

**CITY OF ATLANTA
HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT**

REQUEST FOR PROPOSAL

FC-8260

HOTEL, TRAVEL PLAZA, AND MIXED-USE DEVELOPMENT



**MIGUEL SOUTHWELL
AVIATION GENERAL MANAGER
DEPARTMENT OF AVIATION**

**ADAM L. SMITH, ESQ., CPPO, CPPB, CPPM, CPP
CHIEF PROCUREMENT OFFICER
DEPARTMENT OF PROCUREMENT**



CITY OF ATLANTA

Kasim Reed
Mayor

SUITE 1900
55 TRINITY AVENUE, SW
ATLANTA, GA 30303
(404) 330-6204 Fax: (404) 658-7705
Internet Home Page: www.atlantaga.gov

DEPARTMENT OF PROCUREMENT
Adam L. Smith, Esq., CPPO, CPPB, CPPM, CPP,
CIPC, CISCC, CIGPM
Chief Procurement Officer
asmith@atlantaga.gov

July 6, 2015

ATTENTION QUALIFIED PROPONENTS:

Your firm is hereby invited to submit to the City of Atlanta, Department of Procurement ("DOP"), a proposal for **FC-8260, Hotel, Travel Plaza and Mixed Used Development (RFP)**. The City of Atlanta (the "City") is soliciting proposals from qualified firms to design, construct, finance, operate and maintain a Hotel, Travel Plaza, and Mixed-Use/Office Complex Development at Hartsfield-Jackson Atlanta International Airport.

As a pre-requisite to proposing on this project, proponents must have been qualified by the City of Atlanta (the "City") via **FC-7919, Hotel, Travel Plaza and Mixed Used Development (RFQ)**.

A **Pre-proposal Conference** will be held on **Tuesday, July 28, 2015, at 10:00 a.m.**, at the H-JDP Technical Support Campus, 1255 South Loop Road, College Park, Georgia. **A site visit will immediately follow the pre-proposal conference.** If it is your intent to participate in the site visit, you are required to send an email to **Mano Smith, CPPO, CPPB**, at **MOSmith@atlantaga.gov**, on or before Tuesday, July 21, 2015. This email must identify the names of the individual(s) that will participate in the site visit. The purpose of the Pre-proposal Conference is to provide proponents with detailed information regarding the project and to address questions and concerns. There will be representatives from the Department of Aviation, Office of Risk Management, and the Office of Contract Compliance available at the conference to discuss this project and to answer any questions. Proponents are urged to attend the Pre-proposal Conference.

The last date to submit questions is Tuesday, August 4, 2015. Questions will be responded to in the form of an Addendum.

Your response to this Request for Proposal ("RFP") must be submitted to and received by designated staff of the Department of Procurement at 55 Trinity Avenue, S.W., City Hall South, Suite 1900, Atlanta, Georgia 30303, **no later than 2:00 p.m., Wednesday, October 7, 2015.**

****ABSOLUTELY NO PROPOSALS WILL BE ACCEPTED AFTER 2:00 P.M.****

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FC-8260, Hotel, Travel Plaza and Mixed Use Development (RFP)

July 6, 2015

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The names of submitted proponents will be publicly read at 2:00 p. m. on the respective due date in Suite 1900, 1st Floor, 55 Trinity Avenue, S.W., City Hall South, Atlanta, Georgia 30303.

This RFP is being made available by electronic means. If accepted by such means, then the proponent acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Respondent's possession and the version maintained by the Department of Procurement, the version maintained by the Procurement Department shall govern. The RFP document is available at www.atlantaga.gov.

You are required to email your business name, contact person, address, phone number, fax number and the project number to Mano Smith, CPPO, CPPB, Contract Administrator, at mosmith@atlantaga.gov, to be placed on the Plan Holders List. Failure to do so will prevent you from receiving any addenda that are issued and may deem you non-responsive.

The RFP document may also be obtained from the Department of Procurement, City Hall South, Suite 1900, 55 Trinity Avenue, S.W., Atlanta, Georgia, 30303, at a cost of \$100.00 per package. Payment for the documents represents production costs; therefore, payment is non-refundable.

