



**Enterprise Asset Management System  
Solicitation No. 19-011– Addendum #4  
April 2, 2019**

This Addendum #4 to ATL Solicitation No. 19-011 is being issued in accordance with Section 2.5 of the Request for Proposal document.

**PART 1-Solicitation, Offer and Award**

**Solicitation Schedule**

The solicitation schedule has been revised as follows:

Response Submission Deadline- **April 22, 2019, 2:00PM EST**

Scripted Demonstration (Optional and by Invitation only)- **May 6 - May 17, 2019**

**Part 1- Section 1.2 Type and Term of Contract** shall be revised as follows:

The ATL shall enter into a fixed price contract with the selected Contractor. The Contract to be awarded by the ATL shall be for a period of Seven (7) years (“Initial Term”) with up to three (3) renewal options of one (1) year each (Renewal Term). The renewal of the Contract shall be at the sole discretion of the ATL. All extensions or renewals shall be made in writing and executed by both parties prior to the contract expiration date.

All references to the Contract Term contained in this RFP, including those made in **Section 4 and Section 7.3** shall be consistent with the changes made to Part 1-Section 1.2 as noted above.

**Part 1-Section 2.10 Minority Business Participation-the following statement will be added to the end of paragraph one to read as follows:**

“The DBE goals for each participating entity are agency-wide goals. However, Proposers are encouraged to include DBE’s and Small Business Entities (SBE) as partners if the prime is not a DBE or SBE. There are no evaluation points associated with these DBE goals.

**Part 1-Section 2.17 Contractual Provisions the following statement will be added to the end of the fourth paragraph to read as follows:**

“SRTA intends to issue a Work Order immediately upon contract execution. Cobb County anticipates issuing a Work Order prior to October 1, 2019. The ARC does not have estimated or target dates for issuing a Work Order for EAM implementation currently.”

**Part 1-Section 3.8 Price Proposal Cost book the following statement will be added as the seventh bullet to read as follows:**

“For purposes of preparing price proposals, all Proposers shall assume that Cobb estimates utilizing two (2) devices, SRTA estimates using up to forty-Five (45) devices (not concurrently), and ARC estimates utilizing two (2) devices to access the EAMS system.”

**Part 1-Section 4.2.3-Scoring on Proposals by the Evaluation Committee**

Section 4.2.3 correctly states that the maximum total points for phase 1 is 90. The Technical Evaluation points for bullet one will be revised to read as follows:

- Qualifications/Personnel Assigned to Project (10-point maximum)

**Part 1 Section 4.2.3 Scoring of Proposals by the Evaluation Committee- “Phase 1 Technical Evaluation the following statement will be added to the end of the third bullet to read as follows:**

“The project management artifacts should include a sample project schedule(s) and PMP(s) for all three Participating Entities (ARC, Cobb County and SRTA). It needs to describe all the implementation steps and roll out dates for SRTA, Cobb and ARC. Note: ARC and Cobb artifacts can be described at a high level with less detail.”

## **PART 2-Scope**

### **Section 1-Introduction**

**Section 1-Introduction:** The following statement is added to the end of the paragraph for the purpose of in reference to staffing for SRTA and the Participating Entities and shall read as follows:

- “Currently, the Cobb County Transit Division has 8 employees; Cobb anticipates adding four more employees to its Transit Division by the end of calendar year 19. The State Road and Tollway Authority has approximately 90 employees. ARC, Henry, Douglas and Cherokee, combined have approximately 10 employees.”

**Section 1.1- About SRTA, Cobb County, and ARC (Participating Entities):** The following statement is hereby added to the end of the first paragraph:

- “This section includes Federal Transit Administration (FTA), National Transit Database (NTD), and Transit Asset Management (TAM) requirements. Respondents are expected to meet all applicable

statutory and regulatory requirements, including, but not limited to those noted in this section.”

### **Section 2-Project Background, Goals, and Objectives**

**Section 2.1 Project Background:** The following sentence is hereby added to the end of the first paragraph:

- “A SaaS model is preferred; however, a hosted model is acceptable. Proposers are required to provide a software roadmap as part of the response. Therefore, proposers who are using a hosted model should include potential plans to move to SaaS, if applicable.”

**Section 2.1 Improved contractor data integration:** The following statement is added at the end behind the last sentence:

- “The proposer is expected to provide a standard format for data by type (rolling stock, parts, locations, requisition, etc.) and process for loading during data conversion and during normal operations for larger data loads (multiple asset purchases, purchase orders from the financial application. It is expected the process will also have error handling and other trouble shooting activities along with the templates.

**Section 2.1 Improved Work Activity Timekeeping:** The following sentence is hereby added at the end of the paragraph:

- “Currently, the Participating entities have a manual solution. Proposers shall provide a suggested time clock solution.”

**Section 2.1 Improved data access and reporting:** The following sentence is hereby added and the end of the first paragraph:

- “Proposers should NOT include replacement cost for the decisions support tool, TERM Lite model. SRTA and the participating agencies will be using TERM Lite. It is expected the new EAMS solution will have functionality to export data to TERM Lite, but not perform the functions. If the proposed product has functionalities like TERM Lite, please indicate such in the proposer's response.”

### **Section 3 Solution Functional Components**

**Section 3 Solution Functional Components:** The following sentence is hereby added to the end of the 2<sup>nd</sup> paragraph:

- “The vision is that one EAM ‘instance,’ meaning it will be one system implemented by the region with individual participating entities to manage their own assets, business rules and users. Each Participating Entity will control and manage its own company within the EAMS. The ability for the ARC to “view” and “analyze” all Participating Entities is part of the vision.”

**Section 3.1.1 Functionality: All Assets:** The first paragraph is deleted in its entirety and replaced as follows:

- “It is not expected that each Participating Entity will have access to each other's asset information. Only the ARC will require data from all the Participating Entities for capital planning at the regional level. Part of the vision is that all Participating Entities leverage the same asset data structure and hierarchy that aligns to the FTA requirements. Several SRTA Business Unites have been identified as requiring asset management functionality. These Business Units are detailed in Section 3.2, and an overview of their requirements is provided in Section 3.2 Functional Components. Specifically, Section 3.2.1 describes requirements that are common to all Business Units, and the sections following describe individual, specific Business Unit needs. SRTA and the Participating Entities reserve the right to review/define and/or remove/include additional business units. The anticipated EAMS user counts for each entity are: SRTA 90; Cobb 20; ARC 7.”

**Section 3.1.1 Functionality: All Assets-Table 4:** Reference 8 of Table 4 is deleted in its entirety and replaced as follows:

- The system will support assignment/re-assignment/co-assignment of assets to owning, operating, and maintenance/servicing locations or third-party contractors. Co-assignment refers to an asset within the region owned by one agency but maintained/operated by another. It will be important for these assets to be identified and tracked for each agency and the ARC when reviewing the entire region. Example: A bus owned by SRTA and operated by Henry County.

**Section 3.1.2 Asset Management, Table 6, Asset Management Requirements and Table 7, Assets Management Reporting Requirements**

- The following paragraph shall be inserted as an introduction to Table 6: The requirements noted in Table 6 of Section 3.1.2 Asset Management applies to projects that may fall into the following categories: new assets, replacement assets, technology upgrades, and improved reliability of an asset or set of assets. The Participating Entities need to track the project status from planning to completion and any components/parts used must be tracked from receipt to installation on the asset. A sampling of projects that fall within this requirement includes, but is not limited to, new park-n-ride lots, new managed lanes, new facilities, new vehicles, CAD/AVL upgrade, Farebox upgrade, and mid-life rehab.
- **Table 6: Requirement 37** shall be revised as follows: “The system will provide asset tracking capability for assets that are deconstructed and then reconstructed. This requirement applies to an asset and/or component that is removed, repurposed, rebuilt, or refurbished. The system should have the capability to track the date, purpose and scope of any rehabilitation activity affecting an asset. Should track attributes before and after rehabilitation.”
- **Table 7: Report number R0007, Data Dictionary** shall be revised as follows: “The system will provide for creation of performance indicators and how the indicators are calculated or accumulated based on system data. At a minimum, performance indicators need to provide a snapshot of trends and overall information on the state of good repair, cost of operation and

replacement analysis date for assets.”

- **Table 7 Report number R0015, Configurable KPI Dashboard shall be revised as follows:** “The system will provide user-definable dashboards and key performance indicator (KPI) tracking. All KPIs should be reportable by/at any level defined by the hierarchy and fields in the data definition. For example: vehicle, fleet, engine model, facility, report code, contractor, etc. A sampling of KPIs are operating cost by fleet type, type of engine, model year, specific asset, etc. (includes work orders, PMI, parts, etc. used to maintain SGR); total and average availability of the asset (uptime vs. downtime); SGR rating by type of asset; quantity of repairs by fleet, repair code, specific asset. This is a sampling of KPIs expected and is not an exhaustive list.”

### **Section 3.1.3 Planning & Budgeting: Table 8, Planning & Budgeting Requirements**

- **Reference 56** shall be revised as follows: “The system will provide a budget tool which allows for the development of the proposed budget by a maintenance shop or other business unit with an agency-specified/defined roll-up capability to the overall agency or business unit operating budget. This requirement shall support the ability to generate reports and/or extract data to provide information for building agencies’ operations budgets. Data should include equipment, tools, labor and parts used to maintain assets by mode and asset hierarchy.”
- **Reference 57** is hereby deleted. This requirement is already captured in Table 8, Reference 55.

**Section 3.1.6 Incident Management:** The following sentence shall be added at the end of the first paragraph of Section 3.1.6-Incident Management: “There is no requirement for a public portal for SRTA, Cobb, and ARC. The requirement is integration with the SRTA Customer Service software.”

### **Section 3.2.4 Work Order Management: Table 25, Work Order Management Requirements**

- **Reference 168** shall be revised as follows: “The system will store work orders (multiple) associated with any repairs related to an accident or incident with systematic links to the incident/accident record found in the integrated incident module. The Clever Devices CAD/AVL system being installed on all SRTA rolling stock contains an incident management functionality that will provide information related to accidents and incidents; SRTA is requesting integration with the system to take advantage of its functionality.”
- **Reference 194** shall be revised as follows: “The participating entities require the functionality to release and reassign a tech to new work even if the work order is not closed. There will be times when you must assign a tech to another work order due to waiting for parts or to get a quick repair done.”

### **Section 3.2.4 Work Order Management: Table 26**

- **Reports R0045, R0046, and R0047** shall be revised as follows: “The participating entities are looking to adopt the language and definitions of the awarded vendor but for clarification purposes, problems and incidents are not synonymous. Our general definitions are incidents can arise from customer service or maintenance staff and represent something that has occurred. An incident might not be a problem or require a work request. Problems are identified by maintenance staff

and lead to a work request.”

#### **Section 3.2.6.1 Parts Inventory: Table 31**

- **Reports R0050, R0051, and R0052** shall be revised as follows: “These requirements must be met for SRТА and ARC-Regional partners. These requirements can be disregarded for Cobb.”

#### **Section 4.1 General Technical Requirements**

- **In Section 4.1 General Technical requirements the following statement will be added to the end of the first paragraph to read as follows:** “The Participating Entities are looking for a commercial out of the box solution; however, configuration is expected. The Proposer should provide a clear representation of its software and what can be done using a SaaS or hosted solution. If customization or custom development is required, the proposal should clearly indicate such and the price sheet should identify the associated costs.”

#### **Section 4.1 General Technical Requirements Table 34**

- **Reference #337 and #496** shall be revised as follows: “The system availability requirement is 99.99%.”

#### **Section 4.1 General Technical Requirements Table 34**

- **Reference #342** shall be revised as follows: “The four environments required at a minimum for the EAMS implementation are: Production, Development, Testing, and Sandbox.”

#### **Section 4.1 General Technical Requirements: Table 34**

- **Reference 363** shall be revised as follows: “The term module is meant as a generic term. It is another approach to allow for additional fields by business function, i.e. asset tracking, preventative maintenance, work order management, parts management, warranties, requisitions, etc.”

#### **Section 4.3.1 System Integrations**

- **In Section 4.3.1 Systems Integrations** the following statement will be added to the end of the first paragraph to read as follows: “Currently, ARC and Cobb do not require the supply chain business functions. SRТА, however, requires the full supply chain functionality.”

#### **Section 4.4 Reporting**

- **Reference #435** shall be revised as follows: "The system will provide reports on user production statistics by user ID, time of day, length of job, etc., to determine who is viewing a report, what reports are being used, and computing resources consumed."

#### Section 4.6 Data Conversion

- In **Table 43- Section 4.6 Data Conversion Requirements: Conversion Plan under Asset Category Transit Inventory Item Master**, the following sentence will be added after the existing sentence to read as follows: “Purchase Orders and requisitions related to the work orders do not need to be converted.”

