

**Part 3**  
**Professional Services Contract**

**PROFESSIONAL SERVICES CONTRACT  
FOR**

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**THIS CONTRACT** is made and entered into as of \_\_\_\_\_, 202\_\_ (“Effective Date”), by and between the ATLANTA-REGION TRANSIT LINK AUTHORITY, a body corporate and politic and an instrumentality and public corporation of the State of Georgia (“ATL”), and \_\_\_\_\_ (the “Contractor”). ATL and Contractor may be referred to individually, as “Party” or collectively, as “Parties.”

**WHEREAS**, ATL desires to secure a qualified and experienced firm to perform \_\_\_\_\_ as more fully described in the Request for Proposals # \_\_\_\_\_ and any addenda thereto and any documents referenced therein (collectively, the “RFP”), and the Contractor’s Response/Proposal and any documents referenced therein (collectively, the “Contractor’s Proposal”); and

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

**WHEREAS**, the Contractor has represented to ATL that it is experienced and qualified and willing to provide all of the expertise needed to successfully provide the work and services more fully described in the RFP (collectively, “Services”),

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

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

1. **RECITALS.** The recitals set forth above are true and correct and are incorporated into this Contract.
2. **DEFINITIONS.** Any capitalized term not specifically defined in this Contract or in **Exhibit D** will have the same meanings assigned in the RFP to that term.
3. **INCLUSION AND PRIORITY OF DOCUMENTS.** The RFP is incorporated herein by reference as **Exhibit A**. The Contractor’s response to the RFP, including the Statement of Qualifications (and any documents referenced therein), and any other information submitted in response to the RFP, (collectively, the “Response”), which were submitted in response to the RFP, are incorporated herein by reference as **Exhibit B**. The RFP and the Response are integral parts of this Contract. The RFP, the Response and this Contract (including all amendments, documents, and exhibits referenced in the Contract) shall be collectively referred to as the “Contract Documents” or the “Contract.” In the event of a conflict among the Contract Documents, the Contract Documents herein shall govern the contractual relationship between the Contractor and ATL, and shall control one over another in the following order: Amendments to the Contract, the Contract, the RFP, and the Response.
4. **CONTRACT TERM AND RENEWAL.** This Contract shall begin on the Effective Date and shall continue until Insert expiration date of Contract (the “Initial Term”). ATL may elect to renew this Contract on the same terms and conditions for up to three (3) additional renewal periods with a term of up to one (1) year each (each a “Renewal Term”). The renewal of the Contract shall be at the sole discretion of ATL.

## 5. CONTRACTOR'S RESPONSIBILITIES.

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

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

*5.2.1 ATL's Right to Remove.* ATL shall have the absolute right to require the Contractor to remove an employee from performing under this Contract for any or no reason. In the event of such removal, Contractor will replace the employee with the appropriate personnel within the time specified by ATL.

*5.2.2 Contractor Program Manager.* Contractor shall assign a person who shall interface with ATL ("Contractor Program Manager").

*5.2.3 Key Personnel.* A significant factor in ATL's decision to award this Contract to Contractor is the level of expertise, knowledge and experience possessed by employees of Contractor, particularly Key Personnel and Contractor's agreement to have employees possessing such expertise, knowledge and experience available at all times throughout the Initial Term and each Renewal Term, to assist in the provision of the Services. Throughout the Initial Term and each Renewal Term, Contractor shall employ individuals having significant training, expertise and experience in the areas or disciplines more particularly set forth in the Contract Documents, together with such other areas of expertise, knowledge and experience as may be designated by ATL from time to time during the Initial Term and each Renewal Term. When ATL designates an additional area for which expertise, knowledge and experience shall be required, Contractor shall use all reasonable and diligent efforts to promptly hire and retain one or more individuals possessing such expertise, knowledge and experience. Contractor shall not substitute Key Personnel without the prior written approval of ATL. Any desired substitution shall be noticed to ATL, accompanied by the names and references of Contractor's recommend substitute personnel.

**5.3 Accuracy of Services.** The Contractor shall be responsible for the accuracy of the Services and shall promptly correct its errors and omissions without additional compensation from ATL. Acceptance of the Services by ATL will not relieve the Contractor of the responsibility for subsequent correction of errors, the clarification of any ambiguities, or for the costs associated with any additional work, which may include costs caused by negligent errors in, or negligent omissions from, the reports prepared by the Contractor.

**5.4 Interpretation of Information.** At any time during the performance of any Services, the Contractor shall confer with ATL for the purpose of interpreting the information obtained and to correct any errors or omissions. These consultations, clarifications, or corrections shall be made without added compensation to the Contractor other than what has been provided for under the terms of this Contract. The Contractor shall give immediate attention to these changes so there will be minimum delay to others.

**5.5 Safety.** The Contractor shall take all reasonable precautions in the performance of the Services and shall cause its employees, agents and sub-contractors to do the same. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of its Services, and employees,

agents and sub contractors, and for any damage that may result from their actions or inactions.

**6. PROJECT MANAGEMENT.** ATL shall identify a person who shall act as and be ATL's representative between ATL and the Contractor ("ATL Program Manager").

**7. SUBCONTRACTING AND ASSIGNMENT.**

**7.1 Assignment.** Contractor shall not assign, delegate, sublet or transfer this Contract or any rights under or interest in this Contract without the prior written consent of ATL. The consent of ATL may be withheld for any reason.

**7.2 Subcontracting.** Nothing contained herein shall prevent Contractor from employing independent professional associates, sub contractors as Contractor may deem appropriate to assist in the performance of Services hereunder. However, Contractor shall not subcontract Services to sub contractors that are different from those sub contractors listed in the Response, without obtaining ATL's prior written approval, which approval is within ATL's sole discretion. ATL reserves the right to review all subcontracts prepared in connection with the Contract, and Contractor agrees that it shall submit to ATL any proposed subcontract documents together with subcontractors cost estimates for review and written concurrence of ATL no later than five (5) business days in advance of execution. Any contract between the Contractor and subcontractors shall comply with all pertinent provisions to subcontractor's responsibilities in connection with the Services of this Contract. ATL's approval of any assignment, sublet, or transfer shall not release the Contractor of any obligation under this Contract or as otherwise required by Law. All subcontracts in the amount of \$10,000.00 or more shall include the provisions set forth in this Contract.