If you have any questions regarding this project, please contact Mano A. Smith, CPPO, CPPB, Contract Administrator, at (404) 330-6351, or by e-mail at mosmith@atlantaga.gov. Any questions regarding the procedure for purchasing a copy of the document or obtaining a copy of the plan holder's list should be directed to (404) 330-6024.

The City reserves the right to cancel any and all solicitations and to accept or reject, in whole or in part, any and all proposals when it is for good cause and in the best interest of the City. Thank you for your interest in doing business with the City.

Sincerely,



Adam L. Smith

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Part 1: Information and Instructions to Proponents

- 1. Development Being Procured:** This Request for Proposals (“RFP”) from qualified proponents (“Proponent” or “Proponents”) by the City of Atlanta (“City”), on behalf of its Department of Aviation (“DOA”), seeks a Proponent to lease up to twenty-six and one-half (26.5) acres of land from the City to design, construct, finance, operate and maintain a **Hotel, Travel Plaza, and Mixed-Use Development** (“Development”). A more detailed scope of development sought in this procurement is set forth in **Exhibit E (Program Requirements)** attached to the **Ground Lease Agreement** (“Ground Lease” or “Lease Agreement”) for this project (**FC-8260: Hotel, Travel Plaza, and Mixed-Use Development at Hartsfield-Jackson Atlanta International Airport**) which is included in this RFP at Part 5.¹

As indicated more fully within the terms of the Lease Agreement, final approval of items such as the Development concept and rental terms and conditions are contingent upon consent and approval of the City and the Federal Aviation Administration (“FAA”).

The relationship between the City and the successful Proponent shall begin on the Effective Date (as defined in the Lease Agreement) and is anticipated to exist for fifty (50) years thereafter, unless earlier cancelled, abandoned, or terminated in accordance with the terms of the Lease Agreement.

- 2. General Information:** The Airport services more passengers annually than any other airport in the world. Based on industry-reported data, an average of over 250,000 passengers travel daily through ATL either going to or coming from major international and domestic markets around the globe. The Airport is owned by the City and is operated by the DOA. It is located 10 miles south of downtown Atlanta on 4,750 acres. The Airport’s boundaries reach into the political jurisdictions of unincorporated Clayton County, unincorporated Fulton County, and the cities of College Park, Atlanta, Hapeville and East Point.
- 3. Method of Source Selection:** This procurement is being conducted in accordance with all applicable provisions of the City of Atlanta’s Code of Ordinances, including its Procurement and Real Estate Code (“Code”). The particular method of source selection for the Development sought in this RFP is Code Section 2-1189; Competitive Sealed Proposals. By submitting a Proposal concerning this procurement, a Proponent acknowledges that it is familiar with all laws applicable to this procurement, including, but not limited to, the City’s Code and Charter which laws are incorporated into this RFP by reference.

¹ All capitalized terms contained in the Ground Lease Agreement are incorporated into this RFP.

4. Minimum Qualifications:

Only those Respondents pre-qualified under FC-7919: Hotel, Travel Plaza, and Mixed-Use Development Request for Qualifications (RFQ) may submit a response to this RFP. The Pre-Qualified Respondents are:

Respondent	Contact Person	Contact E-mail
Airmall USA, Inc.	Jamie Daly	J_daly@airmallusa.com
Regent Partners Joint Venture	Sheldon Taylor	staylor@regentpartners.com
Carter/Majestic Realty Co./GPM Investments, LLC	Scott Taylor	staylor@carterusa.com