#### Section 4.9 Security

- In Section 4.9 the following sentence will be added to the end of the second paragraph to read as follows: “The Participating Entities do not need to be in a FEDRAMP certified datacenter. However, the Participating entities do use/follow **all NIST guidelines**. Furthermore, following the NIST guidelines controls will allow the resource usage to be monitored, controlled, and reported on with transparency for both the provider and the Participating Entities for the utilized software.”

#### Section 4.9 Security

- In **Section 4.9 Security** the following statement will be added to the end of the fourth paragraph and shall read as follows: “SRTA is requiring the system to be maintained at a low level according to FIPS 199 standards.”

#### Section 4.9 Security

- **Reference #498 and #500** shall be revised as follows: “All communications should be securely encrypted using SSL 2.0 or other encryption as approved by the respective Participating Entity’s IT department.”

#### Section 4.9 Security

- In **Table 43 under Asset Category Transit Work Orders** the following statement will be added after the last sentence and shall read as follows: “The Participating Entities will need five (5) years of work order history.”

#### Section 7.3 Maintenance Requirements

The following statement will be added after the existing sentence and shall read as follows: “SRTA’s expectation is a five (5) year maintenance agreement beginning year 3, i.e. after the implementation year and first year warranty.”

### PART 3-CONTRACT

Part 3 will be deleted in its entirety and replaced with the updated version attached hereto. For your convenience, a summary of the Contract changes has been provided below. However, it remains the responsibility of each Proposer to read the Contract terms in their entirety.

**Part 3 - Section 4 CONTRACT TERM AND RENEWAL-** See Revised Part 3 (Contract) attached here to.

**Part 3 - Section 11.3 Changes:** Added to Revised Part 3 (Contract) attached here to.

**Part 3 – Section 13.6 Contractor’s Limitation of Liability:** See Revised Part 3 (Contract) attached here to.

**Part 3 – Section 14.3.4 Professional Liability (Errors and Omissions) Insurance:** See Revised Part 3 (Contract) attached here to.

**Part 3 – General:** All references to “Task Orders” has been changed to “Work Orders” to be consistent throughout the contract and scope documents.

All other terms and conditions of ATL Solicitation No. 19-011 not specifically addressed in this Addendum #4 remain in full force and effect.



**REQUEST FOR PROPOSALS 19-011  
ENTERPRISE ASSET MANAGEMENT SOFTWARE AND IMPLEMENTATION SERVICES**

**Instructions to Proposers:**

**All spaces below and all offer documents as outlined herein are to be filled in with signatures where indicated. Failure to sign may render your proposal invalid.**

**PROPOSAL OF:**

**Name of Bidder:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State and Zip Code:** \_\_\_\_\_

**SUBMIT PROPOSAL TO:**

Atlanta-region Transit Link Authority  
Gary Thomason, Issuing Officer  
245 Peachtree Center Avenue, Suite 2200  
Atlanta, GA 30303

**Proposals Due and Open: April 8, 2019, 2:00pm, Local Time (Atlanta, GA)**

**Schedule of Events**

<b>Release RFP</b>	<b>February 8, 2019</b>
<b>Pre-Proposal Conference</b>	<b>Feb. 21, 2019 11:30AM EST</b>
<b>Deadline for Proposer Written Questions</b> (Submit questions by email to <a href="mailto:gthomason@srta.ga.gov">gthomason@srta.ga.gov</a> )	<b>March 8, 2019 2PM EST</b>
<b>Responses to Written Questions</b>	<b>April 2, 2019</b>
<b>Proposal Submission Deadline</b>	<b>April 22, 2019, 2PM</b>
<b>EST Scripted Demonstration (Optional and by invitation only)</b>	<b>May 6 -May 17, 2019*</b>
<b>Notice of Intent to Award</b>	<b>June 17, 2019*</b>
<b>Notice of Contract Award</b>	<b>July 2, 2019*</b>

**\*Subject to change without a formal addendum to the RFP.**

All questions should be submitted by email to [gthomason@srta.ga.gov](mailto:gthomason@srta.ga.gov). Questions must be submitted no later than the deadline specified in the above Schedule of Events. Answers are provided for informational purposes only and will not be considered binding unless incorporated by addendum to this RFP. Proposers are reminded and encouraged to check this website daily for any changes to the RFP as well as to check this website for Notice of Contract Award. Posting of Notice of Award shall constitute official public notification.



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## PART 1 – SOLICITATION, OFFER AND AWARD

### 1. Information for Proposers

#### 1.1 Purpose of Procurement

The purpose of this solicitation is to request proposals from qualified companies to provide an Enterprise Asset Management Solution capable of meeting the needs of the State Road and Tollway Authority (“SRTA”), Cobb County DOT Transit Division (“Cobb County”), and the Atlanta Regional Commission (“ARC”); SRTA, Cobb County, and ARC may be collectively referred to as the “Participating Entities.” The resulting Contract of this RFP shall be available for use by the Participating Entities as well as the Atlanta-region Transit Link Authority (“ATL”) and all county and other local entities within the 13-county jurisdiction of the ATL. The ATL and counties and other local entities within the ATL’s jurisdiction may be referred to individually as “Ordering Entity” or collectively as “Ordering Entities.” The issuance of this RFP does not compel any eligible Participating Entity or Ordering Entity to purchase software or professional services utilizing the resulting Contract. The ATL shall not be a party to any Participating Entity or Ordering Entity’s Work Order(s) and shall not have any responsibility for purchase orders issued by a Participating Entity or Ordering Entity, or any transactions by a Participating Entity or Ordering Entity arising out of or resulting from this RFP.

The scope of work consists of furnishing all labor, machinery, tools, means of transportation, supplies, equipment, materials, safety equipment, services, and incidentals to provide complete Enterprise Asset Management System (“EAMS”) as provided herein. The proposed solution should provide a cohesive, multi-function, flexible, robust, and integrated system capable of meeting the needs of all Participating Entities. The Scope of Services is attached as Part 2 of this RFP. In addition to the Scope of Services, the ATL has provided the following informational attachments:

- Attachment A-SRTA Feature Dictionary
- Attachment B-Xpress DOR Incidents Report
- Attachment C-SRTA Transit Asset Management Plan
- Attachment D-CobbLinc Transit Asset Management Plan
- Attachment E-Atlanta Regional Commission Transit Asset Management Plan
- Attachment F-Questions and Answers Template

The services to be performed shall generally fall into the following National Institute of Government Purchasing (NIGP) commodity codes:

- 95800 – Management and Operation Services
- 99049 – Asset and Inventory Management Services



All respondents to this RFP are subject to the instructions communicated in this document, as may be amended, and are cautioned to review the entire RFP and carefully follow the instructions herein.

Proposals will be accepted until 2:00PM (EST), April 8, 2019. Instructions for requesting a copy of the RFP document can be found on the ATL website at <https://atltransit.ga.gov/procurement/>

## 1.2 Type and Term of Contract

The ATL shall enter into a fixed price contract with the selected Contractor. The Contract to be awarded by the ATL shall be for a period of seven (7) years (“Initial Term”) with up to three (3) renewal options of one (1) year each (Renewal Term). The renewal of the Contract shall be at the sole discretion of the ATL. All extensions or renewals shall be made in writing and executed by both parties prior to the contract expiration date.

## 1.3 Solicitation Schedule

The Schedule of Events set out herein represents the ATL’s best estimate of the schedule that will be followed. However, delays to the procurement process may occur which may necessitate adjustments to the proposed schedule. If a component of this schedule, such as the Proposal Due Date, is delayed, the Schedule of Events may be shifted as appropriate and at the ATL’s discretion. Any changes to the Schedule of Events up to the Proposal Due Date will be posted to the ATL website at <https://atltransit.ga.gov/procurement/>. After the Proposal Due Date, the ATL reserves the right to adjust the remainder of the proposed dates, including the dates for evaluation, award and the Contract term on an as needed basis with or without notice.

Release RFP	February 8, 2019
Pre-Proposal Conference	Feb. 21, 2019 10AM EST
Deadline for Proposer Written Questions (Submit questions by email to <a href="mailto:gthomason@srta.ga.gov">gthomason@srta.ga.gov</a> )	March 8, 2019 2PM EST
Responses to Written Questions	April 2, 2019
Proposal Submission Deadline	April 22, 2019, 2PM
EST Scripted Demonstration (Optional and by invitation only)	May 6-May17, 2019
Notice of Intent to Award	June 17, 2019
Notice of Contract Award	July 2, 2019



## 1.4 Restrictions on Communications with the ATL, Participating Entities, and Ordering Entities during the Solicitation, Offer and Award Period

From the date of issuance of this solicitation through the date of Contract award by ATL, excepting the Pre-Proposal Conference, Proposers are not allowed to communicate for any reason with any ATL or Participating Entities' staff or Board Members regarding this Procurement. All Proposer communications to the ATL concerning this solicitation should be directed to the Issuing Officer. Unauthorized contact regarding this solicitation with other ATL, Participating Entity or Ordering Entity staff or Board members may result in disqualification.

## 1.5 ATL Contact Information

All inquiries, offers, submissions, and/or other correspondence regarding this solicitation (excluding protests submitted in accordance with Part 1, Section 2.9 below) must be directed in writing to:

Gary Thomason, Issuing Officer  
Atlanta-region Transit Link Authority  
245 Peachtree Center Avenue NE, Suite 2200  
Atlanta, GA 30303  
E-mail: [gthomason@srta.ga.gov](mailto:gthomason@srta.ga.gov)

## 1.6 Pre-Proposal Conference

All prospective proposers are invited to attend the pre-proposal conference, which will be held on February 21, 2019, 11:30 AM EST at the SRTA main office located at 245 Peachtree Center Avenue NE, Suite 2200 Atlanta, GA 30303. While attendance is not mandatory, it is highly encouraged.

# 2. Solicitation Terms and Conditions/Instructions to Proposers

## 2.1 Deadline for Submission of Proposals/Late Proposals

Proposals submitted in response to ATL Solicitation No. 19-011 must be received by ATL no later than **2:00 p.m. (EST) on April 22, 2019** to ensure that they are evaluated for Contract award by the Evaluation Committee for this procurement. Proposals received after the submission deadline will not be evaluated.

## 2.2 Format of Proposals

Ten (10) total paper copies of each proposal, inclusive of one (1) original and nine (9) identical paper copies, as well as one (1) electronic copy on USB drive must be submitted to the Issuing Officer for the proposal to be eligible for evaluation and consideration for Contract award. The electronic copy, submitted on a USB drive, must be submitted in Portable Document Format (PDF), Microsoft Word,



and/or Microsoft Excel formats. The USB drive shall contain electronic file copies of all complete, signed Offer Documents that are submitted in paper copy format. The “original” paper copy of the RFP must be unbound. All paper copies must be clearly marked as being either “Original” or “Copy” as applicable. In the event of a discrepancy between a hard copy and electronic versions, the Original hardcopy version will govern.

**Pricing must be submitted in a separate sealed envelope and clearly marked as “Price Proposal” with the Proposer name, ATL Solicitation Number 19-011, and Proposal Submission Deadline on the exterior of the envelope.** Proposer shall provide a total of ten (10) paper copies of the price proposal, inclusive of one (1) original and nine (9) identical paper copies, as well as an electronic copy in Excel format via USB.

All proposals must be prepared and submitted in accordance with the proposal format and content requirements specified in Part 1, Section 3 below. Proposals must be typed. The included required forms may be completed by using the free Adobe Reader software available at <http://get.adobe.com/reader/>. Proposals must be typed in English and all pricing must be provided in US dollars. As a condition of submission responsiveness, all Offer Documents that require the signature of Proposer must be signed. Any Contract award made as a result of this solicitation shall bind the Proposer to all of the terms, conditions, and specifications set forth in this RFP.

### 2.3 Location for Submission of Proposals/Methods of Delivery

Proposals must be submitted exclusively to Gary Thomason, Issuing Officer, at the address noted in Section 1.5. It is the sole responsibility of the Proposer to ensure that its proposal is successfully delivered to ATL by the specified date and time. ATL is not responsible for late or lost deliveries of proposals.

Proposals that are submitted by hand delivery or delivery by U.S. Postal Service or private courier/delivery service must be delivered to the ATL administrative office located at 245 Peachtree Center, Suite 2200, Atlanta, GA 30303. The ATL’s physical address and mailing address are the same.

All envelopes, packages, and/or boxes (including all envelopes, packages, and/or boxes submitted within a larger envelope, package, or box) containing a proposal on USB drive must be clearly marked with the following identifier on the outside of the envelope, package or box:

**“Proposal in response to ATL Solicitation No. 19-011:  
RFP for Enterprise Asset Management Solution – April 22, 2019 2:00 p.m.  
(EST) ATTN: Gary Thomason, Issuing Officer  
To be opened by addressee only.”**

Failure to clearly mark all envelopes, packages, and/or boxes as specified may result in the proposal being discovered and/or opened late. ATL is not responsible for proposals discovered and/or opened late due to Proposer’s failure to mark the proposal as specified. It is the sole responsibility of the Proposer to ensure that its proposal is successfully delivered to ATL by the specified date and time. ATL is not responsible for late or lost deliveries by the U.S. Postal Service or private courier/delivery services.