ATL shall have the right to require the Contractor to remove a sub contractor of Contractor from performing under this Contract, if in ATL's sole opinion, such sub contractor (a) is not performing its portion of the Services satisfactorily, (b) is failing to cooperate as required in the Contract Documents, (c) is posing a security risk to any project or to ATL's business, (d) is otherwise breaching a term of the Contract Documents that is applicable to that portion of the Services being performed by the sub contractor, or (e) presence on a project is not in the best interest of ATL. In the event of such removal, Contractor will replace the sub contractor with a suitable replacement within the time specified by ATL.

**7.3 Contractor Remains Responsible.** If Contractor subcontracts any of the Services to be performed under this Contract, Contractor shall be as fully responsible to ATL for the acts, errors, or omissions of Contractor's sub contractor and of the persons employed by them as Contractor is for the acts and omissions of persons directly employed by Contractor. Contractor shall be obligated to assist ATL in the enforcement of any rights that ATL has against such sub contractor. Notwithstanding any subcontract or agreement with any sub contractor, Contractor shall be fully responsible to ATL for all of the Services required pursuant to the Contract Documents. Notwithstanding any provision to the contrary, Contractor shall be responsible to ATL for all terms, conditions, liabilities, and responsibilities under the Contract Documents regardless of whether Contractor or its sub contractors, suppliers, independent contractors, agents or assigns perform any aspect of the Services.

**7.4 Mandatory Terms in Subcontracts.** Nothing contained in this Contract shall create any contractual relationship between any sub contractor of Contractor and ATL. Any subcontract entered into as a result of this Contract, shall contain all applicable provisions of the Contract Documents that in any way relate to an item of Services that any sub contractor will perform and/or furnish, as well as provisions pertaining to, records, and payment methods. The Contractor shall further ensure that all subcontracts entered into with its sub contractor grant ATL all of the rights

and privileges of such subcontract, including but not limited to (so long as ATL is not in default of its obligations under this Contract) ATL's right to secure materials or services from the sub contractor that might be a part of the sub contractor's Services, in the event Contractor defaults under the Contract Documents.

**7.5 Payments to Sub contractors.** Contractor represents and agrees that for the duration of the Initial Term and each Renewal Term it shall make timely payments for Services properly performed to any sub contractor hereunder and Contractor shall indemnify and hold harmless ATL and the State for any liability for payment claimed by a subcontractor.

**7.6 Failure to Comply.** Any assignments or subcontracts made in violation of **Sections 7.1 (Assignment) and/or 7.2 (Subcontracting)** shall be null and void.

**8. RELATIONSHIP OF THE PARTIES.** Each Party, in the performance of this Contract, shall be acting in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other Party. The employees, agents, partners or 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, contractors, 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 Contractor's employees.

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

**10. PAYMENT.** The maximum not to exceed amount for all Services performed during the Initial Term is \$Insert maximum not to exceed amount., unless otherwise agreed to in writing by ATL.

**10.1 General.** For full and complete compensation for all work, materials, and Services furnished under the terms of this Contract shall be set forth in **Exhibit C – Contractor's Rates**.

**10.2 Payment Obligations of Contractor.** Contractor shall pay from the proceeds it receives from ATL its employees, agents, assigns, subcontractors and suppliers who provided any part of the Services.

**10.3 Overpayment.** In the event an overpayment is made to Contractor under this Contract, Contractor shall immediately refund to ATL the full amount of any such erroneous payment or overpayment following Contractor's written notice of such erroneous payment or overpayment, as issued by ATL. If Contractor fails to refund the erroneous payment or overpayment within a 30-Day period, ATL shall be entitled to interest at one percent per month on the amount not repaid from the date of overpayment.

**10.4 Reduction of Payment for Non-Conforming Services.** If any defined action, duty or service or other item of Services required by the Contract Documents is not performed by the Contractor in accordance with the requirements of the Contract Documents, the value of such action, duty or service or other item of Services will be determined by ATL and deducted from any invoice claiming such items for payment. If the Services or part thereof has been completed and is not in conformance with the Contract Documents, the Contractor will be notified and given the opportunity to correct any deficiencies within a time certain. Payment (for the non-conforming Services) will be withheld by ATL from any invoice until such time as the Services is corrected in

accordance with the Contract Documents.

- 10.5 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 Services not completed or not completed in accordance with the Contract Documents. ATL may withhold all or part of any amounts due Contractor to protect ATL from a loss, including but not limited to, losses caused by the following: (a) failure or alleged failure of Contractor to make proper payments to its subcontractors for Services; (b) failure of Contractor to carry out/or remedy the Services in accordance with the Contract; or (c) Contractor's breach of warranties. Any and all such payment previously withheld shall be released and paid to Contractor promptly when the Services is subsequently performed in accordance with the Contract Documents.
- 10.6 Payment not Acceptance.** Payment or use of any Services or portions thereof by ATL shall not constitute an acceptance of any Services not performed in accordance with the Contract Documents.
- 10.7 Net 30 Days.** Provided all the conditions in **Section 10 (Payment)** have been met to ATL's satisfaction, and Contractor is not otherwise in breach of this Contract, ATL agrees to pay Contractor in accordance with ATL's normal processes and procedures for all undisputed amounts within thirty (30) Days of the later of a review, if any, undertaken by ATL pursuant to **Section 17.1 (Review of Services)** or ATL's receipt of a valid invoice. If ATL objects to any invoice submitted by Contractor, ATL shall advise Contractor in writing giving reasons therefor within fourteen (14) business days of receipt of such invoice. If any invoice submitted by Contractor is disputed by ATL, only that portion so disputed may be withheld from payment.
- 10.8 Invoicing.** The Contractor shall deliver to ATL an audit-worthy invoice on a monthly basis by the tenth (10) Day of the month following the month in which Services was performed. The Contractor shall submit separate invoices as each Services is completed. The Contractor agrees to provide an accompanying GPS tracking report for each designated park and ride lot for the applicable billing period in a format acceptable to ATL which will outline in written and, if requested, graphic form the various phases and the order of performance of the Services in sufficient detail so that the progress of the Services can easily be evaluated. ATL will be entitled at all times to be advised at its request as to the status of Services being done by the Contractor and the details thereof.