- 5. No Offer by City; Firm Offer by Proponent:** This procurement does not constitute an offer by City to enter into a Ground Lease Agreement and cannot be accepted by any Proponent to form a contractual relationship with the City. This procurement is only an invitation for offers from those Pre-Qualified Proponents listed above and no offer shall bind the City. A Proponent’s offer is a firm offer, subject to modification only as herein allowed, and may not be withdrawn except under the rules specified in the City’s Code and other Applicable Law.
- 6. Proposal Deadline:** Proposals must be received by the City’s Department of Procurement, 55 Trinity Avenue, S.W., City Hall South, Suite 1900, Atlanta, Georgia 30303-0307 no later than 2:00 p.m. local time, on **Wednesday, October 7, 2015**. Any Proposal received after this time will not be considered and will be rejected and returned.
- 7. Pre-Proposal Conference/Site Visit:** Each Proponent is strongly encouraged to attend the Pre-Proposal Conference scheduled for **Tuesday, July 28, 2015, at 10:00 A.M.**, at Hartsfield-Jackson Technical Support Campus, 1255 South Loop Road, College Park, GA 30337. **A site visit will immediately follow the pre-proposal conference.** If it is your intent to participate in the site visit, you are required to send an email to **Mano Smith, CPPO, CPPB**, at **MOSmith@atlantaga.gov**, on or before Tuesday, July 21, 2015. This email must identify the names of the individual(s) that will participate in the site visit. Each Proponent must be fully informed regarding all existing and expected conditions and matters which might affect the cost or performance of the Lease Agreement.
- 8. Procurement Questions; Prohibited Contacts:** Any questions regarding this RFP should be submitted in writing to the City’s contact person, **Mano Smith, CPPO, CPPB**, Contract Administrator, Department of Procurement, 55 Trinity Avenue, SW, Suite 1900, Atlanta, Georgia 30303-0307, by fax (404) 658-7705 or e-mail **MOSmith@atlantaga.gov**, on or before **Tuesday, August 4, 2015**. Questions received after the designated period will only be considered at the discretion of the City. Any response made by the City will be provided in writing to all Proponents by Addendum. It is the responsibility of each Proponent to obtain a copy of any Addendum issued for this procurement by monitoring the City’ website at www.atlantaga.gov and its Department of Procurement’s Plan Room, which is

open during posted business hours, Suite 1900, 1st Floor, 55 Trinity Avenue, S.W., City Hall South, Atlanta, Georgia 30303. No Proponent may rely on any verbal response to any question submitted concerning this RFP. **All Proponents and representatives of any Proponent are strictly prohibited from contacting any other City employees or any third-party representatives of the City on any matter having to do with this RFP.** All communications by any Proponent concerning this RFP must be made to the City's contact person, or any other City representatives designated by the Chief Procurement Officer in writing.

9. **Ownership of Proposals:** Each Proposal submitted to the City will become the property of the City, without compensation to a Proponent, for the City's use, in its discretion.
10. **Georgia Open Records Act:** Information provided to the City is subject to disclosure under the Georgia Open Records Act ("GORA"). Pursuant to O.C.G.A. § 50-18-72(a)(34), "[a]n 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.]."
11. **Insurance Requirements:** The insurance and bonding requirements for any Lease Agreement that may be awarded pursuant to this RFP are set forth in **Exhibit D** attached to the form of Ground Lease Agreement included in this RFP. By submitting a Proposal in response to this RFP, each Proponent acknowledges and agrees that it will comply with the requirements set forth in **Exhibit D** of the Lease Agreement.
12. **Applicable City OCC Programs:** The City's OCC Programs applicable to this procurement are set forth in **Appendix A: Office of Contract Compliance Submittals**, attached to the Lease Agreement included in this RFP. By submitting a Proposal in response to this procurement, each Proponent agrees to comply with such applicable OCC Programs.
13. **Examination of Proposal Documents:**
 - 13.1. Each Proponent is responsible for examining with appropriate care the complete RFP and all Addenda and for informing itself with respect to all conditions which might in any way affect the preparation of its Proposal. Failure to do so will be at the sole risk of the Proponent, who is deemed to have included all necessary and required information in its Proposal.
 - 13.2. Each Proponent shall promptly notify the City in writing should the Proponent find discrepancies, errors, ambiguities or omissions in the Proposal Documents, or should the City's intent or meaning appear unclear or ambiguous, or should any other question arise relative to the RFP. Replies to such notices may be made in the form of an Addendum to the RFP, which will be issued simultaneously to all potential Proponents who have obtained the RFP from the City.