## 2.4 Questions

Questions regarding the RFP must be submitted to ATL in writing (defined as being sent or received via letter on official firm/agency letterhead or by electronic mail) by 2:00 p.m. (EST) on March 8, 2019. Written questions must be submitted to the attention of Gary Thomason, Issuing Officer, in accordance with Section 1.5 above.

The final Contract that the ATL expects to award as a result of this RFP, as well as any additional terms and conditions required under Work Orders that may be issued by Participating Entities, are attached hereto as Part 3 of this RFP. Therefore, all costs associated with complying with the requirements of the Contract as well as Work Orders to be issued by the Participating Entities, should be included in any pricing submitted by the Proposer.

Please review the ATL's attached Contract terms and conditions as well as the terms and conditions of Work Orders anticipated to be issued by Participating Entities, and submit any and all questions, clarifications and recommendations to the Issuing Officer by the deadline date and time specified in this RFP. All questions, clarifications, and recommendations must be submitted using Attachment F-Questions and Answers Template.

Requests that materially change the terms or the requirements of the Contract or Work Order as determined by the ATL, in its sole discretion, will be rejected. Requests that grant the Proposer an impermissible competitive advantage, as determined by the ATL, in its sole discretion, will be rejected. Requests will only be considered if submitted prior to the deadline for submitting written questions as defined by the Schedule of Events. Should there be any changes made to the Contract as a result of requests received, the ATL shall post a Final Contract via formal addendum to the RFP. Absent the issuance of a formal addendum containing a Final Contract, proposers should plan on the Contract terms and conditions as attached hereto as Part 3-Contract.

The ATL shall provide answers to each Proposer that has submitted questions by the applicable deadline no later than April 2, 2019. It is the sole responsibility of the Proposer to make itself aware of ATL's responses to written questions the Proposer has submitted. Responses to questions are provided as information only and do not in any way alter the contents of the Solicitation inclusive of the Scope of Services and the remainder of the RFP documents. Revisions to the Solicitation shall be made only via formally issued Amendments (i.e. Addenda). Only such written addenda shall constitute revisions to the Solicitation that are binding upon ATL or the Participating Entities.

## 2.5 Amendments to Solicitation (Addenda)/Postponement of Proposal Submission Deadline

The ATL reserves the right to revise or amend the RFP up to the time set for the submission of proposals. Such revisions and amendments, if any, shall be announced by written addenda to the RFP. If an addendum significantly changes the RFP, the date set for the submission of proposals may be postponed



by such number of days as in the opinion of ATL shall enable potential Proposers to revise their proposals. In any case, the proposal submission deadline shall be at least three (3) business days after the last addendum, and the addendum shall include an announcement of the new date, if applicable, for the submission of proposals.

Upon issuance, addenda will be considered part of the RFP and will prevail over inconsistent or conflicting provisions contained in the original RFP. Amendments to the RFP will be made in writing. Copies of all addenda will be made available on both the Georgia Procurement Registry website at [http://ssl.doas.state.ga.us/PRSapp/PR\\_index.jsp](http://ssl.doas.state.ga.us/PRSapp/PR_index.jsp) and the ATL website at <https://atltransit.ga.gov/procurement/>. This process will be repeated each time an addendum is made available by ATL.

The ATL will not be responsible for a potential Proposer failing to receive notification of the availability of addenda. EACH PROPOSER IS INDIVIDUALLY RESPONSIBLE FOR REVIEWING ADDENDUMS AND ANY OTHER POSTED DOCUMENTS AND MAKING ANY NECESSARY OF APPROPRIATE CHANGES AND/OR ADDITIONAL TO THE PROPOSER'S RESPONSE PRIOR TO SUBMISSION. It is the sole responsibility of each potential Proposer to check the ATL and Georgia Procurement Registry websites regularly for addenda.

Proposers shall acknowledge receipt of all addenda by completing and submitting Offer Document #3 (Acknowledgement of Addenda), included in this RFP, as part of its proposal. As with other required documentation, proposals that fail to reference receipt of addenda by inclusion of Offer Document #3 (Acknowledgement of Addenda) may be excluded from consideration for a Contract award.

## 2.6 Single Response to Solicitation

If only one proposal is received in response to this RFP, a detailed cost analysis of the single proposal may be requested of the single Proposer. A cost analysis, evaluation, and/or audit of the proposal may also be performed by ATL in order to determine if the proposal price is fair and reasonable. If ATL determines that a cost analysis is required, the single Proposer must be prepared to provide, upon request, detailed summaries of estimated costs (i.e., labor, equipment, supplies, overhead costs, profit, etc.) and documentation supporting all cost elements.

## 2.7 Confidential/Proprietary Information

Any and all materials submitted in response to this RFP are subject to public inspection, pursuant to the provisions of O.C.G.A. § 50-18-70 et seq., Georgia's Open Records Act, upon completion of the RFP process. ATL's receipt, review, evaluation or any other act or omission concerning any such information shall not be considered to create an acceptance of any obligation or duty for ATL to prevent the disclosure of any such information except as required by the Open Records Act. Proposers that decide to submit information they believe should be exempt from disclosure under the Open Records Act shall: (i) clearly mark each page containing such information as confidential, proprietary or exempt, (ii) shall include such information in a different color from the rest of the proposal text, (iii) shall state the legal basis for the



exemption with supporting citations to the Georgia Code, and (iv) for records containing trade secrets, Proposers who wish to keep such record confidential shall also submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 of the Georgia Code.

Pursuant to Georgia Law, if the information is requested under the Open Records Act, ATL shall make a final determination if any exemption actually exists for ATL to deny the request and prevent disclosure. ATL will withhold such information from public disclosure under the Open Records Act only if ATL determines, in its sole discretion, that there is a basis to do so.

All material submitted regarding the RFP becomes the property of ATL. Any activity pursuant to this RFP by any Proposer is governed by all applicable laws, including without limitation, Georgia and Federal antitrust laws.

## 2.8 Reserved Rights

The ATL reserves the right to reject any and all proposals or any portion of a specific proposal for any reason. Issuance of this RFP and receipt of proposals does not commit ATL to award a contract.

The ATL has the sole right to select the successful proposal(s) for contract award(s); to reject any proposal as unsatisfactory or non-responsive due to non-conformance with the requirements of this RFP; to cancel the solicitation and to advertise for new proposals; to award a contract(s) to other than the Proposer submitting the lowest cost proposal; to award multiple contracts; or not to award a contract as a result of this RFP.

The ATL reserves the right to accept any proposal deemed to be in the best interest of the ATL and to waive any irregularities in any proposal that does not prejudice the ATL or other Proposers.

No Proposer shall have any cause of action against the ATL or Participating Entities arising out of the methods by which proposals are evaluated.

## 2.9 Protest Procedures

Proposers should familiarize themselves with the procedures set forth on the ATL's website, which accessible here: <https://atltransit.ga.gov/procurement/>.

## 2.10 Minority Business Participation

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is ATL's policy to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All companies qualifying under this solicitation are encouraged to submit proposals. The requirements of this solicitation apply for all Proposers, including those who qualify as a Disadvantaged Business Enterprise (DBE). Proposers with questions regarding DBE certification may contact the Issuing Officer. The DBE goals for each participating entity are agency-wide goals. However,

Proposers are encouraged to include DBE's and Small Business Entities (SBE) as partners if the prime is not a DBE or SBE. There are no evaluation points associated with these DBE goals.

Each Participating Entity has a DBE goal for federally funded contracts awarded between October 1, 2017 – September 30, 2020. The DBE goals for the Participating Entities are: 15%, 7%, 8% for ARC, Cobb County, and SRTA, respectively. Additional Contract requirements related to participation by DBEs are specified in Part 3 – Contract of this RFP.

As an incentive to increase utilization of minority-owned businesses as subcontractors on State purchases, the State of Georgia provides for an income tax adjustment on the state tax return of any company that subcontracts with a State certified minority-owned firm to furnish goods, property, or services to the State of Georgia. The Tax Incentive Program is codified at O.C.G.A. §48-7-38 and is managed by the Georgia Department of Revenue.

## 2.11 Ethical Standards

It is a breach of ethical standards for any ATL employee to participate directly or indirectly in a procurement when the employee knows:

- The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

ATL employees are also bound by the Georgia Governor's Executive Order, dated January 14, 2019, for "Establishing a Code of Ethics for Executive Branch Officers and Employees." The Executive Order prohibits ATL and ATL 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 a potential Proposer, or its subcontractors or suppliers, to make gifts or favors to any ATL employee. It is also unlawful for any ATL employee to accept any such gift or favor. In addition, any persons acting as members of the Evaluation Committee for this procurement shall, for the purposes of this procurement, be bound by the referenced Executive Order.

Throughout the proposal evaluation and award process and subsequent contract negotiations, Proposers shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process or the contract negotiations, with members of the Evaluation Committee, the ATL Board of Directors, or ATL employees other than Gary Thomason, Issuing Officer.

## 2.12 ADA Guidelines

The ATL adheres to the guidelines set forth in the Americans with Disabilities Act. Proposers should contact the Issuing Officer at least one day in advance if they require special arrangements when attending the Pre-Proposal Conference. The Georgia Relay Center at 1-800-255-0056 (TDD only) or 1-800-255-0135 (Voice) will relay messages, in strict confidence, for the speech and hearing impaired.

## 2.13 Contractual Relationships

The ATL intends to execute a Contract, attached as Part 3 of this RFP. The selected Contractor's contractual responsibility must solely rest with one firm or legal entity, which shall not be a subsidiary or affiliate with limited resources. Proposer's Proposal Letter, included as Offer Document #2 of this RFP, must clearly indicate the firm or entity responsible for contract execution.

The ATL shall not be a party to any Work Orders issued between the Participating Entity or Ordering Entities and the Contractor. Further, the ATL shall not have any responsibility for purchase orders issued by a Participating Entity or Ordering Entity pursuant to this Contract.

## 2.14 Small Business Participation

The ATL strongly supports the participation of small business owners in its contracts. It is the policy of the ATL to ensure nondiscrimination in the award and administration of USDOT- assisted contracts. It is the intention of the ATL to create a level playing field on which Small Businesses can compete fairly for contracts and subcontracts relating to its construction, procurement and professional services activities in compliance with the requirement of 49 C.F.R. 26.39.

## 2.15 Proposal Withdrawal and/or Revision Following Submission

A submitted proposal may be withdrawn and changes to a submitted proposal can be made prior to the RFP Due Date and time. In the event a Proposer notes an error or omission in its response which was overlooked prior to submitted the proposal, the Proposer may contact the Issuing Officer to request the proposal withdrawn. Once the Proposer's response is withdrawn, the ATL has no response from the Proposer. Unless and until the Proposer resubmits the received response, the ATL will have no offer from the Proposer to evaluate for possible Contract award. Any resubmission must be received by the ATL no later than the Proposal submission deadline.

## 2.16 Proposer Conflicts of Interest

Proposer must disclose in detail, with the Proposal, anything that may create a conflict or appearance of a conflict of interest. Required disclosures include, but are not limited to: 1.) any current contractual relationships with the ATL, Participating Entities or Ordering Entities; 2.) any past, present or planned contractual or employment relationships with any officer or employee of the ATL, Participating Entities or Ordering Entities; and 3.) any other circumstances that might be considered to create a financial interest in the Contract by any ATL, Participating Entity or Ordering Entity officer or employees if Proposer is awarded the Contract. Conflicts of interest that arise after the Proposal submission deadline, but before the Notice of Award, must be disclosed in detail in writing to the Issuing Officer. The foregoing list is a demonstrative list and shall constitute a limitation on the Proposer's disclosure obligations.

## 2.17 Contractual Provisions

The ATL shall execute the Master Services Contract (the “Contract”), attached as Part 3 to this RFP, with the successful proposer. Each Participating Entity, at its sole discretion, may execute a Work Order with the Successful Proposer. Copies of the Work Orders anticipated to be executed by the Participating Entities have been included in Part 3 of this RFP. The ATL, Participating Entities and Ordering Entities shall be under no obligation to consider and/or approve exceptions or changes to the Contract or Work Order. Nevertheless, any proposed Contract or Work Order modifications must be submitted by the Question Submission Deadline noted in Section 2.4 using the question submission template provided as part of this RFP.

The ATL shall not be a party to any Participating Entity or Ordering Entity’s Work Order(s) and shall not have any responsibility for purchase orders issued by a Participating Entity or Ordering Entity or any transactions by any Participating Entity or Ordering Entity arising out of or resulting from this RFP.