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

All invoices shall reference ATL Contract No. 24-028. The applicable invoice addresses for ATL is as follows:

Atlanta-Region Transit Link Authority  
Attn: Accounts Payable  
245 Peachtree Center Avenue, NE, Suite 2200  
Atlanta, GA 30303-1426  
Email: einvoices@srtcga.gov

- 10.9 Late Fees.** ATL shall not be liable for late fees, collection fees, attorney's fees, interest, or other fees incurred by the Contractor as a result of non-payment or a delay in payment by ATL.
- 10.10 Right to Set-Off.** ATL may retain any set off amount owed to it by Contractor, as determined pursuant to **Section 22 (Dispute Resolution)**.

- 10.11 Full Compensation.** All Services performed by the Contractor in meeting the requirements of the Contract Documents shall be paid as set forth herein, which shall constitute full compensation for the Services, including but not limited to: (a) the cost of all insurance and bond premiums, home office, job site and other overhead, and profit relating to Contractor's performance of its obligations under this Contract; (b) the cost of performance of each and every portion of the Services (including all costs of all Services provided by subcontractors and suppliers); (c) the cost of obtaining all governmental approvals and all costs of compliance with and maintenance of such governmental approvals; (d) all risk of inflation, currency risk, interest and other costs of funds associated with the progress payment schedule for the Services as provided herein; and (e) payment of any taxes, duties, permits and other fees and/or royalties imposed with respect to the Services and any Equipment, materials, supplies, documentation, labor or services included therein.
- 10.12 Overtime.** Unless otherwise authorized in writing by ATL, no premium pay or overtime will be paid by ATL.
- 10.13 Costs and Expenses.** Contractor will not be reimbursed for any out-of-pocket expenses that are incurred in connection with the performance of the Services, including, but not limited to, any travel, air fare, meals, ground transportation, parking, communication, reproduction, and other such incidental costs. ATL will not reimburse Contractor for time spent or costs incurred traveling to and from and Park and Ride lot, ATL's office, and Contractor's office. ATL will not withhold any taxes on amounts paid to Contractor, and all federal, state, and local taxes will be Contractor's responsibility to pay. ATL will not reimburse Contractor for any such taxes.
- 10.14 Covenants against Contingent Fees.** The Contractor shall comply with the relevant requirements of all federal, state and local laws in effect as of the date hereof. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Department shall have the right to annul this Contract without liability or, in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- 10.15 DBE Compliance.** Where Contractor has indicated its intent to perform some or part of the Services as a Disadvantaged Business Enterprise "DBE" Subcontractor in the Contractor Proposal, Contractor shall be required to submit to ATL a completed notice of intent to perform as a DBE subcontractor, as set forth in **Exhibit G - ATL Notice of Intent to Perform as Subcontractor Form**. Thereafter, for any invoice submitted to ATL, Contractor shall comply with and submit the necessary DBE participation form, where applicable, and as set forth in **Exhibit H - ATL DBE/SBE Participation and Subcontractor Payment Report Form**. Upon the completion of all Services of the Contract, Contractor must complete and submit to ATL **Exhibit I - DBE/SBE Subcontractor Utilization Closeout Report**.
- 11. PROCESS.** ATL will order from Contractor, all or a portion of the Services as such Services, in ATL's sole opinion, is needed. The expected project deliverables are set forth in Exhibit E (Scope of Services), or as otherwise included in any task order. All task orders shall be subject to the terms and conditions of the Contract Documents.
- 11.1 Project Schedule.** The performance time of each Service shall be set in **Exhibit E (Scope of Services)** or as otherwise included in any task order, as applicable. Any Services performed

before or after the time set forth in **Exhibit E (Scope of Services)** or as otherwise included in any task order will be ineligible for payment. Unless an extension of time is granted by ATL pursuant to **Section 11.2 (Time Extensions)** of this Contract, Contractor will successfully, fully and entirely complete and otherwise perform all Services as required in the Contract Documents.

- 11.2 Time Extensions.** ATL will only grant an extension of time if the Contractor is delayed in the progress of the Services by (i) any act or neglect of ATL, (ii) an event listed in **Section 28.4 (Time of the Essence; Force Majeure)**, or (iii) other governmental actions. If and when such event occurs, then the time of completion set forth shall be extended for such time equal to the time lost as a result of the delay. The Contractor expressly agrees that the Contractor's sole and exclusive remedy for such delay shall be an extension of time within which to perform the affected Services 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 case of delay, only one claim is necessary, but no claim for a continuing delay shall be valid unless the Contractor, within ten (10) days from the cessation of the delay, shall have given notice in writing to ATL as to the amount of additional time claimed.

In the event time for performance of a scheduled Services expires and the Contractor has not requested or if ATL has denied an extension of the completion date, Contractor must nevertheless continue Services until the same is complete. No payment shall be made for Services performed after the expiration of the Service completion date except where a time extension has been executed by both Parties in accordance with **Section 11.2**.

## **12. INDEMNIFICATION.**

- 12.1 General Liability.** The Contractor shall be responsible to ATL for those costs, expenses, liabilities, allegations, claims, bodily injuries, including death, or damage to real or personal property, arising out of or resulting from any wrongful and/or negligent act or omission, the breach of contract, the failure to perform, or other default regarding the Services by the Contractor, its employees, agents, or any of its subcontractors or others working at the direction of the Contractor or on its behalf.
- 12.2 General Indemnification.** Contractor hereby agrees to indemnify and hold harmless ATL, the state of Georgia and its departments, authorities, agencies and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including reasonable attorneys' fees, due to Contractor's liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the negligent performance of this Contract or any negligent act, error, or omission on the part of the Contractor, its agents, employees, subcontractors or others working at the direction of Contractor or on its behalf, or due to any breach of this Contract by the Contractor, or due to the application or violation of any pertinent Federal, State or local law, rule or regulation by the Contractor or its sub contractors. 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 Risk Management Division (hereinafter "DOAS") the Contractor agrees to reimburse the Funds for such monies paid out by the Funds.