- 13.3. The City may in accordance with Applicable Law, by Addendum, modify any provision or part of the RFP at any time prior to the Proposal due date and time. The Proponent shall not rely on oral clarifications to the RFP unless they are confirmed in writing by the City in an issued Addendum.
- 14. Rejection of Proposals; Cancellation of Solicitation; Waiver of Technicalities:** The City reserves the right to reject any Proposal or all Proposals or to waive any technical defect in a Proposal. The City also may cancel this procurement at any time in accordance with the City of Atlanta Code of Ordinances.
- 15. Award of Ground Lease Agreement; Execution:** If the City awards a Ground Lease Agreement pursuant to this procurement, the City will prepare and forward to the successful Proponent a Ground Lease Agreement for execution substantially in the form included in this RFP. Subject to the required pre-approvals by the City and the FAA, the final terms of the Ground Lease Agreement will be negotiated with the successful Proponent.
- 16. Representations:** By submitting a Proposal to the City, Proponent acknowledges and represents that: (a) the accompanying Proposal is made by a person or business entity (i.e., firm) that is neither a high cost lender nor a predatory lender, nor is the Proponent an affiliate of a high cost lender or a predatory lender, as defined by Code Section 58-102; (b) it has read all of the RFP documents (including, without limitation, the Ground Lease Agreement) and acknowledges that Proponent shall be bound by the terms and conditions stated therein; (c) the signatory to the Proposal is the Proponent (or Proponent's duly authorized agent or employee of the Proponent with the authority to bind Proponent hereto); (d) any information or disclosure provided on **Form 2** are accurate representations up to and including the date Proponent submitted its Proposal to the City; and (e) it agrees that it will voluntarily notify the City immediately if any information or disclosure provided to the City during any part of this procurement process changes, is no longer accurate or would be misleading in any way.
- 17. Electronic Proposal Documents:** This RFP is being made available to all Proponents by electronic means. By responding to this RFP, Proponent acknowledges and accepts full responsibility to ensure that it is responding to the correct form of RFP, including any addenda issued by the City's Department of Procurement. Proponent acknowledges and agrees that in the event of a conflict between the RFP in the Proponent's possession and the version maintained by the Department of Procurement, the version maintained by the City's Department of Procurement shall govern. The RFP document is available at www.atlantaga.gov.

Part 2: Contents of Proposals/Required Submittals

1. **General Contents of Proposals:** A Proponent must submit a complete Proposal in response to this RFP in the format specified in this RFP; no other format will be considered. A Proposal will consist of two (2) separate volumes: Volume I will consist of information drafted and provided by the Proponent; and Volume II will consist of information provided by the Proponent on forms provided by the City in this RFP.
2. **VOLUME I (Information drafted and provided by a Proponent):**
 - 2.1. **Executive Summary:** The executive summary must include a letter with the Proponent's name, address, telephone number and fax number, signed by a person authorized to act on behalf of the Proponent. It should also designate one (1) contact person to whom all future correspondence and/or communications will be directed by the City concerning this procurement, if that person is different from the person executing the letter. At a minimum, the Executive Summary must contain the following information:
 - 2.1.1. Complete legal name of the Proponent and the name of the legal entities that comprise the Proponent. The Proponent must provide the domicile where each entity comprising it is organized, including entity name, brief history of the entity, contact name, address, phone number, e-mail address, and facsimile number, as well as the legal structure of the entity and a listing of major satellite offices.
 - 2.1.2. If Proponent is a corporation, limited liability company, or other registered entity formed in the State of Georgia, Proponent must include a copy of its Certificate of Incorporation, its Certificate of Organization, or other evidence of its registration with the Georgia Secretary of State.
 - 2.1.3. If Proponent is a corporation, limited liability company, or other registered entity formed outside the State of Georgia, Proponent must include evidence of its registration with the Georgia Secretary of State.
 - 2.1.4. A description or representation of the Proponent's plan for complying with the Office of Contract Compliance ("OCC") program goals set forth in **Appendix A**. This section should include detailed information regarding essential sub-contractors / subconsultants that the Proponent intends to use and should indicate the role and responsibilities these firms will be assigned.
 - 2.1.5. A declarative statement as to whether the Proponent or any member of the Proponent team has an open dispute with the City or is involved in any litigation associated with work in progress or completed in both the private and public sector during the past five (5) years.