The apparent successful Proposer must return two signed copies of the Contract to the ATL Issuing Officer within five (5) business days of notification of intent to award. Failure to do so may lead to rejection of the Proposer. The ATL reserves the right to proceed to discussions with the next ranked Proposer.

The Participating Entities and Ordering Entities shall be permitted to issue Work Orders pursuant to this Contract for the life of the Contract term, inclusive of any extensions. While this does not commit the Participating Entities or Ordering Entities to ordering from the successful Proposer, nor does it guarantee that any additional orders will result, it does allow the Participating Entities and Ordering entities, at their discretion, to make use of the ATL’s competitive procurement process, provided that said process satisfies each entities’ own procurement guidelines and purchase directly from the successful Proposer. SRTA intends to issue a Work Order immediately upon contract execution. Cobb County anticipates issuing a Work Order prior to October 1, 2019. The ARC does not have estimated or target dates for issuing a Work Order for EAM implementation currently.

## 2.18 Registered Lobbyists

By submitting a response to this RFP, the Proposer hereby certifies that the Proposer and its lobbyists are in compliance with the Lobbyist Registration Requirements in accordance with the Georgia Government Transparency and Campaign Finance Commission.

## 2.19 Responsibility for Compliance with Legal Requirements

Proposer’s products, services, and facilities shall be in full compliance with any and all applicable federal, state, and local laws, regulations, ordinances, and standards regardless of whether or not they are referred to in this RFP.

## 2.20 Conditional Proposals

Terms and conditions attached to a proposal by a Proposer and made a condition of Contract execution may render the proposal non-responsive and may be rejected by the ATL.

## 2.21 Sales and Use Taxes

The ATL and Participating Entities are exempt from paying sales and use taxes. All pricing provided in response to this RFP shall exclude sales and use taxes. Pricing providing for Ordering Entities shall be exclusive of sales tax. In the event that a particular Ordering Entity is not sales tax exempt, the Ordering Entity shall be responsible for paying the appropriate sales tax to the Contractor. Contractor shall specify the sales tax to be paid, if applicable, in any resulting Work Order with an Ordering Entity.

## 2.22 Proposal Preparation Costs

All costs of proposal preparation, attendance at pre-proposal and/or pre-award meetings, and any other pre-award costs shall be at Proposer's sole cost and expense.

# 3. Contents of Complete Proposal

All Proposals should include a table of contents with page numbers and sufficient detail to facilitate easy reference to all requested information. Proposer shall not utilize a font size smaller than 10pt font or have margins that are less than 1-inch. To be eligible for evaluation by the ATL as a complete, responsive proposal in response to ATL Solicitation No. 19-011, any and all proposals submitted to the ATL must contain all fifteen (15) of the following documents, properly signed by an authorized representative, fully completed by the Proposer, and numbered and arranged in the following order:

## 3.1 Complete Proposal Checklist

- This document serves as a checklist for Proposers to ensure that their proposal is complete and ready for submission to the ATL. The document is used by the ATL during the evaluation of responsiveness of proposals.
- This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- Blank checklist form is attached as Offer Document #1 of this RFP.

## 3.2 Proposal Letter

- This document summarizes the acknowledgements and representations made by and agreed to by the Proposer with regard to its proposal.
- This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- Blank form is attached as Offer Document #2 of this RFP.

### 3.3 Acknowledgement of Addenda to RFP

- This document is required by Part 1, Section 2.5 of this RFP.
- This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- If no addenda to the RFP were issued by the ATL, Proposer must still complete the form and include it in its proposal.
- Blank form is attached as Offer Document #3 of this RFP.

### 3.4 Proposer Information Form

- This document summarizes key information about the Proposer for the ATL's assistance and reference during evaluation of the proposals including:
  - Contact Information for Proposer
  - Corporate information
  - List of references for whom Proposer has performed similar services in the past five years
- The ATL will contact the references listed on this document as part of its evaluation of proposals. References provided should have the proposed solution currently deployed or have deployed the solution within the past five years.
- If Proposer is a certified DBE, proof of DBE certification must accompany this document.
- This document must be fully completed, signed, and submitted with the proposal.
- Blank form is attached as Offer Document #4 of this RFP.

### 3.5 Proposer Certifications

- This document must be fully completed, signed, and submitted with the proposal.
- Blank form is attached as Offer Document #5 of this RFP.

### 3.6 Statement of Firm's Qualifications and Experience

- This document shall be provided by the Proposer and shall be a narrative description of the Proposer's qualifications and experience. This narrative description shall include the appropriate use of headings and subheading that address, at minimum, the following elements:
  - Brief description of the Proposer (brief history, number of employees, lines of business, areas of specialization, office locations, organization, gross revenue, net income and loss for the current and prior year, parent company (if applicable), recent litigations and outcomes, litigation currently underway, etc.)
  - Description of the firm's experience in performing work of a similar nature to that solicited in this RFP, specifically the provision and implementation for an FTA- funded transit agency, state DOT, or other transportation entity, and the participation in such work by the key personnel proposed for assignment to this project.

- Highlight the firm’s experience with the work or services identified in Scope of Services.
  - Comprehensive listing and brief descriptions of relevant engagements started and/or completed during the last five years that are similar in scope and nature to the Scope of Services, attached to this RFP.
- There is no prescribed format for this document. The format of the document shall be at the discretion of Proposer; however, font size no smaller than 10 pt. with margins no less than 1 inch, on 8.5 x 11 size paper. Proposer should label this document as Offer Document #6 in its proposal.

### 3.7 Project Team and Project Approach

- This document shall be provided by the Proposer and shall be a narrative description of the Proposer’s project team and approach. This narrative description shall include the appropriate use of headings and subheading that address, at minimum, the following elements:
- Firm’s technical approach to the project and interpretation of the Scope of Services, including the Tasks identified in the Scope of Services section
  - Identify the adequacy of the firm’s resources, including personnel, labor, equipment and supplies, etc.
  - Proposed solution, project approach and plan in response to the Scope of Services
  - Resumes of project team members
  - Any special or unique benefits that the proposed team and/or its approach brings to the Scope of Services
  - Current version and general availability release date, proposed version and general availability release date, estimated release date for next version, typical release schedule and time to install, number of prior versions currently supported
  - Approach and philosophy regarding training
  - Approach to streamlining data delivery and minimizing transcription redundancies
  - Sample project schedule, project work plan, and project management plan (For additional details, see Part 2 Scope of Services Section 5.2 Project Management Services)
- There is no prescribed format for this document. The format of the document shall be at the discretion of Proposer; however, font size no smaller than 10 pt. In addition, the sample project schedule may be submitted in 11x14 or 11x17 page format. Proposer should label all document(s) submitted in response to this Section 3.7 as Offer Document #7 in its proposal.

### 3.8 Price Proposal Costbook

- This document must be fully completed, signed by an authorized representative, and submitted with the **proposal in a separately sealed envelope or package, marked “Price Proposal” on the front of the envelope.**
- The submitted Price Proposal Costbook must include all costs of performing pursuant to the final posted Contract.

- Price proposals containing a minimum order/ship quantity or dollar value, unless otherwise specified in the RFP, will be treated as non-responsive and may not be considered for award.
- In the event there is a discrepancy between the Proposer's unit price and extended price, the unit price shall govern.
- The envelope shall contain one (1) signed original, nine (9) copies and one (1) electronic version of the Price Proposal. The electronic version of the Price Proposal must be submitted on a USB drive and the file format must be Microsoft Excel.
- A blank Price Proposal is attached as Offer Document #8 of this RFP.
- For purposes of preparing price proposals, all Proposers shall assume that Cobb estimates utilizing two (2) devices, SRTA estimates using up to forty-five (45) devices (not concurrently), and ARC estimates utilizing two (2) devices to access the EAMS system.

### 3.9 Contract Affidavit under O.C.G.A § 13-10-91(b)(1)

- This document must be fully completed, signed by an authorized representative, notarized, and submitted with the proposal.
- Blank form is attached as Offer Document #9 of this RFP.

### 3.10 Subcontractors and DBEs

- This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- If any identified subcontractor is a certified DBE, proof of DBE certification must accompany this document.
- Blank form is attached as Offer Document #10 of this RFP.

### 3.11 Certification Regarding Suspension and Debarment

- This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- Blank form is attached as Offer Document #11 of this RFP.

### 3.12 Certification Regarding Lobbying

- This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- Blank form is attached as Offer Document #12 of this RFP.

### 3.13 Non-Collusion Affidavit

- This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- Blank form is attached as Offer Document #13 of this RFP.

### 3.14 Anti-Boycott, Divestment and Sanctions Against Israel Certification

- This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- Blank form is attached as Offer Document #14 of this RFP.

### 3.15 Requirements Response Matrix

- This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- Blank form is attached as Offer Document #15 of this RFP.

### 3.16 Statement of Responsibility

- This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- Blank form is attached as Offer Document #16 of this RFP.

### 3.17 Sales and Use Tax Compliance Form

- This document must be fully completed, signed by an authorized representative, and submitted with the proposal.
- Blank form is attached as Offer Document #17 of this RFP.

## 4. Proposal Evaluation and Contract Award

### 4.1 Standards for Award

ATL Solicitation No. 19-011 is a Request for Proposals. The ATL intends to award a contract to the Proposer whose proposal conforms to the solicitation and is determined to be the most advantageous to the ATL and the Participating Entities, taking into consideration price and other evaluation factors set forth in this document.

In order to be eligible for contract award a proposal must meet all of the following criteria:

#### 4.1.1. The proposal submitted is responsive to the solicitation.

- A proposal shall be considered responsive if it conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission.
- It shall be at the sole discretion of the ATL to determine if a proposal conforms in all material aspects to the requirements of the solicitation.

#### 4.1.2 The Proposer who submitted the proposal is a responsible Proposer.

A Proposer shall be considered responsible if the Proposer possesses, at the time of Contract award, the ability to perform successfully and a willingness to comply with the terms and conditions of the Contract.

## 4.2 Evaluation and Award Process

All proposals shall be evaluated by an Evaluation Committee. Proposals and evaluations will be kept confidential throughout the evaluation and award process. Only the members of the Evaluation Committee and other ATL or Participating Entity staff having a legitimate work-related interest will be provided access to the proposals and evaluation results during the evaluation and award process. Proposals will be evaluated, and a Contract will be awarded in accordance with the following process:

### 4.2.1 Evaluation of Proposals by the Issuing Officer

- Proposals will first be evaluated by the Issuing Officer for responsiveness in accordance with the standard set forth in Part 1, Section 4.1.1 above. Only those proposals that are determined to be responsive shall be evaluated for Proposer responsibility.

### 4.2.2 Evaluation of Proposals by the Evaluation Committee

- Proposers who submitted responsive proposals will be evaluated by the Evaluation Committee for responsibility in accordance with the standard set forth in Part 1, Section 4.1.1 above.
- A responsible Proposer is one that the ATL believes to be responsible based on the responses provided on the Proposer's Offer Document No. 3.16 and/or based on Contractor's responses to the requirements of the RFP. The ATL reserves the right to conduct additional due diligence into any Proposer's responsibility status. Such due diligence may include investigations into any of the items set forth in the submitted offer documents.

### 4.2.3 Scoring of Proposals by the Evaluation Committee

- Proposals that are determined to be responsive and that were submitted by responsible Proposers shall be further evaluated by the Evaluation Committee to determine the Proposal(s) that is/are most advantageous to the ATL. The Evaluation Team will review each proposal to determine its compliance with the RFP technical requirements. All proposals which are considered responsive proposals will be scored in accordance with the scoring criteria detailed below.

#### ***Phase 1-Technical Evaluation (90 point maximum)***

- Qualifications/Personnel Assigned to Project (10 point maximum)- Proposer's experience and expertise with implementing EAMS; experience with government clients. Proposer's technical team members experience and expertise with EAMS implementation.
- Software-Functional and Technical Capabilities (35 point maximum)- Proposer's ability to meet functional and technical requirements without customization in an integrated EAM solution. Functional capabilities should highlight the ability to meet business process requirements while technical capabilities should address reporting, integrations, security and other features.

- Implementation Services and Approach (35 point maximum)- Proposers' ability to provide experienced resources to support the project management and consultant need is design, build, test, train and support of EAM solution. This section should showcase the proposer's ability to lead Participating and Ordering Entities through and implementation with design decisions, software understanding and task management, proposed project schedule, and sample project management plan.
- References (10 point maximum)- Evaluation Committee shall specifically consider information submitted in accordance with Sections 3.4 and 3.6. The ATL and/or its designee(s) will be contacting all provided references looking for positive feedback on software functionality and implementation services.