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

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

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

### 13. INSURANCE.

**13.1 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, their respective Board of Directors, officials, agents and employees as the certificate holder and an endorsement listing ATL as an additional insured on the commercial general liability and business automobile policies. Evidence of insurance coverages shall be provided on the form acceptable to ATL and the Georgia Office of the Insurance Commissioner. The insurance certificate must provide the following:

- 13.1.1 Name and address of authorized agent
- 13.1.2 Name and address of insured
- 13.1.3 Name of insurance company(ies)
- 13.1.4 Description of policies
- 13.1.5 Policy Number(s)
- 13.1.6 Policy Period(s)
- 13.1.7 Limits of liability
- 13.1.8 Name and address of ATL as certificate holder
- 13.1.9 Project Name and Number
- 13.1.10 Signature of authorized agent
- 13.1.11 Telephone number of authorized agent
- 13.1.12 Mandatory thirty (30) Day notice of cancellation or non-renewal (except ten (10) Days for non-payment).

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

13.2.1 *Written Notice of Changes*. The Contractor shall notify ATL upon the cancellation of any insurance affecting this Contract. 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 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.

13.2.2 *Separation of Insureds.* 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.

13.2.3 *Representation by Georgia Attorney General.* 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.

13.2.4 *Deductibles.* All deductibles shall be paid for by the Contractor.

**13.3 Required Insurance Coverages.** From insurers rated at least A- by Best's and registered to do business in the State of Georgia, the Contractor shall provide the following kinds of insurance in the minimum amount of coverage set forth below. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of the Contract. ATL reserves the right to require redacted copies of all insurance policies and endorsements required by this Contract at any time.

13.3.1 *Workers' Compensation and Employer's Liability.* Statutory coverage shall be maintained for Worker's Compensation as required by the laws of the State of Georgia.

13.3.2 *Commercial General Liability Insurance.* Commercial General Liability Insurance of at least \$2,000,000 per occurrence \$4,000,000 aggregate, including Automobile. The Contractor shall require its sub-contractors to maintain Commercial General Liability insurance with business automobile liability coverage with companies and limits as stated above.

13.3.3 *Business Automobile Liability Insurance.* Business Automobile Liability Insurance for bodily injury and property damage caused by hired, owned, leased, or rented automobiles rented by Contractor with limits of at least \$1,000,000 combined single limit each accident.

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

- For Professionals – \$1,000,000 per claim and \$1,000,000 in aggregate coverage;
- For Other Contractors – \$1,000,000 per claim and \$1,000,000 in aggregate coverage.
- The Contractor shall maintain professional liability insurance that shall be either a practice policy or project-specific coverage. Professional liability insurance shall contain prior acts coverage for services performed by the Contractor for this Project. If project-specific coverage is used, these requirements shall be continued in effect for two years following issuance of the Certificate of Final Completion for the Project.

**13.4 Insurance Premiums and Deductibles.** The Contractor shall pay the insurance premiums and shall be responsible for payment of all deductibles and self-insured retention.

**13.5 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.

**13.6 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.

**13.7 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 13**.

**13.8 General.** The Contractor's obligations under this Section are in addition to Contractor's obligations under **Section 12 (Indemnification)**.

**13.9 Waiver of Subrogation.** There is no waiver of subrogation rights by either party with respect to insurance.

**13.10 Additional Insured Endorsement.** ATL shall be named as an additional insured on all required insurance except for Worker's Compensation and Professional Liability insurance and a copy of each policy endorsement shall be provided with each insurance certificate.

**14. ADDITIONAL CONTRACTOR RESPONSIBILITIES AND REPRESENTATIONS.** The Contractor represents to ATL and agrees that throughout the Initial Term and each Renewal Term that:

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

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

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

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

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

**14.6 Cooperation.** Contractor shall fully cooperate with ATL, ATL-designated Representatives, ATL's other contractors and vendors, and any other governing authority, in furnishing all the Services required by the Contract Documents.

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

**14.8 Intellectual Property.** As used in this Contract, "Intellectual Property" shall mean any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the foregoing, whether or not registered as

of the Effective Date or at any later date. Contractor represents that Contractor, its agents, employees, subcontractors, and assigns will neither violate nor in any way infringe upon the Intellectual Property rights of ATL or of any other third party.

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

## **16. REVIEW/AUDITS.**

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

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

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

**17. OWNERSHIP OF DOCUMENTS.** The Contractor agrees that all reports, drawings, studies, specifications, estimates, maps, computations, computer files and other data, prepared pursuant to the Contract Documents shall be delivered to, become and remain in the property of ATL upon the earlier of termination or completion of the Services. ATL shall have the right to use same without restriction or

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

## 18. INTELLECTUAL PROPERTY

**18.1 Work Made for Hire.** To the extent possible, any papers, interim reports, forms, and other material which are a part of the Services specifically developed and created by Contractor pursuant to the Contract Documents shall be deemed a "work made for hire" for ATL, with ATL being deemed the author thereof with all rights, title and interest in all such Services and other work product owned by ATL (collectively, "Work Product"). In the event that any such Work Product is deemed not to be a work made for hire for ATL, then with the exception of any pre-existing Intellectual Property rights owned by Contractor that were used in performing the Services, Contractor hereby irrevocably assigns to ATL all right, title and interest in all such work including, without limitation, all Intellectual Property rights with respect thereto, and further agrees to execute and deliver such other and further assignments, certificates of originality and other documents and instruments as reasonably requested by ATL in order for ATL to evidence and perfect its ownership of all rights with respect thereto. Contractor acknowledges and agrees that the provisions of this Section apply regardless of any disputes, payment issues or other claims that may exist between the Parties, and that ATL's ownership of all rights with respect to such Work Product is unconditional. Such Work Product shall include any and all modifications, improvements, adaptations, revisions, updates, releases, new versions, derivative works, and documentation (including any specifications, copies, notes, summaries or analyses) comprising, based on, derived from, or related to any work made for hire, including any of the foregoing that is conceived, discovered, invented, created, developed or made by Contractor or its subcontractors (Contractor and its subcontractors shall be referred to as "Contractor Parties"). None of the Contractor Parties shall have any proprietary interest in such Work Product. The Contractor Parties shall not assert any ownership interest or conditions to executing assignments and other documents to evidence and perfect ATL's ownership of all rights in and to same, and any claims that the Contractor Parties may have against ATL shall exclude claims challenging ATL's ownership of same. In the event this Contract is terminated, all Work Product whether completed or not shall be delivered to ATL within ten (10) Days from the date of termination. To the extent any Contractor Intellectual Property is incorporated into any Services, then Contractor agrees to and does hereby grant to ATL and to the State an irrevocable, non-exclusive, non-transferable and royalty-free license to use such Intellectual Property.