- 2.2. **Organizational Structure:** The Proponent’s Organizational Structure section of the Proposal should introduce the proposed Proponent Team by:
- 2.2.1. Providing the Proponent’s Organizational Chart both graphically and in narrative format. The Organizational Chart and narrative should provide a description of the Proponents’ views on how it will organizationally complete the Development, as well as depict the relationship of its key personnel to that of the Principal-in-Charge and other key members of the management team. The Organizational Chart must include any and all proposed Design Firms and General Contractors.
 - 2.2.2. Providing a description of how this Organizational Structure will facilitate managing the Lease Agreement and how an efficient flow of information will be realized from the Organizational Structure to ensure all deliverables are fully coordinated within the organization.
 - 2.2.3. Providing the names of proposed candidates for each major function on the chart, including, at a minimum, any and all anticipated Design Firms and General Contractors. The City understands that due to the multi-discipline requirements associated with the Development, the Proponent may submit several Design Firms and General Contractors to accomplish separate aspects of the Development.
 - 2.2.4. Noting that following completion of negotiations with the City, the Proponent may not change any of the key members, Design Firms, or General Contractors without the written consent of the City.
- 2.3. **Management Plan:** Based on the Proponent’s Organizational Structure, describe how the Proponent will manage the Ground Lease, specifically addressing the following:
- 2.3.1. Proponent’s approach to Team leadership. Describe how the Proponent will:
 - 2.3.1.1. Ensure proper communication and coordination among pertinent project team members.
 - 2.3.1.2. Assure the City that the Lease Agreement requirements will be kept within the established time and access constraints and the means and frequency detailing how this information will be communicated to the City.
 - 2.3.1.3. Establish and maintain the necessary cooperative relationships.

- 2.3.1.4. Coordinate all necessary project activities within the project team to ensure project delivery is seamless with all team members.
- 2.3.1.5. Describe its approach to Project Management, specifically how quality, iconic distinction, and project schedules will be maintained.
- 2.3.2. Proponent's proposed method to:
 - 2.3.2.1. Identify and resolve issues during the project duration.
 - 2.3.2.2. Make critical decisions.
 - 2.3.2.3. Ensure constant communications with the City's Authorized Representative, as defined in the Lease Agreement, regarding all aspects of the Development.
- 2.4. **Conceptual Submittal:** Proponent is required to provide a detailed narrative and visual renderings describing the Proponent's proposed Development. The narrative and renderings must include the "brand" of each facility, physical attributes, amenities, level of proposed services, information technology services, and any additional information necessary to fully describe the proposed facility, within the parameters of **Exhibit E: Program Requirements** (attached to the Lease Agreement) including, at a minimum, the following:
 - 2.4.1. **Hotel:**
 - 2.4.1.1. Provide a detailed proposal of Proponent's concept for the Hotel within the Hotel Development Tract.
 - 2.4.1.2. Identify any design or construction features that the Proponent represents will set the facility apart as an iconic Hotel.
 - 2.4.1.3. Provide the general color scheme, fixtures, casework, furniture and décor and the image sign and graphic elements.
 - 2.4.1.4. Submit a maximum of twenty-five (25) different color sketches depicting the proposed facility. Sketches may be 11" x 17" but must be folded to 8½" x 11" when submitted and should include:
 - 2.4.1.4.1. The overall design of the Hotel.

- 2.4.1.4.2. The typical guest room sizes with listing of standard features.
- 2.4.1.4.3. The lobby area, meeting rooms, and key common area amenities.
- 2.4.1.4.4. A site plan, including:
 - 2.4.1.4.4.1. typical floor plans of major areas,
 - 2.4.1.4.4.2. floors with total number of guest rooms per floor,
 - 2.4.1.4.4.3. room floor plans,
 - 2.4.1.4.4.4. meeting facilities,
 - 2.4.1.4.4.5. concessions areas,
 - 2.4.1.4.4.6. exterior elevation,
 - 2.4.1.4.4.7. parking facilities,
 - 2.4.1.4.4.8. guest ingress and egress concepts from the terminal, MARTA, and the Rental Car Facility Automated People Mover System (“SkyTrain”),
 - 2.4.1.4.4.9. building sections and consideration of overall massing, and
 - 2.4.1.4.4.10. pedestrian/patron flow within the facility.
- 2.4.1.4.5. Provide the expected timing and value for Hotel refurbishments.