***Phase 2-Interview and System Demonstrations- (30 point maximum)***

The ATL may elect to invite up to four (4) firms for interviews and system demonstrations. Should the ATL elect to conduct interviews and demonstrations, the basis for selecting Proposers to be invited for interview and system demonstrations will be the scores assigned to each Proposer by the Evaluation Committee as part of Technical Evaluation. Proposers that are invited for interviews may earn up to 30 points based on the quality of the interview and system demonstrations. The interview and demonstrations will be used to assess the following:

- Proposer's ability to successfully address system requirements as required by the Scope of Work
- Flexibility offered by the proposed system and its ease of use
- Proposer's team, ability to demonstrate specific software scenarios and response to implementation and proposal questions

Demonstrations will not include any functionality that is considered beta or part of a future release.

Should the ATL elect not to conduct interviews and system demonstrations presentations, the evaluation process shall proceed from Phase 1 immediately to Phase 3, with no points being awarded to any Proposer for Phase 2.

***Phase 3-Price Proposal (60 point maximum)***

- The Evaluation Committee shall specifically consider information submitted in accordance with Section 3.8. The Price Proposal Costbook will be reviewed for reasonableness and proper allocations across project deliverables. Failure to reasonably allocate cost amount deliverables, including, but not limited to, frontend loading of price items, may result in proposal disqualification.

4.2.4 Total Combined Score

Upon completion of the scoring by the Evaluation Committee, each Proposer will be assigned a Total Combined Score, consisting of the Proposer's scores from Phase 1, Phase 2 (if applicable) and Phase 3.

#### 4.2.5 Best and Final Offer

The ATL reserves the right, but is not required, to request a Best and Final Offer from the Proposer(s) after the Evaluation Committee has completed scoring. BAFOs may be requested from one or more Proposers. In the event that a Best and Final Offer is requested, the request will indicate: 1.) the elements of the proposal for which revisions are requested; 2.) the criteria by which the revised proposals will be evaluated; 3.) any additional questions that the Proposer must respond to; and 4.) the method of submission and the deadline for submission of revised proposals and pricing. Additional discussions between the ATL and the proposers may not take place during the BAFO period.

If a BAFO is requested, the final Contract award will be based on the highest point total using the following formula:

$$(\text{Original Technical Score}) + (\text{Interview and Demo Score, if applicable}) + (\text{Best and Final Offer Cost Score}) = \text{Final Total Score}$$

If a BAFO is not requested, the final Contract award will be based on the highest point total using the following formula:

$$(\text{Original Technical Score}) + (\text{Interview and Demo Score, if applicable}) + \text{Price Proposal Score} = \text{Total Combined Score}$$

#### 4.2.6 Notice of Intent to Award and Notice of Award

The preliminary results of the evaluation may be announced through the public posting of a Notice of Intent to Award to the ATL website. The Notice of Intent to Award (“NOIA”) is not notice of an actual contract award; instead, the NOIA is notice of the ATL’s expected contract award(s) pending resolution of the protest process. The NOIA (if any) will identify the apparent successful Proposer. The Notice of Award is ATL’s public notice of actual Contract award and will be publicly posted to the ATL website.

#### 4.2.7 Execution of Contract

After the Notice of Award has been posted, the ATL will execute a Contract with the successful Proposer.

**ENTERPRISE ASSET MANAGEMENT  
SYSTEM MASTER SERVICES  
AGREEMENT**

**BETWEEN**

**THE ATLANTA-REGION TRANSIT LINK  
AUTHORITY**

**AND**

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## ENTERPRISE ASSET MANAGEMENT SYSTEM MASTER SERVICES AGREEMENT

**THIS ENTERPRISE ASSET MANAGEMENT MASTER SERVICES AGREEMENT** (the “Contract”) is made and entered into as of \_\_\_\_\_, 201\_\_ (the “Effective Date”), by the ATLANTA-REGION TRANSIT LINK AUTHORITY (“ATL” or “Authority”), a body corporate and politic and an instrumentality and public corporation of the State of Georgia and \_\_\_\_\_ (the “Contractor”), a \_\_\_\_\_ corporation, authorized to do business in the State of Georgia. The ATL and Contractor may be referred to individually, as “Party” or collectively, as “Parties.”

**WHEREAS**, the ATL desires to secure a qualified and experienced firm to perform professional services as more fully described in ATL Solicitation No. 19-011: RFP for the Enterprise Asset Management System (“EAMS”) and any addenda thereto and any documents referenced therein (collectively, the “RFP”), and the Contractor’s Proposal and any documents referenced therein (collectively, the “Contractor’s Proposal”);

**WHEREAS**, the Contractor has represented to the ATL that it is experienced and qualified and willing to provide all of the expertise needed to successfully provide the work and deliverables more fully described in the RFP, Scope of Services, and the Work Orders issued pursuant to this Contract (collectively, “Services”);

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

**WHEREAS**, the primary purpose of this Contract is to provide an EAMS solution capable of meeting the needs of the State Road and Tollway Authority (“SRTA”), the Cobb County DOT Transit Division (“Cobb County”), and the Atlanta Regional Commission (“ARC”) (referred to individually as “Participating Entity” or collectively as “Participating Entities”).

**WHEREAS**, a Participating Entity may, in its sole discretion, execute a Work Order with the Contractor for the provision of Services pursuant to this Contract, provided the Services to be provided are related to transit activities;

**WHEREAS**, the ATL, all local governments located within the 13-county jurisdiction of the ATL, and agencies, departments, boards, bureaus, commissions, and authorities of the State of Georgia (referred to individually as “Ordering Entity” or collectively as “Ordering Entities”) also may, in their sole discretion, execute Work Orders for the provision of Services pursuant to this Contract, provided the Services to be provided are related to transit activities;

**WHEREAS**, pursuant to O.C.G.A. §50-32-11(5), ATL is authorized to contract for the Services to further the public purpose for which the ATL was created.

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

- 1. RECITALS.** The recitals set forth above are true and correct and are incorporated into this Contract.
- 2. DEFINITIONS.** Certain capitalized terms used herein shall have the meanings assigned to them as set forth in **Exhibit A** to this Contract. Any other capitalized term not specifically defined in this Contract will have the same meanings assigned in the RFP to that term.

**3. INCLUSION AND PRIORITY OF DOCUMENTS.** The RFP, which is incorporated herein by reference as **Exhibit B**, the Scope of Services which is herein incorporated by reference as **Exhibit C**, and the Contractor's Proposal (and any documents referenced therein) submitted in response to the RFP, which is incorporated herein by reference as **Exhibit D** (collectively, the "Contractor's Proposal"), are integral parts of the agreement between the ATL and the Contractor. The RFP, the Contractor's Proposal, this Contract (including all Amendments, Work Order, Amended Work Order, documents and exhibits referenced in this Contract) shall be collectively referred to as the "Contract Documents."

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

1. Amended Work Order
2. Applicable Work Order
3. Amendments to the Contract
4. The Contract
5. The RFP
6. The Contractor's Proposal

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

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

**4. CONTRACT TERM AND RENEWAL.** This Contract shall begin on the Effective Date and shall expire seven (7) calendar years thereafter, ending at 11:59 pm (the "Initial Term"). The 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 the ATL. Any extension of the Term of the Contract must be in writing and signed by the Parties to the Contract.

**5. WORK ORDERS.** During the term of this Contract, the Participating Entities, and Ordering Entities, may, in their sole discretion, execute a Work Order with the Contractor. The Participating Entities and the Ordering Entities shall have all the rights and responsibilities of the ATL as set forth in this Contract under any Work Order executed under this Contract, except as otherwise set forth in the applicable Work Order. The Contractor shall not perform any Services until a Work Order is executed and the Contractor is only entitled to payment under this Contract through a Work Order issued under this Contract. The Participating Entities and Ordering Entities may modify the terms of this Contract through the Work Order. The Contractor is obligated to execute and perform all Work Orders issued by the Participating Entities. However, the Contractor is not obligated to execute a Work Order that is issued by an Ordering Entity but shall negotiate the terms of such Work Orders in good faith.

**5.1 Limitation of ATL Responsibility and Liability under Work Orders.** The ATL shall not be a party to the Work Orders executed between the Contractor and any of the other Participating Entities and Ordering Entities. Further, and notwithstanding anything to the contrary, the ATL shall have no

responsibility or liability for Work Orders issued under this Contract by any of the other Participating Entities and Ordering Entities.

## 6. CONTRACTOR RESPONSIBILITIES.

- 6.1 General.** In performing the Services, the Contractor shall use the degree of care and skill ordinarily exercised by skilled professionals in the field under similar conditions. The Services to be performed by the Contractor under this Contract shall encompass and include all detail work, services, materials, and equipment, supplies necessary to provide Services in accordance with the ordinary practices in the industry.
- 6.2 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 Contractor's Proposal ("Key Personnel"), unless changes to the Contractor's staff are approved in writing by the ATL.
- 6.2.1 Right to Remove.* The 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 the ATL.
- 6.2.2 Contractor Program Manager.* Contractor shall assign a Program Manager who shall interface with the ATL ("Contractor Program Manager"), and any other person or persons authorized by the ATL to represent that ATL in some or all dealings with the Contractor ("ATL-designated Representatives").
- 6.2.3 Key Personnel.* A significant factor in the 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 the ATL from time to time during the Initial Term and each Renewal Term. Contractor shall not substitute Key Personnel without the prior written approval of the ATL. Any desired substitution shall be noticed to the ATL, accompanied by the names and references of Contractor's recommend substitute personnel. Notwithstanding any provision in the Contract Documents to the contrary, the Contractor's project manager proposed by Contractor, any other lead proposed by the Contractor, any other individual for whom a resume was included in Contractor's Proposal shall be considered Key Personnel.
- 6.3 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 the ATL. Acceptance of the Services by the 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 plans prepared by the Contractor.
- 6.4 Interpretation of Information.** At any time during the performance of any Services, the Contractor shall confer with the 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.

**6.5 Notice to Proceed.** Contractor's performance of the Project will begin with the issuance of a written Notice to Proceed, which shall be in writing and signed by the ATL's Project Manager.

**7. PROJECT MANAGEMENT.** The ATL shall identify a program manager (each "the ATL Program Manager") who shall act as and be the ATL's representative between the ATL and the Contractor.

## **8. SUBCONTRACTING AND ASSIGNMENT.**

**8.1 Assignment.** Contractor shall not assign, delegate, sublet or transfer this Contract or any rights under or interest in this Contract without the prior written consent of the ATL. The consent of the ATL may be withheld for any reason. The Parties agree that ATL may, in its sole discretion, assign its right, responsibility and interest in and to this contract to another government entity or ATL's successor. ATL will provide written notice to Contractor within thirty (30) Days of any such assignment.

**8.2 Subcontracting.** Nothing contained herein shall prevent Contractor from employing independent professional associates, subcontractors as Contractor may deem appropriate to assist in the performance of Services hereunder. However, Contractor shall not subcontract Services to subcontractors that are different from those subcontractors listed in the Contractor Proposal, without obtaining the affected ATL's prior written approval, which approval is within the ATL's sole discretion. The ATL's reserve the right to review all subcontracts prepared in connection with the Contract, and Contractor agrees that it shall submit to the applicable ATL any proposed subcontract documents together with sub-contractor cost estimates for review and written concurrence of the ATL no later than five (5) business days in advance of execution. Any contract between the Contractor and any sub-contractor shall comply with all pertinent provisions to sub-contractor's responsibilities in connection with the Services of this Contract. The ATL's approval of any assignment, sublet, or transfer shall not release the Contractor of any obligation under this Agreement 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 Agreement. As set forth in the Contract, certain provisions of this Contract must be included in all subcontracts regardless of amount.

The ATL shall have the right to require the Contractor to remove a sub-contractor of Contractor from performing under this Contract, if in the ATL's sole opinion, such subcontractor (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 the 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 the ATL. In the event of such removal, Contractor will replace the sub-contractor with a suitable replacement within the time specified by the ATL.

**8.3 Contractor Remains Responsible.** If Contractor subcontracts any of the Services to be performed under this Contract, Contractor shall be as fully responsible to the 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 the ATL in the enforcement of any rights that the ATL has against such subcontractor. Notwithstanding any subcontract or agreement with any subcontractor, Contractor shall be fully responsible to the ATL for all of the Services required pursuant to the Contract Documents. Notwithstanding any provision to the contrary, Contractor shall be responsible to the ATL for all terms, conditions, liabilities, and responsibilities under the Contract Documents regardless of whether Contractor or its subcontractors, suppliers, independent Contractors, agents or assigns perform any aspect of the Services.

**8.4 Prompt 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 a subcontractor hereunder and Contractor shall indemnify and hold harmless the ATL and the State for any liability for payment claimed by a subcontractor. All subcontract agreements between Contractor and subcontractors shall be in writing and shall contain all of the federal requirements and pertinent provisions of this Contract.

**8.5 Failure to Comply.** Any assignments or subcontracts made in violation of **Sections 8.1 (Assignment) and/or 8.2 (Subcontracting)** shall be null and void.