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

## 19. TERMINATION.

- 19.1 Termination for Cause.** Upon an Event of Default as defined in **Section 23.1 (Event of Default)**, 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, which shall be no less than fifteen (15) Days after the date of such notice, provided, however, that Contractor shall have an opportunity to cure upon receipt of such notice for any such alleged Event of Default, or to submit a plan for cure acceptable to the ATL, except in the case of financial improprieties, fraud or other criminal activity on Contractor's part in which case, termination shall be effective immediately upon notification. Upon such termination, ATL will have the right to appropriate or use any or all Services (whether or not complete) as ATL determines. Upon such termination ATL shall not be required to pay Contractor any amounts for Services performed prior to the date of termination for which payment may be due and owing but not yet paid ("Remaining Payment"). In the event ATL's expenses incurred or anticipated to be incurred as a result of Contractor's breach are less than the Remaining Payment, ATL shall remit such differential to the Contractor. In the event ATL's expenses incurred or anticipated to be ATL as a result of Contractor's breach exceed the Remaining Payment, including any costs of ATL incurred by any delay (or from any reason attributable to the delay) then Contractor shall within five (5) Days 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. The Contractor acknowledges that the remedy set forth in this Section is the Contractor's sole and exclusive remedy against ATL for termination for cause and Contractor hereby waives all other rights and remedies it may have against ATL, whether at law or in equity.
- 19.2 Termination for Convenience.** ATL may terminate this Contract, in whole or in part, for convenience upon five (5) business days before the effective date of such termination. Contractor will be paid for all Services performed in accordance with the terms and conditions of this Contract prior to termination, less amounts due ATL pursuant to the Contract Documents. All Services performed shall remain the property of ATL. ATL shall not be responsible to Contractor for, and Contractor hereby waives any right to, any other costs, fees and expenses of any nature whatsoever including, but not limited to, administrative fees, legal fees, costs to set up or shut down operations, salary, overhead, or any other cost or expense, whether direct or indirect, whether foreseen or unforeseen. The 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, whether at law or in equity.
- 19.3 Termination in General.** Under no circumstances shall a proper termination by ATL (with or without cause) constitute a default by ATL. In the event of a termination for convenience or for cause ATL shall notify Contractor of such action and with instructions as to the effective date of termination or suspension, in accordance with the time frames set forth in this Section. In the event of a termination for convenience or for cause, Contractor shall comply with the terms and conditions of **Section 24.2 (Transition)**. Contractor shall not be paid for, and Contractor hereby waives any claim to special, indirect, consequential or undocumented expenses, lost profit, overhead or any other type of payment (except payment for satisfactory Services actually performed in accordance with the Contract) regardless of the reason for termination. Contractor shall not be liable for any errors or omissions contained in deliverables which are incomplete as a result of suspension or termination where Contractor is deprived of the opportunity to complete Contractor's Services.
- 19.4 Compliance with Contract.** Contractor shall comply with all of the terms and conditions of the Contract Documents including, but not limited to, the provisions of **Section 24 (Cooperation,**

**Transition of Services, and End of Contract Responsibilities)**, in the event ATL exercises any of its rights under this Section.

- 20. CHANGES IN CONTRACTOR ORGANIZATION.** The Contractor shall notify ATL in writing within five (5) Business Days upon any action that changes Contractor's corporate structure, including company mergers, company acquisitions, changes in corporate names, changes in corporate officers, changes in corporate governing structure, and similar relevant information. Such notification shall identify how the change in corporate business structure will impact ATL, including payments to the Contractor, and Contractor shall identify how these impacts to ATL will be mitigated. Contractor shall immediately notify ATL of any material adverse change since the Effective Date in Contractor's financial condition, business, affairs or operations, or of the existence of any material impairment of rights or ability of Contractor to carry on as its business and operations as are currently conducted.
- 21. CONFIDENTIALITY.** Contractor acknowledges that in order to perform the Services called for in this Contract, it will be necessary for ATL to disclose to Contractor certain trade secrets, and confidential information concerning the Services, ATL's customers, operations, projects, procurements and any confidential and/or proprietary information of any of ATL's vendors (collectively, "Confidential Information"). Contractor agrees that it shall use its best efforts to keep the Confidential Information strictly confidential and shall not disclose, transfer, use, copy, or allow access to any such Confidential Information to any employees or to any third parties excepting those who have a need to know such Confidential Information in order to allow Contractor to perform the Services, and who have executed a nondisclosure agreement with either Contractor or ATL consistent with the provisions hereof.
- 21.1 No Obligation of Confidentiality.** Contractor shall not have any obligation of confidentiality with respect to any Confidential Information which: (i) can be conclusively demonstrated by the Contractor to have been in its possession or known by it prior to receipt of the Confidential Information under this Contract; (ii) is disclosed by the Contractor with the written approval of ATL; (iii) is developed independently by the Contractor without reference in any way to the Confidential Information provided under this Contract; or (iv) is obligated to be disclosed by order of a court of competent jurisdiction or is subject to disclosure under the Georgia Open Records Act.
- 21.2 Use of Confidential Information.** Contractor and its representatives shall use the Confidential Information solely for the purpose of providing the Services required under the Contract Documents and shall not in any way use the Confidential Information to the detriment of ATL or its Customers.
- 21.3 Return of Confidential Information.** The Contractor shall return to ATL any Confidential Information immediately on request but no later than upon the termination for whatever reason of this Contract.
- 22. DISPUTE RESOLUTION.** In the event of any dispute whatsoever arising out of or relating to the Contract Documents or the Services, the disputing Party must furnish a written notice to the other Party, setting forth in detail the dispute. Such notice must be addressed to the ATL Program Manager and ATL's Procurement Director or the Contractor Program Manager, as applicable. Within five (5) Days after the receipt of the notice by the receiving party, the ATL Program Manager and the Contractor Program Manager shall meet in ATL's offices to attempt to resolve the dispute. If the ATL Program Manager and the Contractor Program Manager cannot resolve the dispute or otherwise agree to extend the time within which to attempt to resolve the dispute then, within five (5) Days after the date of written notice by either individual to the Executive Director of ATL and the Managing Principal of the Contractor, the Executive Director of ATL and the Contractor's Managing Principal shall meet in ATL's offices to attempt to resolve the dispute. If the Executive Director of ATL and the Contractor's Managing Principal cannot resolve the dispute or otherwise agree to extend the time within which to attempt to resolve the dispute, then either

Party may pursue those remedies only as allowed under this Contract.

