PRICING BEGINS ON NEXT PAGE. PAGES NUMBERED SEPARATELY.**

**EXHIBIT D**  
**BOND FORMS**

**PERFORMANCE BOND**

Project No. and Name:  
Contractor:  
Surety:  
Name of State Entity: Atlanta-region Transit Link Authority  
Bond Number:

KNOW ALL MEN BY THESE PRESENTS:

That ---- (Legal Name and Address of the Contractor) as principal (hereinafter referred to as ("Principal")), and (Legal Title and Address of Surety) as surety (hereinafter referred to as "Surety"), are held and firmly bound unto the ATLANTA-REGION TRANSIT LINK AUTHORITY as Obligee (hereinafter referred to as "ATL"), in the amount of DOLLARS (\$) , to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a contract with ATL bearing date of for: (Insert Name of Project), which said contract is incorporated herein by reference and made a part hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully perform and comply with the terms and conditions of said contract; and shall indemnify and save harmless against and from all cost, expenses, damages, injury or loss to which said ATL may be subjected by reason of any wrongdoing, including patent infringement, misconduct, want of care or skill, default or failure of performance on the part of said Principal, his agents, subcontractors or employees, in the execution or performance of said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

1. The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the Work to be performed thereunder, or the specifications or drawings accompanying same, or the exercise of ATL's right to perform Work with separate contractors or to correct Work pursuant to the terms of the Contract, shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the Work or to the specifications or drawings. In addition, the Surety to this bond, for value received, hereby agrees that the provisions of O.C.G.A. §§13-10-2, 13-10-40, and 13-10-60, shall be deemed to govern the requirements of the performance and payment bonds required under this Contract. Therefore, pursuant to O.C.G.A. §§13-10-2, 13-10-40, and 13-10-60, the bonds must be in a penal amount equal to at least 100% of the Total Contract Amount plus any Change Orders. Accordingly, the Surety warrants and agrees that, for any Change Order increasing the Contract Sum by five (5%) percent or more, it shall approve a written amendment to each bond increasing the penal amount to 100% of the Contract Sum, effective as of the date of the Change Order.
2. If pursuant to the Contract Documents the Principal shall be declared in default by ATL under the aforesaid Contract, the Surety shall promptly perform this bond agreement in accordance with its terms and conditions. It shall be the duty of the Surety to give an unequivocal notice in writing to ATL, within twenty five (25) days after receipt of a declaration of default, of the Surety's election to either remedy the default or defaults promptly or to perform the Contract promptly, time being of the essence. In said notice of election, the Surety shall indicate the date on which the remedy or performance will commence, and it shall then be the duty of the Surety to give prompt notice in writing to ATL immediately upon completion of (a) the remedy and/or correction of each default, (b) the remedy and/or correction or each item of condemned Work, (c) the furnishing of each omitted item of Work, and (d) the performance of the contract. The Surety shall not assert its Principal as justification for its failure to give notice of election or for its failure to promptly remedy the default or defaults or perform the Contract.
3. It is expressly agreed by the Principal and the Surety that ATL, if it desires to do so, is at liberty to make inquiries at any time of subcontractors, laborers, materialmen, or other parties concerning the status of payments for labor, materials, or services furnished in the prosecution of the Work.
4. No right of action shall accrue on this bond to or for the use of any person or corporation other than ATL named herein or the legal successors of ATL.
5. For the purposes of this bond, the name and address of the Authorized State of Georgia Licensed Agent to whom correspondence and telecommunications may be addressed and/or with whom business concerning this bond may be conducted will be as follows:

Name: Telephone:  
Address:  
City: State: Zip Code:

6. Further, this bond shall be the Performance Bond furnished under O.C.G.A. §§ 13-10-2, 13-10-20, 13-10-40 and 13-10-60 and shall be subject to increase in the penal amount of the bond pursuant to such statutes and the provisions of the Contract.

SIGNED AND SEALED THIS DAY OF , 20\_\_\_\_\_.

ATTEST (Seal)

(Name of Principal)

\_\_\_\_\_  
Secretary (Note 1) By \_\_\_\_\_  
President

(Seal)

(Name of Surety) (Note 2)

By: \_\_\_\_\_  
(Title)  
Resident Georgia Agent \*

Note 1. Please apply seal of Corporation over Secretary’s Signature.

Note 2. Please apply seal of Surety and arrange for countersignature by a “Resident Georgia Agent” of Surety in order to comply with surety regulations of Georgia.

(\* ) Attach Power of Attorney

**PAYMENT BOND**

Project No. and Name:

Contractor:

Surety:

Name of State Entity: Atlanta-region Transit Link Authority

Bond Number:

KNOW ALL MEN BY THESE PRESENTS:

That (Legal Title and Address of the Construction Professional) as Principal (hereinafter referred to as the "Principal") and (Legal Name and Address of the Surety) as Surety (hereinafter referred to as "Surety", are held and firmly bound unto the ATLANTA-REGION TRANSIT LINK AUTHORITY. as Obligee (hereinafter referred to as "ATL") for the use and benefit of claimants defined, hereinafter in the amount of: \_\_\_DOLLARS (\$ \_\_) to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a contract with ATL dated \_\_\_ for \_\_\_(Insert Name of Project), which contract is incorporated herein by reference and made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials supplied in the prosecution of the Work provided for in said Contract, then this obligation shall be void, otherwise it shall remain in full force and effect subject, however, to the following conditions:

- (1) The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the Work to be performed thereunder, or the exercise of ATL’s right to perform Work with separate contractors or to correct Work pursuant to the terms of the Contract, shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the Work. In addition, the Surety to this bond, for value received, hereby agrees that the provisions of O.C.G.A. §§13-10-2, 13-10-40, and 13-10-60, shall be deemed to govern the requirements of the performance and payment bonds required under this Contract. Therefore, pursuant to O.C.G.A. §§13-10-2, 13-10-40, and 13-10-60, the bonds must be in a penal amount equal to at least 100% of the Total Contract Amount plus any Change Orders. Accordingly, the Surety warrants and agrees that, for any Change Order increasing the Contract Sum by five (5%) percent or more, it shall approve a written amendment to each bond increasing the penal amount to 100% of the Contract Sum, effective as of the date of the Change Order.