**9. 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 the ATL in all manner and respect and that no Party to this Contract is authorized to bind the other Party to any liability or obligation or to represent in any way that it has such authority. Contractor shall be solely responsible for all payments to its sub-contractors, agents, consultants, suppliers, employees, partners or any other parties with which it does business including, but not limited to, paying all benefits, taxes and insurance, including workmen's compensation insurance, for Contractor's employees.

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

**11. PROCESS.** The ATL will order from the Contractor, all or a portion of the Services as such Services, in the ATL's sole opinion, is needed. The expected project deliverables are set forth in **Exhibit F (Project Schedule)** or as otherwise included in any Work Order. All Work 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 F (Project Schedule)** or as otherwise included in any Work Order, as applicable. Any Services performed before or after the time set forth in **Exhibit F (Project Schedule)** or as otherwise included in any Work Order will be ineligible for payment. Unless an extension of time is granted by the applicable ATL, Contractor will successfully, fully and entirely complete and otherwise perform all Services as required in the Contract Documents.

**11.2 Time Extensions.** The 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 the ATL, (ii) an event listed in **Section 28.3 (Time of the Essence; Force Majeure)**, or (iii) other governmental actions. If and when such event occurs, then the time of completion set forth shall be extended for such time equal to the time lost as a result of the delay. The 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 the ATL. In the case of a continuing cause of delay, only one claim is necessary, but no claim for a continuing delay shall be valid unless the Contractor, within ten (10) Days from the cessation of the delay, shall have given notice in writing to the ATL as to the amount of additional time claimed.

In the event time for performance of a scheduled Service expires and the Contractor has not requested or if the 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.

### **11.3 Changes.**

*11.3.1 Amended Work Order.* An Amended Work Order shall consist of only such additions, deletions or other revisions to the Services which represent a material change from the Scope of Services as detailed in the related Work Order and do not arise from the actions or inactions of the Contractor, its agents, employees, suppliers or subcontractors, as reasonably determined by the ATL. Minor changes that do not involve increased compensation, extension of the time for performance as set forth in an applicable Work Order, or changes in the goals and objectives of the applicable Work Order may be made by written notification signed by the ATL Program Manager and the Contractor Program Manager. The Contractor shall perform at no additional cost to ATL, all such additions, deletions and other revisions, the need for which arises from the actions or inactions of the Contractor, its agents, employees, subcontractors or suppliers, or any other entity or person with whom Contractor entered into an agreement to perform any portion of the Services required of Contractor under the Contract Documents. Compensation or a reduction in the amount due to Contractor pursuant to the Contract Documents for the Services and any approved schedule changes shall be forth in the Amended Work Order.

*11.3.2 Amended Work Order Process.* The ATL may initiate the Amended Work Order procedure by notice to the Contractor setting forth the proposed Amended Work Order (“Amended Work Order Proposal”). Within five (5) Business Days thereafter, the Contractor shall provide a more detailed proposal which includes proposed prices, if applicable, and/or a proposed schedule for performance, if applicable. ATL may accept Contractor’s proposal or modify it or the Parties may negotiate further, whereupon a written Amended Work Order shall be executed by both Parties. If the Parties fail to reach agreement, then the ATL may nevertheless direct the Contractor to proceed with the Services included in the Amended Work Order Proposal (which for purposes of **Section 11.3 (Changes)** shall be hereinafter defined as “Disputed Services”) and the Contractor shall proceed to perform the Disputed Services pursuant to the Contract Documents. In the event of such Disputed Services, the Contractor shall be obligated to proceed immediately upon notice from ATL to perform the Disputed Services and shall be compensated by ATL in accordance with time rates in **Exhibit E** of this Contract.

The Contractor shall furnish weekly status reports regarding Disputed Services, including such documentation as the ATL may require in order to support all costs of the Disputed Services. The Contractor agrees to maintain and furnish the ATL with time and materials records that will substantiate the Contractor’s costs for Disputed Services.

### **12. PAYMENT.**

The maximum not to exceed amount for all Services performed during the Initial Term is \$\_\_\_\_\_ Compensation for Services performed shall be set forth in **Exhibit E-Pricing Schedules** or as otherwise included in any Work Order.

**12.1 General.** Compensation for Services performed shall be set forth in **Exhibit E-Pricing Schedules** or as otherwise included in any Work Order.

- 12.2 Trust Funds.** All payments made by the ATL to Contractor for the Services under the Contract Documents shall be held in trust by the Contractor for the purpose of paying its employees, agents, assigns, sub-contractors and suppliers who provided any part of the Services.
- 12.3 Overpayment.** In the event an overpayment is made to Contractor under this Contract, Contractor shall immediately refund to the 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 the ATL. If Contractor fails to refund the erroneous payment or overpayment within a 30-day period, the ATL shall be entitled to interest at one percent per month on the amount not repaid from the date of overpayment.
- 12.4 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 the 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 either ATL from any invoice until such time as the Services is corrected in accordance with the Contract Documents.
- 12.5 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 the 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 sub-contractors for Services; (b) failure of Contractor to carry out/or remedy the Services in accordance with the Agreement; 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.
- 12.6 Payment not Acceptance.** Payment or use of any Services or portions thereof by an ATL shall not constitute an acceptance of any Services not performed in accordance with the Contract Documents.
- 12.7 Net 30 Days.** Provided all the conditions in **Section 12** have been met to the ATL's satisfaction, and Contractor is not otherwise in breach of this Contract, the ATL agrees to pay Contractor in accordance with the ATL's normal processes and procedures for all undisputed amounts within thirty (30) Days of the later of a review, if any, undertaken by the ATL or the ATL's receipt of a valid invoice. If the ATL objects to any invoice submitted by Contractor, the ATL shall so advise Contractor in writing giving reasons therefor within fourteen (14) business days of receipt of such invoice. If any invoice submitted by Contractor is disputed by the ATL, only that portion so disputed may be withheld from payment.
- 12.8 Invoicing.** The Contractor shall deliver to the ATL an audit-worthy invoice on a monthly and or quarterly basis, as applicable, by the tenth (10) Day of the month following the month in which Services was performed. The Contractor shall submit separate invoices for as each Service is completed. The Contractor may submit invoices for partial payment of Services in accordance with the requirements of **Exhibit E-Pricing Schedules**. The Contractor agrees to provide an accompanying monthly project progress report in a format acceptable to the 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. Partial payments to the Contractor shall correspond to the progress of Services achieved. The 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 the ATL under the Contract.

All invoices shall reference ATL Contract No. 19-030. The applicable invoice addresses for the 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@srta.ga.gov

- 12.9 End of Fiscal Year.** No later than the second Friday of July of each year, Contractor must submit to ATL outstanding invoices or progress reports for Services successfully completed or supplied during the period of July 1st – June 30th of that year. Progress reports shall include a description of the Services that has been successfully completed or supplied and an estimated cost for the Services. Failure to adhere to this requirement may result in non-payment for the Services. ATL reserves its right to dispute part or all of an invoice and to withhold payment for any Services that was not successfully completed or supplied.
- 12.10 Late Fees.** The 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 the ATL.
- 12.11 Right of Set Off.** The ATL may retain or set off any amount owed to it by Contractor, as determined pursuant to **Section 23, Dispute Resolution.**
- 12.12 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 partial payment schedule for the Services as provided herein; and (e) payment of any taxes, duties, permits and other fees and/or royalties imposed with respect to the Services and any equipment, materials, supplies, documentation, labor or services included therein.
- 12.13 Overtime.** Unless otherwise authorized in writing by the ATL, no premium pay or overtime will be considered compensable and will not be paid by the ATL.
- 12.14 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. The ATL will not reimburse Contractor for time spent or costs incurred traveling to and from the ATL office and Contractor’s State office. The 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. The ATL will not reimburse Contractor for any such taxes.
- 12.15 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 the ATL a completed notice of intent to perform as a DBE subcontractor, as set forth in **Exhibit H - ATL Notice of Intent to Perform as Subcontractor Form**. Thereafter, for any invoice submitted to the ATL, Contractor shall comply with and complete the necessary DBE participation form, where applicable, and as set forth in **Exhibit G - ATL DBE Participation Form**.

### 13. GENERAL LIABILITY.

**13.1 General Liability.** The Contractor shall be responsible to the 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 sub-contractors or others working at the direction of the Contractor or on its behalf.

**13.2 General Indemnification.** Contractor hereby agrees to indemnify and hold harmless the ATL, the State of Georgia and its departments, other authorities, agencies and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including reasonable attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the negligent performance of this Contract or any negligent act, error or omission on the part of the 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 subcontractors.

This indemnification extends to the successors and assigns of the Contractor. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by law, the bankruptcy of the Contractor. If and to the extent such damage or loss (including costs and expenses) as covered by this indemnification is paid by the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS") the Contractor agrees to reimburse the Funds for such monies paid out by the Funds.

*13.2.1 DOAS.* Risk Management will endeavor to notify affected insurers of claims made against the State that fall within this indemnity. In the event of litigation, the 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.

*13.2.2 Obligations Not Mutually Exclusive.* The Contractor's obligations under this Section are in addition to Contractor's obligations under **Section 14 (Insurance)**.

**13.3 Intellectual Property Indemnification.** Contractor represents and warrants that it will have at all times while performing the work and labor needed for the Services and ATL will have, upon completion of the Services, all necessary patent, copyright, and any other necessary intellectual property rights to all Services furnished by Contractor under the Contract and that all Services, as a whole and each of its components shall not infringe any third party patent, copyright, trademark, trade secret or other intellectual property right. In case any component of the Services is held to constitute an infringement of the patent rights or copyrights or other intellectual property rights of a third party and its use is enjoined, the Contractor at the Contractor's sole cost and expense, shall promptly (a) secure for ATL, its representatives, agents, and designees the right to continue using the infringing item by suspension of the injunction or by procuring a perpetual, non-revocable, paid-up, royalty-free, assignable, non-exclusive

license(s) to reproduce, publish, or otherwise use for ATL's direct purposes; or (b) replace the infringing item with a non-infringing substitute that meets the requirements of the Contract Documents; or (c) modify the infringing item so that it becomes non-infringing provided the resulting Services meets the requirements of the Contract Documents. If the amount of time necessary to proceed with one of these options is deemed excessive by ATL, ATL may direct the Contractor to select another option or risk default. Nothing in this provision shall be deemed to limit or condition ATL's rights otherwise set forth in the Contract, including termination. Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the Indemnitees and indemnify the Indemnitees from any loss resulting from the use by the Indemnitees of intellectual property supplied under this Contract and against any award of damages and costs made against the Indemnitees by a final judgment of a court of last resort in such suit to the extent the same is based on a claim that any performance under this Contract constitutes an infringement of any United States Letters Patent or copyright by Indemnitees, provided ATL gives Contractor notice in writing of the institution of such suit, permits Contractor to participate fully in the defense of the same, and gives Contractor all available information, assistance, and authority to enable Contractor to do so. Subject to the approval of the Attorney General of the State, the Indemnitees shall tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against the Indemnitees reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the Indemnitees unless approved by the Indemnitees. This intellectual property infringement provision shall not apply to any infringement or alleged infringement which is the result of or arises out of ATL, its employees or agents 1) modifying or altering any part or component, alone or in combination with any other part or component, except as consented to by Contractor, 2) using the components in direct contravention of the Contract Documents, or 3) using a combination of the components with any materials not provided or approved by Contractor. The Contractor's obligations under this Section are in addition to Contractor's Insurance obligations.

**13.4 Limitation of Liability of the ATL.** The ATL's liability to Contractor, if any, shall be limited to direct damages and in such case, only to the extent of the amount such ATL has paid to Contractor under this Contract for the twelve (12) months immediately preceding Contractor's claim.

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

**13.6 Contractor's Limitation of Liability.** Except for claims made against ATL by third parties for which Contractor is required to indemnify the ATL pursuant to the Contract Documents, then to the extent expressly permitted by law, Contractor's liability to the ATL for damages (including actual, direct or any other damages whether arising in contract, negligence, other tort, or any other theory of law) will not exceed the sum of two times the amount payable by ATL to Contractor under the Work Order.

## 14. INSURANCE.

**14.1 Insurance Certificates.** The Contractor shall procure the insurance coverages identified below at the Contractor's expense and shall furnish the ATL an insurance certificate listing the ATL, their respective Board of Directors, officials, agents and employees as the certificate holder and an endorsement listing the ATL as an additional insured on the commercial general liability and business automobile liability policies. Evidence of insurance coverages shall be provided on the form acceptable to the ATL and the Georgia Office of the Insurance Commissioner. The insurance certificate must provide the following:

14.1.1 Name and address of authorized agent

- 14.1.2 Name and address of insured
- 14.1.3 Name of insurance company(ies)
- 14.1.4 Description of policies
- 14.1.5 Policy Number(s)
- 14.1.6 Policy Period(s)
- 14.1.7 Limits of liability
- 14.1.8 Name and address of the ATL as certificate holder
- 14.1.9 Project Name and Number
- 14.1.10 Signature of authorized agent
- 14.1.11 Telephone number of authorized agent

**14.2 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.

Contractor's Commercial General Liability, Business Automobile Liability and Commercial Excess Liability or Umbrella Liability insurance coverage shall be primary insurance with respect to the ATL, their respective Board of Directors, officials, agents and employees for any claims not covered by the Georgia Tort Claims Act. Any insurance of self-insurance shall be in excess to the coverage of the Contractors insurance and shall not contribute to it.