## **23. EVENT OF DEFAULT; DAMAGES/REMEDIES.**

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

- 23.1.1* The Contractor withheld, disrupted or delayed Services due to non-payment by ATL, if such withholding of payment is allowed under **Section 10 (Payment)**;
- 23.1.2* The Contractor has failed to deliver the Services or a component thereof on a timely basis, except to the extent of an excusable delay in accordance with **Section 11.2 (Time Extensions)** and the continuance thereof for a period of five (5) Business Days after notice is given to the Contractor by ATL;
- 23.1.3* The performance of the Contractor is not completed in accordance with the terms and conditions of this Contract;
- 23.1.4* The Contractor becomes insolvent (other than pursuant to a case, proceeding, or other action pursuant to subparagraph (a)(xii)), or has assigned the proceeds of the Contract for the benefit of the Contractor's creditors (except any assignment of proceeds as collateral for any loan), 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 is commenced in bankruptcy, or seeking reorganization, liquidation or any relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution or other similar act or law of any jurisdiction, which case, proceeding or other action remains undismissed, undischarged or unbonded for a period of thirty (30) Days;
- 23.1.5* The Contractor failed to provide "adequate assurances" within three (3) 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;
- 23.1.6* The suspension or revocation of any license, permit, or registration necessary for the performance of the Contractor's obligations under this Contract;
- 23.1.7* The Contractor suspended or failed to proceed with any part of the Services;
- 23.1.8* The default in the performance or observance of any of the Contractor's other obligations under the Contract Documents.

**23.2 ATL Damages/Remedies.** Upon the occurrence of an Event of Default, ATL may, in addition to and without prejudice to all other contractual remedies and/or remedies allowed at law or in equity, proceed to take any or all of the following actions:

- 23.2.1* Withhold any money then due and/or thereafter due to Contractor;
- 23.2.2* Perform or cause to be performed for the account of Contractor any contractual obligation, 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 obligation. Any amounts which have been paid or incurred by reason of failure of the Contractor

to comply with any obligation or provision of this Contract shall bear interest at the Default Rate, which shall be defined as the Prime Rate plus five (5) percent, but in no case higher than the highest rate permitted by law, from the date of payment by ATL until paid by the Contractor (“Default Rate”); and

- 23.2.3 Obtain the Services, or a portion thereof, from a third party under substantially similar terms of this Contract, and recover from Contractor all additional costs and expenses paid or incurred by ATL as a result of the Event of Default, plus all additional costs paid or incurred by ATL to obtain the replacement Services as set forth in this Section.

## **24. COOPERATION, TRANSITION OF WORK, AND END OF CONTRACT RESPONSIBILITIES.**

**24.1 Cooperation.** In the event that ATL enters into any agreement at any time with any other contractor(s) for work related to the Services, Contractor agrees to cooperate fully with such other contractor(s) in order to facilitate the performance of the Services and/or provision of work by such other contractor(s) and to refrain from any activity which would interfere with performance of the Services and/or provision of work by such other contractor(s).

**24.2 Transition.** Upon expiration or earlier termination of this Contract, Contractor shall accomplish a complete transition of the Services from Contractor to ATL, to a ATL-designated Representative or to any replacement provider designated by ATL, without any interruption of, or adverse impact on the Services any component thereof or any other Services provided by third parties. Contractor shall cooperate fully with ATL, a ATL-designated Representative, or such replacement provider and promptly take all steps required to assist in effecting a complete transition. All Services related to such transition shall be performed at no additional cost beyond what would be paid for the Services hereunder and any other work for which there are no labor or equipment rates set forth in **Exhibit C (Contractor Rates)** shall be set forth in a writing signed by both Parties.

**24.3 End of Contract.** The Contractor shall perform the end of Contract responsibilities as reasonably specified by ATL upon the expiration or earlier termination of this Contract.

**24.4 Failure to Comply.** The Parties acknowledge and understand that Contractor’s failure to comply with the terms and conditions as stated hereinabove shall adversely affect ATL and result in monetary loss to ATL. ATL shall assess, audit, and certify to the Contractor ATL’s monetary losses resulting from the Contractor’s failure to comply with the provisions of this Section.

**25. CONFLICTS OF INTEREST.** ATL’s employees are bound by the Georgia Governor’s Executive Order dated January 10, 2011 for “Establishing a Code of Ethics for Executive Branch Officers and Employees.” The Executive Order prohibits ATL’s employees, or any person acting on their behalf, from accepting, directly or indirectly, any gift from any person with whom the employee interacts on official ATL business. Therefore it is unlawful for the Contractor, or its subcontractors or suppliers, to make gifts or favors to any of ATL’s employees. It is also unlawful for a ATL employee to accept any such gift or favor. The Contractor represents and warrants that it, its principals, its employees, and all others in close association or otherwise affiliated with it, have no conflict of interest or of time, directly or indirectly, that would prevent timely performance of the Services in a manner that is free of appearance or fact of impropriety. The Contractor promises to allow no such conflict to arise and promises to disclose such a conflict in the event that, nevertheless, one develops. Such disclosure must be made in writing to the ATL Program Manager no later than five (5) Days after such conflict arises.

**26. MANTATORY FTA CLAUSES.** Contractor shall comply with the requirements set forth in **Exhibit F**,

attached hereto and incorporated herein. To the extent there is any conflict between the Contract Documents and Exhibit F, the terms of **Exhibit F** shall control.

**27. EXHIBITS.** The following Exhibits are incorporated by reference into and made a part of the Contract Documents:

**Exhibit A-** RFP

**Exhibit B-** Contractor's Response to RFP

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

**Exhibit C-** Contractor Rates

**Exhibit D-** Definitions

**Exhibit E** – Scope of Services

**Exhibit F** – Mandatory FTA Clauses

**Exhibit G** – ATL DBE Participation Form

**Exhibit H** – ATL Notice of Intent to Perform as Subcontractor Form

**Exhibit I** - DBE/SBE Subcontractor Utilization Closeout Report

**28. MISCELLANEOUS.**

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

*28.1.1 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 Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

**28.2 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.

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

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

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

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

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

**28.4 Time of the Essence; Force Majeure.** Time is of the essence for all Services performed pursuant to the Contract Documents. The Contractor shall perform its responsibilities in accordance with the schedule set forth therein. However, neither Party shall be liable to the other Party for any

delay or failure of performance due to fires or other casualties, acts of God, unusual weather conditions, strikes or labor disputes, war, or any cause beyond the reasonable control of either Party. Contractor's exclusive remedies for force majeure are set forth in **Section 11.2 (Time Extensions)**.