2.4.2. Travel Plaza:

- 2.4.2.1. Provide a detailed proposal of Proponent’s concept for the Travel Plaza within the Travel Plaza Development Tract.
- 2.4.2.2. Identify the types of fuel (e.g., gasoline, diesel, compressed natural gas) to be dispensed at the facility.

- 2.4.2.3. Describe the food services to be provided at the facility.
- 2.4.2.4. Describe any other amenities (e.g., car wash with zero discharge recycling system) that may be offered at the facility.
- 2.4.2.5. Submit a maximum of ten (10) different color sketches depicting the proposed facility. Sketches may be 11" x 17" but must be folded to 8½" x 11" when submitted.
- 2.4.2.6. Provide the expected timing and value for Travel Plaza refurbishments.

2.4.3. Mixed-Use Development:

- 2.4.3.1. Provide a detailed proposal of Proponent's concept for the Mixed-Use Development, including a minimum 30,000 sq. ft. Class A office complex, within the Mixed-Use Development Tract.
- 2.4.3.2. Identify any other facilities the Proponent may propose to construct and operate within the Mixed-Use Development.
- 2.4.3.3. Submit a maximum of ten (10) different color sketches depicting the proposed facilities. Sketches may be 11" x 17" but must be folded to 8½" x 11" when submitted.

2.4.4. **"Use It or Lose It" Provision:** The City of Atlanta, Department of Aviation may at its sole discretion, re-possess any portion of land not meeting the required milestones as delineated in the Lease Agreement attached hereto at Part 5. Therefore, proponents should demonstrate in their proposal, a phased plan of development that will provide reasonable access to such parts of all development tracts that may remain undeveloped.

2.5. **Sustainability Elements:** Proponent shall describe its proposed sustainability program for each Development. Proposals should reflect sustainable development, demonstrating their ability to lower energy consumption, water use, waste (trash to landfills) and greenhouse gas emissions. Information for the Airport guidelines for sustainability can be found on the Airport's web-site (www.atlanta-airport.com/docs/Airport/Sustainability/Sustainable_Management_Plan.pdf).

2.6. **Financial Offer:** Each Proponent must submit a Financial Offer using the form provided by the City at Part 4; **Form 9**. Submit one (1) stamped "Original" and ten (10) copies in a separate sealed envelope.

- 2.6.1 The Proponent will offer a percentage of gross revenue to be paid to the City as Percentage Rent as described in the Ground Lease. The Lessee will be required to pay the higher of Land Rent or Percentage Rent.
- 2.7. **Financing Plan:** Each Proponent shall include the following related to the Development:
- 2.7.1. A financing plan estimating total costs of the Development including construction costs, professional fees, insurance, and other soft-costs necessary to complete the Development. The financing plan should also include plans for construction and permanent financing, potential sources of equity/capital financing, and any other information or financial data which would assist in evaluating the financial viability of the Development as proposed by Proponent.
- 2.7.2. Describe the amounts, sources, and timing of private equity to be secured for the Development. Provide the minimum required rate of return for equity investors.
- 2.7.3. Describe the amounts, sources, and timing of any private construction and/or permanent loans to be secured for the Development. Provide the required rate of return for the short-term and long-term lenders.
- 2.7.4. Provide a ten-year proforma (from the estimated opening date) for each major component of the Development identifying operating revenue, operating expenses, and debt service requirements.
- 2.7.5. Each Proponent shall include a detailed description of sources of funds for the Development. The proposed approach to financing shall include the capital cost for construction, operation and maintenance, remodeling, mid-lifecycle refurbishment, and furniture, fixtures, and equipment costs, and any and all other costs associated with the Development which shall be fully borne by the Proponent.
- 2.8. **Recommended Changes to the Ground Lease Terms:** Proponent's Proposal may include any recommendations or alternate proposal regarding the lease terms and conditions as stated in the draft Lease Agreement at Part 5 herein. Respondent's recommendations/alternate proposal will not be included in the evaluation but will be considered in the final negotiation of Lease Agreement terms and conditions.
- 2.9. Additional facilities and services that complement the development may be proposed. The proposed development must comply with all applicable Airport policies and should also include green space and landscaping.