Each such policy shall contain the following provisions:

*14.2.1 No Cancellation.* The insurance company will notify the 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.

*14.2.2 No Invalidation.* The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("Separation of Insureds").

*14.2.3 State 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.

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

**14.3 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. The ATL reserves the right to require redacted copies of all insurance policies and endorsements required by this Contract at any time.

*14.3.1 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.

14.3.2 *Commercial General Liability Insurance.* Commercial General Liability Insurance of at least \$1,000,000 per occurrence \$2,000,000 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.

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

14.3.4 *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 provide coverage for Contractor’s negligent acts, errors, or omissions for services performed under this Contract. The professional liability insurance shall be either a practice policy or project-specific coverage. The professional liability insurance shall contain prior acts coverage or a retroactive date that precedes the commencement date 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.

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

**14.5 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.

**14.6 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.

**14.7 Ongoing Coverage.** Contractor is responsible for tracking insurance coverages for itself and its sub Contractors, for ensuring that coverages remain in force throughout the duration of the Contract, and for demonstrating to the ATL ongoing compliance with this **Section 14**.

**14.8 General.** The Contractor’s obligations under this **Section 14** are in addition to Contractor’s obligations under **Section 13.2 - Indemnification**.

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

**14.10 Additional Insured Endorsement.** The 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.

## **15. WARRANTIES.**

**15.1 Express Warranties.** In addition to any express or implied warranties provided by Law and not otherwise disclaimed below and in the RFP, the Contractor represents and warrants that:

- 15.1.1 *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.
- 15.1.2 *Organization.* The Contractor is authorized to do business in the State of Georgia.
- 15.1.3 *Authorization by Contractor.* The Contractor has authorized the execution, delivery, and performance of this Contract.
- 15.1.4 *Authorization of Signer.* The person signing this Contract has been duly authorized by Contractor to execute and deliver same.
- 15.1.5 *Valid Contract.* This Contract is valid, enforceable, and legally binding obligation of the Contractor.
- 15.1.6 *Cooperation.* Contractor shall fully cooperate with the ATL, each ATL-designated Representative, the ATL's other Contractors and vendors, and any other governing authority, in furnishing all the Services required by the Contract Documents.
- 15.1.7 *Services/Labor.* All deliverables, documentation, Services, services and labor shall (a) conform to the performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the Contract Documents, and (b) be performed per mutually agreed schedules, and in a workmanlike manner, and in accordance with the standard of care and skill exercised by other providers of similar labor and services under similar circumstances at the time the labor and services are provided.
- 15.1.8 *Intellectual Property.* Contractor represents that Contractor, its agents, employees, subcontractors, and assigns will neither violate nor in any way infringe upon the Intellectual Property rights of the ATL or of any other third party.
- 15.1.9 *Software.* Contractor represents and warrants that during the Term of the Contract (1) all software that Contractor will use to perform the Services shall be provided pursuant to the Contract Documents and free from defects and any update or revision to any of such software will be free from defects and will meet all specifications set forth in the Contract Documents, (2) Contractor will, without charge to ATL, correct any defects and make any fixes, additions, modifications or adjustments to any of such software or any update or revision to such software as may be necessary to keep the software in operating order in accordance with the Contract Documents, and (3) all software provided pursuant to the Contract Documents and any update or revision to any of such software will be free from viruses, worms, time bombs, back doors, Trap Doors, Trojan horses, Easter eggs, all other forms of malicious code and/or disabling devices or the like.
- 15.1.10 *Work/Labor.* Contractor represents and warrants that during the Term of the Contract all documentation, services and labor shall (1) conform to the performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the RFP, (2) the labor and services to be performed hereunder will be performed on time, and in a workmanlike manner, consistent with the highest level of care and skill exercised by other providers of similar labor and services under similar circumstances at the time the labor and services are provided.
- 15.1.11 *Documentation.* Contractor represents and warrants that during the Term of the Contract all documentation, services and labor shall conform to the performance, capabilities, accuracy,

completeness, characteristics, specifications, configurations, standards, and functions required by the RFP.

*15.1.12 Intellectual Property.* Contractor represents and warrants that during the Term of the Contract (1) no aspect of the Services will violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any Intellectual Property rights, (2) Contractor is the lawful owner or licensee of all software, hardware, methods, methodologies and any pre-existing Intellectual Property used in the Services contemplated hereunder and Contractor has the right to permit ATL access to, or use of, such software, hardware, methods, methodologies and Intellectual Property as required by the Contract Documents.

*15.1.13 Post-completion Warranty.* The post-completion warranty phase for the Project shall commence upon Go-Live and shall include all maintenance and production support for the software. The post-completion warranty phase will conclude either twelve (12) months after Go-Live occurs or upon successful completion of the Final System Acceptance as described in Section 5.5.2 of the Scope of Services, whichever occurs later. The maintenance period for the Project shall begin upon the completion of the post-completion warranty period.

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

**15.3 Hosting Location.** Both the primary and backup system hosting locations must be located within the Contiguous United States.

**15.4 Survival.** Except for Sections 15.1.9 (1) and (2), the representations and covenants of Contractor contained in Section 15.1 of this Contract shall survive from for a period of two (2) years following the expiration or earlier termination of this Contract.

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

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

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

the cost thereof.

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

**15.9 Warranty Process.** During the applicable warranty period or thereafter during maintenance obligations, Contractor will replace defective Services. Upon discovery of defective Services, Contractor shall be responsible to replace the defective Services at no additional cost to ATL.

**16. COOPERATION.** The 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 the ATL's Contractors, vendors, and other contractors and other governmental entities, all as directed by the ATL. Such cooperation shall include attendance at meetings, discussions, and hearings, as may be requested by the ATL, furnishing plans and other data produced in the course of Services for the ATL projects, as may be requested from time to time by the ATL to affect such cooperation, and compliance with all directives issued by the ATL. In the event the Contractor deems that any other of the ATL's Contractors/vendors or other third parties is delaying the Services or otherwise interfering with the Services, Contractor shall immediately notify the ATL in writing of this matter, including a detailed explanation of such delay so that the 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 the 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.

## **17. REVIEW/AUDITS.**

**17.1 Review of Services.** The ATL and its 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 the ATL and its ATL-designated Representatives for inspection and review at all reasonable times in the ATL's offices. Acceptance of any Services by the ATL shall not relieve the Contractor of its obligation to correct, at its expense, any of its errors in the Services.

**17.2 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 the 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 is completed. Copies of these documents and records will be furnished to the ATL upon request and may be audited by the ATL -designated Representatives.

**17.3 Audit.** The ATL or the 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 the 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 the ATL or the ATL -designated Representatives in performing such audit.

**18. 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 the ATL upon the earlier of termination or completion of the Services. The 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 the 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 other data, prepared pursuant to the Contract Documents shall be delivered to, become and remain in the property of the ATL with the exception of such Contractor Intellectual Property. Contractor shall not publish or make public any of the Services or by-products thereof unless required by law or authorized in writing by the Executive Director of the ATL. In such case Contractor shall notify the ATL as far in advance as possible to allow the ATL, if it deems appropriate, to seek legal redress to prevent such publication.

**19. INTELLECTUAL PROPERTY.**

**19.1 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 the ATL, with the ATL being deemed the author thereof with all rights, title and interest in all such Services and other work product owned by the ATL (collectively, “Work Product”). In the event that any such Work Product is deemed not to be a work made for hire for the 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 the 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 the ATL in order for the 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 the 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 the ATL’s ownership of all rights in and to same, and any claims that the Contractor Parties may have against the ATL shall exclude claims challenging the ATL’s ownership of same. In the event this Contract is terminated, all Work Product whether completed or not shall be delivered to the ATL within ten (10) Days from the date of termination.

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

**20. TERMINATION.**

**20.1 Termination for Cause.** Upon an Event of Default, the ATL may, in their sole discretion, terminate this Contract, in whole or in part. Termination shall take effect on the date set forth in the 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 from receipt of such notice for any such alleged Event of Default, or to submit a plan for cure acceptable to 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, the ATL will have the right to appropriate or use any or all Services (whether or not complete) as the ATL determines. Upon such termination the 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 the aggregate of the ATL's expenses incurred or anticipated to be incurred as a result of Contractor's breach are less than the Remaining Payment, the ATL shall remit such differential to the Contractor. In the event the ATL's expenses incurred or anticipated to be incurred as a result of Contractor's breach exceed the Remaining Payment, including any costs of the ATL incurred by any delay (or from any reason attributable to the delay) then Contractor shall within five (5) Days written notice from the ATL, make payment of the differential to the ATL. In addition to the rights and remedies in this section, the 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 the ATL for termination for cause and Contractor hereby waives all other rights and remedies it may have against the ATL, whether at law or in equity.

**20.2 Termination for Convenience.** The ATL may terminate this Contract, in whole or in part, for convenience and in writing at least five (5) business days before the effective date of such termination. Contractor will be paid for all Services performed in accordance with the terms and conditions of this Agreement prior to termination, less amounts due the ATL pursuant to the Contract Documents. The ATL will compensate Contractor for partially completed tasks based on a signed statement of completion to be submitted by the Contractor which shall itemize each task element and state in detail the Services that have been completed and what work remains to be done. All Services performed shall remain the property of the ATL. The 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 the ATL for termination for convenience and Contractor hereby waives all other rights and remedies it may have against the ATL, whether at law or in equity.

**20.3 Termination in General.** Under no circumstances shall a proper termination by the ATL (with or without cause) constitute a default by the ATL. In the event of a termination for convenience or for cause the 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 25.2 (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 Services actually performed) 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.

**20.4 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 25 (Cooperation, Transition of Services, and End of Contract Responsibilities)**, in the event the ATL exercises any of its rights under this section.

- 21. CHANGES IN CONTRACTOR ORGANIZATION.** The Contractor shall notify the 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 the ATL, including payments to the Contractor, and Contractor shall identify how these impacts to the ATL will be mitigated. Contractor shall immediately notify the 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.
- 22. CONFIDENTIALITY.** The Parties acknowledge that in order to perform the Services called for in this Contract, it may be necessary to disclose to each other certain confidential information ("Confidential Information"). Each Party agrees that it shall not disclose, transfer, use, copy, or allow access to any such Confidential Information to any employees or to any third parties excepting those who have a need to know such Confidential Information in order to allow Contractor to perform the Services, and who, in the case of third parties, have executed a nondisclosure agreement consistent with the provisions hereof. Customer information of any kind shall be deemed ATL's Confidential Information.
- 22.1 Open Records Act.** Notwithstanding anything else to the contrary, information provided to ATL is subject to disclosure under the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.), as it may be amended from time to time. Pursuant to O.C.G.A. § 50-18-72 (a)(34), "An entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A § 10-1-760 et seq.]"
- 22.2 No Obligation of Confidentiality.** Neither Party shall have any obligation of confidentiality with respect to any information which (i) is or becomes (through no improper action or inaction of the receiving Party or any of its affiliates, agents, consultants or employees) generally available to the public; (ii) can be demonstrated by the receiving Party to have been in its possession or known by it prior to the receipt under this Contract; (iii) is rightfully disclosed to the receiving Party by a third party without restriction; (iv) is disclosed by the receiving Party with the written approval of the disclosing Party; (v) is developed independently by the receiving Party without any reference, whether direct or indirect, to the Confidential Information of the disclosing Party; or (vi) is obligated to be disclosed by order of a court of competent jurisdiction or is subject to disclosure under the Georgia Open Records Act, provided the disclosing Party is promptly notified in order to resist or limit any such disclosure by the receiving Party.
- 22.3 Use of Confidential Information.** The Party receiving the Confidential Information shall use the Confidential Information solely for the purpose of providing the Work required under the Contract Documents and shall not in any way use the Confidential Information to the detriment of disclosing Party.
- 22.4 Return of Confidential Information.** Except as otherwise provided in the Contract or by Law, the receiving Party shall return to disclosing Party any Confidential Information immediately on request but no later than upon the termination for whatever reason of this Contract.
- 23. DISPUTE RESOLUTION.** In the event of any dispute whatsoever arising out of or relating to the Contract Documents, the Services, the disputing Party must furnish a written notice to the other Party, setting forth in detail the dispute. Such notice must be addressed to the applicable ATL Program Manager and the ATL's Procurement Manager 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 the applicable ATL's offices to attempt to resolve the dispute. If the applicable 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 the ATL and Contractor's Principal-In-Charge of the Contractor, the Executive Director of the ATL and Contractor's Principal-In-Charge shall meet in the ATL offices to attempt to resolve the dispute.