- 28.5 Non-disparagement.** Each Party agrees not to make any statement, written or oral, to any third party which disparages or criticizes the other Party or the other Party's respective officers, directors, employees, agents or management and business practices, in each case in connection with the performance or administration of the Services, this Contract, any other work/relationship between the other Parties under separate agreement, or any matter related thereto. The provisions of this Section shall not apply to any truthful statement required to be made by either Party, or such Party's officers, directors or agents, as the case may be, in any legal proceeding or governmental or regulatory investigation or to any internal discussions or communications between the Parties.
- 28.6 Trading with State Employees.** The Contractor represents that the provisions of O.C.G.A. §§45-10-20 *et seq.* have not and will not be violated under the terms of this Contract.
- 28.7 Registered Lobbyists.** Contractor represents and warrants that the Contractor and its lobbyists, if any, are in compliance with the Lobbyist Registration Requirements in accordance with the Georgia Procurement Manual, incorporated herein by reference.
- 28.8 Governing Law and Venue.** This Contract is a Georgia agreement made under the laws of the State. It will be enforced according to Georgia law without regard to its conflict of laws rules or any other rules directing referral to foreign law or forums. Any action related to this Contract in any way shall be brought exclusively in the Superior Court of Fulton County, Georgia, and each Party hereby consents to the jurisdiction and venue of such Court and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum. Each Party hereby agrees to execute an acknowledgment of service of process at the request of the other Party in any litigation related to this agreement. In the event that a Party does not provide an acknowledgment of service as agreed, each Party consents to service of process at that Party's address set forth in **Section 28.9 (Notices)**.
- 28.9 Notices.** All notices, notifications, approvals, acceptances, requests, permission, waivers or other communications (excluding invoices that will be handled as set forth in **Section 10 (Payment)** hereunder shall be in writing and transmitted via hand delivery, overnight courier, or certified mail to the Parties at the respective addresses set forth below. Contractor shall submit a complete, audit worthy invoice to the following address: Atlanta-Region Transit Link Authority, ATTN: Accounts Payable, 245 Peachtree Center Avenue NE, Suite 2200 Atlanta, GA 30303 and at [invoices@srta.ga.gov](mailto:invoices@srta.ga.gov). Invoices may also be sent by U.S. Mail, postage prepaid. Notices will be deemed to have been given when received, unless otherwise noted in the Contract. If a Party refuses to accept delivery or fails to take delivery, notice shall be deemed given on the day delivery is first attempted. Notice may also be given by email, provided a hard copy of the notice is also transmitted via hand delivery, overnight courier, or certified mail to the Parties at the respective addresses set forth below.

*For ATL:*

Atlanta-Region Transit Link Authority  
Attn:  
245 Peachtree Center Avenue NE, Suite 2200  
Atlanta, Georgia 30303  
Phone: (404) 893-  
Email:  
Copy to: Meryll Mandus

*For the Contractor:*

- 28.10 Taxes.** The Contractor will pay all taxes lawfully imposed upon it that may arise with respect to this Contract.
- 28.11 Safety and Health/No Discrimination.** Contractor shall at all times comply with and require that all of its subcontractors performing Services under this Contract comply with all applicable federal and State occupational safety and health standards, rules, regulations and federal and State orders. Contractor shall not and shall cause any subcontractor to not discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the Services under the Contract Documents. Contractor shall carry out and shall cause its subcontractors to carry out, applicable requirements of 49 CFR Part 26. Contractor shall include this provision in every subcontract pertaining to the Services.
- 28.12 Publicity.** Contractor shall not issue a press release or otherwise publicize the Services or this Contract without the prior written permission of ATL's Chief Communications Officer.
- 28.13 Drug-Free Workplace.** Contractor certifies that (i) a drug free workplace will be provided for the Contractor's employees during the performance of this Contract, and (ii) it will secure from any subcontractor, agent or assign 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 (i) the Contractor has made false certification hereinabove, or (ii) the Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. § 50-24-3.
- 28.14 Remedies Cumulative.** The rights and remedies of ATL under this Contract are cumulative of one another and with those otherwise provided by law or in equity.
- 28.15 Waiver and Severability.** The waiver by ATL of a breach of any provision of this Contract shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision of this Contract. Any such waiver must be in writing in order to be effective, and no such waiver shall establish a course of performance between the Parties contradictory to the terms hereof. All provisions of this Contract are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed so as to carry out the full intention of the Parties.
- 28.16 No Third-Party Beneficiaries.** Nothing contained in the Contract Documents shall be construed as conferring upon or giving to any person, other than the Parties hereto, any rights or benefits under or by reason of this Contract.

*28.16.1 Federal Government Not a Party.* Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent

the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to either ATL, Contractor, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from the underlying Contract.

*28.16.2 Subcontract Language.* Contractor agrees to include the language in Section 28.16.1 in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**27.17 Interpretation.**

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

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

**27.18 Counterparts.** The Parties may execute this Contract in counterparts.

**27.19 Construction of Contract.** In the event this Contract must be interpreted by a court of competent jurisdiction as defined in **Section 27.8 (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.

**27.20 Survival.** In addition to those provisions, which by their terms would naturally survive termination of the Contract, **Sections 3 (Inclusion and Priority of Documents), 7 (Subcontracting and Assignment), 10 (Payment), 12 (Indemnification), 13 (Insurance), 14 (Additional Contractor Responsibilities and Representations), 16 (Review/Audits), 17 (Ownership of Documents), 18 (Intellectual Property), 19 (Termination), 21 (Confidentiality), 23 (Event of Default; Damages/Remedies), 24 (Cooperation, Transition of Services and End of Contract Responsibilities), and 28 (Miscellaneous)** shall survive the termination for whatever reason of this Contract.