- (2) A claimant is defined as any subcontractor and any person supplying labor, materials, machinery, or equipment in the prosecution of the Work provided for in said contract.
- (3) Every person entitled to the protection hereunder and who has not been paid in full for labor or materials furnished in the prosecution of the Work referred to in said bond before the expiration of a period of ninety (90) days after the day on which the last of the labor was done or performed by him, or materials or equipment or machinery was furnished or supplied by him for which claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due him, provided, however, that any person having direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the Principal furnishing said payment bond shall have (a) given written notice to said Principal within ninety (90) days from the day on which such person did or performed the last of the labor, or furnished the last of the materials or machinery or equipment for which such claim is made stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied or for whom the labor was performed or done; and (b) if the Principal has filed a Notice of Commencement with the Clerk of the Superior Court in the county in which the Project is located pursuant to O.C.G.A. § 13-10-62, given to said contractor a written Notice to Contractor within 30 days from the filing of the Notice of Commencement or 30 days following the first delivery of labor, materials, machinery or equipment, whichever is later, setting forth:
- A) The name, address, and telephone number of the person providing labor, material, machinery, or equipment; the name and address of each person at whose instance the labor, material, machinery or equipment is being furnished;
  - B) The name and the location of the Work; and
  - C) A description of the labor, material, machinery, or equipment being provided and, if known, the contract price or anticipated value of the labor, material, machinery, or equipment to be provided or the amount claimed to be due, if any.

It is provided further that nothing contained herein shall limit the right of action to said 90 day period. Notice may be served by the depositing of a notice, registered mail, postage paid, duly addressed to the Principal at any place it maintains an office or conducts his business, or his residence, in any post office or branch post office or any letter box under the control of the Post Office Department or notice may be served in any manner in which the sheriffs of Georgia are authorized by law to serve summons or process. Every suit instituted under this section shall be brought in the name of the claimant without ATL being made a party thereof. The official who has custody of said bond is authorized and directed to furnish, to any person making application thereof who submits an affidavit that it has supplied labor or materials for such Work and payment therefore has not been made, or that it is being sued on any such bond, a copy of such bond and the contract for which it was given, certified, by the official who has custody of said bond and contract shall be admitted in evidence without further proof. Applicants shall pay for such certified statements and such fees as the official fixes to cover the cost of preparation thereof, but in no case shall the fixed fee exceed the fees that the clerks of the superior courts are permitted to charge for similar copies.

- (4) Further, this bond shall be the Payment Bond furnished in compliance with O.C.G.A. §§ 13-10-2, 13-10-60, 13-10-40 and 13-10-60 and shall be subject to increase in the penal amount of the bond pursuant to such statutes and the applicable provisions of the Contract.
- (5) For the purposes of this bond, the name and address of the Authorized State of Georgia Licensed Agent to whom correspondence and telecommunications may be addressed and/or with whom business concerning this bond may be conducted will be as follows:

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ .

ATTEST (Seal)

(Name of Principal)

\_\_\_\_\_  
 Secretary (Note 1) By \_\_\_\_\_  
 President

(Seal)

(Name of Surety) (Note 2)

By: \_\_\_\_\_  
 (Title)  
 Resident Georgia Agent \*

Note 1. Please apply seal of Corporation over Secretary's Signature.

Note 2. Please apply seal of Surety and arrange for countersignature by a "Resident Georgia Agent" of Surety in order to comply with surety regulations of Georgia.

(\*) Attach Power of Attorney

**EXHIBIT E**  
**BILL OF SALE**

BILL OF SALE

This Bill of Sale is made on this \_\_\_\_\_ day of 202\_\_ by \_\_\_\_\_ (“Seller”).  
Seller, in exchange for consideration of \$\_\_\_\_\_, the receipt of which funds is acknowledged, hereby does grant, sell, transfer and deliver to the Atlanta-region Transit Link Authority, a body corporate and politic and an instrumentality and public corporation of the State of Georgia (“ATL”), the following goods:

\_\_\_\_\_  
\_\_\_\_\_

ATL shall have full rights and title to the goods described above.

Seller is the lawful owner of the goods and the goods are free from all encumbrances. Seller has good right to sell the goods and will warrant, indemnify and defend the right against the lawful claims and demands of all persons.

This Bill of Sale is signed, sealed and delivered by Seller.

Name of Seller \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT F**  
**DAVIS BACON WAGES – [Multiple Counties]**

**EXHIBIT G**  
**DBE NOTICE OF INTENT TO PERFORM AS A SUBCONTRACTOR**

**EXHIBIT H**

DBE SUBCONTRACTOR PAYMENT REPORT

**EXHIBIT I**

DBE UTILIZATION CONTRACT CLOSEOUT REPORT