If the Executive Director of the ATL and Contractor's Principal-In-Charge 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.

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

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

- 24.1.1 The Contractor withheld, disrupted or delayed Services due to non-payment by the ATL, if such withholding of payment is allowed under **Section 12 (Payment)**;
- 24.1.2 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 the ATL;
- 24.1.3 The performance of the Contractor is not completed in accordance with the terms and conditions of this Agreement;
- 24.1.4 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;
- 24.1.5 The Contractor failed to provide "adequate assurances" within five (5) Days of the ATL's notice, when, in the opinion of the ATL, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform any of its obligations under this Contract;
- 24.1.6 The suspension or revocation of any license, permit, or registration necessary for the performance of the Contractor's obligations under this Contract;
- 24.1.7 The Contractor suspended or failed to proceed with any part of the Services;
- 24.1.8 The default in the performance or observance of any of the Contractor's other obligations under the Contract Documents.

**24.2 ATL Damages/Remedies.** Upon the occurrence of an Event of Default, the 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:

- 24.2.1 Withhold any money then due and/or thereafter due to Contractor;
- 24.2.2 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 the ATL upon demand any amount paid or incurred by the 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 the ATL until paid by the Contractor; and

24.2.3 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 the ATL as a result of the Event of Default, plus all additional costs paid or incurred by the ATL to obtain the replacement Services as set forth in this section.

## **25. COOPERATION, TRANSITION OF SERVICES, AND END OF CONTRACT RESPONSIBILITIES.**

**25.1 Cooperation.** In the event that the 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).

**25.2 Transition.** Upon expiration or earlier termination of this Contract, Contractor shall accomplish a complete transition of the Services from Contractor to the ATL, to the applicable ATL-designated Representative or to any replacement provider designated by the 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 the ATL, the 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 E (Pricing Schedules)** shall be set forth in a writing signed by both Parties.

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

**25.4 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 the ATL and result in monetary loss to the ATL. The ATL shall assess, audit, and certify to the Contractor the ATL's monetary losses resulting from the Contractor's failure to comply with the provisions of this section.

**26. 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 Contractor, or its sub-contractors or suppliers, to make gifts or favors to any of ATL's employees. It is also unlawful for an 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.

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

**Exhibit A** - Definitions

**Exhibit B** - RFP

- Exhibit C** - Scope of Services
- Exhibit D** - Contractor Proposal
- Exhibit E** - Pricing Schedules
- Exhibit F** – Project Schedule
- Exhibit G** - ATL DBE Participation Form
- Exhibit H**- ATL Notice of Intent to Perform as Subcontractor Form
- Exhibit I** – Contractor’s Software License Agreement
- Exhibit J** – Mandatory FTA Provisions

## 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, compliance with Americans with Disabilities Act, anti-solicitation, O.C.G.A. §50-5-82, O.C.G.A. §13-10-91, immigration (O.C.G.A. §13-10-91 et seq.), and auditing and reporting provisions, now or hereafter in effect, and any rules required by any federal grant funding payment by the ATL.
- 28.2 Parties Bound.** This Contract will bind the respective heirs, executors, administrators, legal representatives, successors, and assigns of each Party.
- 28.3 Time of the Essence; Force Majeure.** Time is of the essence for all Services performed pursuant to the Contract Documents. The Contractor shall perform its responsibilities for the Services in accordance with the schedule set forth herein. However, neither Party shall be liable to the other Party for any delay or failure of performance due to fires or other casualties, acts of God, unusual weather conditions, strikes or labor disputes, war, or any cause beyond the reasonable control of either Party. Contractor’s exclusive remedies for force majeure are set forth in **Section 11.2-Time Extensions**.
- 28.4 Non-disparagement.** Each Party agrees not to make any statement, written or oral, to any third party which disparages or criticizes the other Party or the other Party’s respective officers, directors, employees, agents or management and business practices, in each case in connection with the performance or administration of the Services, this Contract, any other work/relationship between the other Parties under separate agreement, or any matter related thereto. The provisions of this section shall not apply to any truthful statement required to be made by either Party, or such Party’s officers, directors or agents, as the case may be, in any legal proceeding or governmental or regulatory investigation or to any internal discussions or communications between the Parties.
- 28.5 Trading with State Employees.** The 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.
- 28.6 Lobbyists.** Contractor represents and warrants that the Contractor and its lobbyists, if any, are in compliance with the Lobbyist Registration Requirements in accordance with the Georgia Vendor Manual, incorporated herein by reference.
- 28.7 Governing Law and Venue.** This Contract is a Georgia agreement made under the laws of the State. It will be enforced according to Georgia law without regard to its conflict of laws rules or any other rules directing referral to foreign law or forums. Any action related to this Contract in any way shall be brought exclusively in the Superior Court of Fulton County, Georgia, and each Party hereby consents to the jurisdiction and venue of such Court and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum. Each

Party hereby agrees to execute an acknowledgment of service of process at the request of the other Party in any litigation related to this agreement. In the event that a Party does not provide an acknowledgment of service as agreed, each Party consents to service of process at that Party's address set forth in **Section 28.8 (Notices)**.

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

*For the ATL:*

Atlanta-region Transit Link Authority  
Attn:  
245 Peachtree Center Avenue NE, Suite 2200  
Atlanta, GA 30303-1426  
Phone:  
Email:  
Copy to: Merryl Mandus, General Counsel

*For the Contractor:*

\_\_\_\_\_ Corporation  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

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

**28.10 Safety and Health/No Discrimination.** Contractor shall at all times comply with and require that all of its sub-contractors 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 sub-contractor 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 sub-contractors to carry out, applicable requirements of 49 CFR Part 26. Contractor shall include this provision in every subcontract pertaining to the Services.

**28.11 Publicity.** Contractor shall not issue a press release or otherwise publicize the Services or this Contract without the prior written permission of the ATL's Director of Marketing and Communications. Any request for information directed to the Contractor, pursuant to the Georgia Open Records Act, by the public shall be immediately redirected to the appropriate authority for handling. The ATL shall be responsible for providing the response to requests under the Georgia Open Records Act. Contractor acknowledges and agrees that all records of the Services and work, including records of contractors and subcontractors are subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., with particular attention being called to O.C.G.A. § 50-18-70 (b)(2) regarding the records of private entities in the performance of a service or function for or on behalf of a state agency, public agency or public office. The Contractor shall include this language or similar language in all contracts with its subcontractors.

**28.12 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 sub-contractor, 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), (Sub-contractor's Name), certifies to the Contractor that a drug free workplace will be provided for the sub-contractor'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.

- 28.13 Remedies Cumulative.** The rights and remedies of the ATL under this Contract are cumulative of one another and with those otherwise provided by law or in equity.
- 28.14 Waiver and Severability.** The waiver by the 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.
- 28.15 No Third Party Beneficiaries.** Nothing contained in the Contract Documents shall be construed as conferring upon or giving to any person, other than the Parties hereto, any rights or benefits under or by reason of this Contract.
- 28.16 Captions.** The captions in this Contract are solely for convenience and will not affect the interpretation of any terms of this Contract.
- 28.17 Counterparts.** The Parties may execute this Contract in counterparts.
- 28.18 Construction of Contract.** In the event this Contract must be interpreted by a court of competent jurisdiction as defined in **Section 28.7 (Governing Law and Venue)**, the Parties expressly agree that this is a negotiated Contract that will not be construed against one Party over the other because such Party drafted the Contract.
- 28.19 Survival.** In addition to those provisions, which by their terms would naturally survive termination of the Contract, **Sections 3 (Inclusion and Priority of Documents), 8 (Subcontracting and Assignment), 12 (Payment), 13 (General Liability), 14 (Insurance), 15 (Warranties), 17 (Review/Audits), 18 (Ownership of Documents), 19 (Intellectual Property), 20 (Termination), 22 (Confidentiality), 24 (Event of Default; Damages/Remedies), 25 (Cooperation, Transition of Services and End of Contract Responsibilities), and 28 (Miscellaneous)** shall survive the termination for whatever reason of this Contract.
- 28.20 Non-exclusivity.** This Contract is entered into solely for the convenience of the ATL and the State, and in no way precludes the ATL from obtaining like goods or services from other contractors at the ATL's sole discretion.
- 28.21 Entire Contract; Amendment.** This Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all other prior and contemporaneous contracts and understandings between the Parties, whether oral or written. The 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 signed, sealed and delivered this Contract effective as of the Effective Date.

Atlanta-region Transit Link Authority

\_\_\_\_\_ Corporation

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

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

Christopher Tomlinson, Interim Executive Director

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

Witness \_\_\_\_\_

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

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

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

## **EXHIBIT A DEFINITIONS**

“ATL” shall mean the Atlanta-region Transit Link Authority

“Business Day” shall mean a day that the Authority is open for regular business, which includes Monday through Friday but excludes Saturday, Sunday, and holidays that the Authority’s offices are closed.

“Contractor” shall mean the person, firm, joint venture, or corporation that the ATL has hired to perform the services required by this Contract.

“Contractor Program Manager” shall mean the Contractor’s designated representative who has been assigned to interface with the ATL.

“Contractor’s Proposal” shall mean those documents contained herein as Exhibit D.

“Contract” shall mean ATL Contract No. 19-030.

“Contract Documents” shall mean the RFP, Contractor’s Proposal, and this Contract (including all Amendments, the applicable Work Order, Amended Work Orders, documents and exhibits referenced in this Contract).

“Days” shall mean calendar days unless otherwise specified in the Contract.

“EAMS” Enterprise Asset Management System

“FTA” shall mean Federal Transit Administration.

“Individual Project Lead” shall mean persons designated by ATL as the designated point of contact between the Contractor and the ATL for the Services.

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

“Ordering Entity(ies)” shall mean the ATL, local governments located within the 13-county jurisdiction of the ATL, and agencies, departments, boards, bureaus, commissions, and authorities of the State of Georgia.

“Participating Entity(ies)” shall mean the SRTA, Cobb County, and ARC.

“Project” shall mean the Scope of Services for accomplishing the Services as specified in the Contract Documents.

“Scope of Services” shall mean Part 2 of RFP 19-011.

“State” shall mean the state of Georgia.

“Work Order” shall mean a contract between the Contractor and a Participating Entity or between the Contractor and an Ordering Entity for the provision of Services pursuant to this Contract.

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

**EXHIBIT B**  
**REQUEST FOR PROPOSALS**  
**ATL Solicitation No. 19-030**

**EXHIBIT C**  
**SCOPE OF SERVICES**

**EXHIBIT D  
CONTRACTOR'S PROPOSAL**

**EXHIBIT E**  
**PRICING SCHEDULES**

Hourly Rates, Overhead Rate, Fixed Fee, and Burdened Rates

Contractor shall notify ATL in writing, one hundred twenty (120) days prior to the expiration of the Initial Term or expiration of the Renewal Term, as applicable, of any requested rate change for the following Renewal Term, at which time the Parties may negotiate new rates. Any change in rates must be agreed to by both parties in writing as an Amendment to the Contract. If Contractor fails to provide such notice, then the rates set forth in this Exhibit E, Pricing Schedules, shall be in effect for the following Renewal Term.

**EXHIBIT F**  
**PROJECT SCHEDULE**

**EXHIBIT G**  
**DBE/SBE SUBCONTRACTOR PAYMENT REPORT**

**EXHIBIT H**  
**NOTICE OF INTENT TO PERFORM AS A DBE**

**Exhibit I**

**Contractor's Software License Agreement**

**A. Software:**

\_\_\_\_\_ ATL Business Use  
1. \_\_\_\_\_

**B. Software License:** ATL is authorized to use the following quantity of software:

\_\_\_\_\_ Quantity  
1.

**EXHIBIT J**  
**MANDATORY FTA CLAUSES**

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

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

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

- 2.1 Contractor acknowledges that the provisions of the Project Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Project Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Agreement. Upon execution of the underlying Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Project Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- 2.2 Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under ATL of 49 U.S.C. § 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 FFY'18-FFY'20 (October 1, 2018 and September 30, 2020) is 8%. ATL has not established a separate DBE goal for this project.

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 approval 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 DBE subcontractor(s) performing work related to this Agreement for satisfactory performance of that work no later than fifteen (15) calendar days after Contractor's receipt of payment for that work from ATL. In addition, Contractor may not hold retainage from its DBE 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 FTA terms and conditions.

**8. PROMPT PAYMENT OF SUBCONTRACTORS.**

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

**9. SUSPENSION 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 Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

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

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United

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

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

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