**27.21 Non-exclusivity.** This Contract is entered into solely for the convenience of ATL and the State, and in no way precludes ATL from obtaining like goods or services from other contractors at ATL’s sole discretion.

**27.22 Entire Contract; Amendment.** This Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all other prior and contemporaneous contracts and understandings between the Parties, whether oral or written. 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.

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed effective as of the Effective Date.

Atlanta-Region Transit Link Authority

Contractor

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

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

Jannine Miller  
Executive Director

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Merryl Mandus  
General Counsel

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

**EXHIBIT A**  
**REQUEST FOR PROPOSALS**

Incorporated herein by reference.

**EXHIBIT B**  
**CONTRACTOR'S RESPONSE TO RFP NO. 19-021**

Incorporated Herein by Reference

**EXHIBIT C  
CONTRACTOR'S RATES**

## **EXHIBIT D DEFINITIONS**

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

**ATL** means the Atlanta-Region Transit Link Authority.

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

**ATL-designated Representative** shall mean the employee(s), individual(s), contractor, partnership, firm, or corporation authorized by ATL to act on behalf of ATL in matters related to this Contract.

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

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

**Compensation for Services** means the monetary compensation paid for the Services performed as more specifically described in **Section 10 (Payment)** of the Contract

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

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

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

**Contractor Program Manager** shall have the same meaning assigned to it in **Section 5.2.2 (Contractor Program Manager)** of the Contract.

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

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

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

**Default Rate** shall have the same meaning assigned to it in **Section 23.2.2 (ATL Damages/Remedies)** of the Contract.

**Design Team** means the entity who provides engineering design services on behalf of ATL.

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

**Effective Date** shall mean the date set forth in the preamble of the Contract.

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

**FTA** means 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.

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

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

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

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

**Intellectual Property** means any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the forgoing, whether or not registered as of the Effective Date or at any later date.

**Invoice** shall have the same meaning assigned to it in **Section 10.8 (Invoicing)** of the Contract.

**Key Personnel** means employees of the Contractor, or any sub contractor(s), affiliates, joint venture partners, or team members, and contractors engaged by any of those entities, whose work is considered by ATL to be essential to the Services being performed under the Contract Documents. The following personnel are considered at a minimum to be Key Personnel: all primary subject matter experts and any staff billing more than 20 hours under this contract. Persons considered Key Personnel are set forth more fully in **Section 5.2.2 (Contractor Program Manager)** of the Contract.

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

**Party/Parties** shall have the same meaning assigned to it in the preamble of the Contract.

**Project** shall mean the scope of Services for accomplishing the Services as specified in the Contract Documents.

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

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

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

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

**State** shall mean the State of Georgia.

**Services** shall have the same meaning assigned to it in the preamble to the Contract.

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

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

**Exhibit E**  
**Scope of Services**

## **Exhibit F**

### **MANDATORY FTA REQUIREMENTS**

#### **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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on 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 Contractor agrees to provide to ATL, Georgia Office of Treasury and Fiscal Services, U.S. Secretary of Transportation, and the Comptroller General of the United States or their duly authorized representatives, access to all contract records, including those required by 49 U.S.C. § 5325(g), for the purpose of examining, auditing, and copying them. Contractor further agrees to require and assures that its subcontractors shall provide sufficient access to procurement records as needed for compliance with State and Federal laws and regulations or to assure proper project management as determined by FTA.
- 3.2 During the course of the Services and for three (3) years thereafter from the date of final payment, Contractor agrees to maintain intact and readily accessible all data, books, documents, reports, records, subagreements, leases, third party contracts, and supporting materials related to the Services as the State and Federal governments may require.

4. **FEDERAL CHANGES.** 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 Agreement.

## 5. CIVIL RIGHTS.

- 5.1 Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, 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, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, 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, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Agreement. 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- 5.2.2 *Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- 5.2.3 *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, 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. ATL's overall goal for DBE participation in federally funded contracts awarded during FY'24-FY'26 (October 1, 2023 and September 30, 2025) is 10.31%.

- 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 During the term of this contract, the Contractor will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform under the contract, and that the Contractor meets its DBE commitment as set forth in its bid.
- 6.3.1 If Contractor requests substitution of a DBE subcontractor or supplier listed in its Offer Document 13-Subcontractors and DBEs Information and Certifications form, the Contract shall exert good faith efforts to replace the DBE firm with another DBE firm subject to approval of ATL.
- 6.3.2 Contractor shall not terminate for convenience any DBE subcontractor or supplier listed in its Offer Document 13-Subcontractors and DBEs (or an approved substitute DBE firm) and then perform the work itself or with its affiliates without prior written of ATL.
- 6.3.3 If a DBE subcontractor or supplier is terminated or fails to complete its work on the contract for any reason, Contractor shall make good faith efforts to find another DBE firm to substitute for the original DBE firm.
- 6.4 Contractor will be required to report its DBE participation obtained through race-neutral means throughout the Term of Agreement.
- 6.5 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) Days after Contractor's receipt of payment for that work from ATL. In addition, Contractor may not hold retainage from its subcontractors.
- 6.6 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, 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 ATL 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) 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) Days after the subcontractor's work related to this Agreement is satisfactorily completed. ATL discourages Contractor from withholding retainage from its subcontractors.

## **9. SUSPENSION AND DEBARMENT.**

- 9.1 This Agreement is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 1200. As such, ATL is required to assure that Contractor, its subcontractors, and other participants at any tier of the Project are not excluded or disqualified as defined in 2 CFR Part 180 Subpart I.
- 9.2 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 \$100,000 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 \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**14. 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.

**15. 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.

**16. 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."

**17. 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 Services 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.

**18. 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 Services 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. Services 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 Services 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 agreement.

**19. 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.

**20. PRIVACY ACT.** The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

**21. ADA ACCESS REQUIREMENTS.** Contractor shall comply with 49 U.S.C. § 5301(d), stating federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

**Exhibit G**

**ATL DBE PARTICIPATION FORM**  
(Attached to the next page)

**EXHIBIT H**

**ATL DBE/SBE PARTICIPATION AND SUBCONTRACTOR PAYMENT REPORT FORM**  
(Attached to the next page)

**EXHIBIT I**

**DBE/SBE SUBCONTRACTOR UTILIZATION CLOSEOUT REPORT**  
(Attached to the next page)