3. **Volume II (Information required by a Proponent on forms provided by the City):**

- 3.1. **Illegal Immigration Reform and Enforcement Act** – Each Proponent must complete and submit a Contractor’s Affidavit, attached hereto at **Form 1: Illegal Immigration Reform and Enforcement Act Forms** with its Proposal. This RFP is subject to the Illegal Immigration Reform and Enforcement Act of 2011 (“Act”). Pursuant to the Act, the Proponent must provide with its Proposal proof of its registration with and continuing and future participation in the E-Verify Program established by the United States Department of Homeland Security. Under state law, the City cannot consider any Proposal which does not include a completed Contractor’s Affidavit. It is not the intent of this notice to provide detailed information or legal advice concerning the Act. All Proponents intending to do business with the City are responsible for independently apprising themselves of and complying with the requirements of the Act and assessing its effect on City procurements and their participation in those procurements. For additional information on the E-Verify program or to enroll in the program, go to <https://e-verify.uscis.gov/enroll>.
- 3.2. **Contractor Disclosure Form** – Each Proponent must complete and submit **Form 2: Contractor Disclosure Form** with its Proposal.
- 3.2.1. If the Proponent is an individual, then that individual must complete and sign the Contractor Disclosure (Form 2) where indicated.
- 3.2.2. If the Proponent is a partnership (including but not limited to, joint venture partnership), then each partner in the partnership must complete and sign a separate Contractor Disclosure (Form 2) where indicated.
- 3.2.3. If the Proponent is a legal entity (e.g., corporation, limited liability company), then an authorized representative of that entity must complete and sign the Contractor Disclosure (Form 2) where indicated.
- 3.2.4. If the Proponent is a newly formed entity (formed within the last three years), then an authorized representative of that entity must complete and sign the Contractor Disclosure (Form 2) where indicated, and each of the members or owners of the entity must also complete and sign separate Contractor Disclosure Forms where indicated.
- 3.3. **Acknowledgment of Insurance and Bonding Requirements** – Each Proponent must complete and submit **Form 5: Acknowledgement of Insurance and Bonding Requirements** with its Proposal. The insurance and bonding requirements for any Lease Agreement that the City may award pursuant to this RFP are set forth in **Exhibit D: Insurance and Bonding Requirements**.

- 3.3.1. An authorized representative of Proponent must complete and sign this Acknowledgment of Insurance and Bonding Requirements where indicated.
 - 3.4. **Acknowledgement of Addenda** – Each Proponent must complete and submit an acknowledgement with its Proposal that it has received all Addenda issued by the City for this RFP. **Form 7: Acknowledgement of Addenda** has been included and may be used to satisfy this requirement.
 - 3.4.1. If submitted, an authorized representative of Proponent must complete and sign this Acknowledgment of Addenda where indicated.
 - 3.5. **Proponent Contact Directory** – Each Proponent must complete and submit **Form 8: Proponent Contact Directory** with its Proposal to include the names, positions/titles, firms, mailing addresses, phone and fax numbers and (when possible) e-mail addresses for at least two individuals, one (1) primary and one (1) secondary, who are authorized to represent Proponent for purposes of this RFP and to whom notices may be sent.
 - 3.6. **Financial Offer Form** – Each Proponent must complete and submit **Form 9 – Financial Offer Form**. Form 9 is to be submitted in a separate sealed envelope with the Proponents name and FC-8260 Hotel, Travel Plaza, and Mixed-Use Development on the outside of the envelope. Proponents are required to submit 1 “original” with an original signature and 10 copies of Form 9.
 - 3.7. **OCC Programs** – This criterion is based upon the Proponent’s representations regarding how it will comply with the requirements from the Office of Contract Compliance (“OCC”) as described in **Appendix A** to the Lease Agreement. This criterion is not scored on a sliding scale. Responsive Proponents will receive a score of 15 points. Proponents who fail to represent a compliant OCC program will be deemed non-responsive.
4. **Submission of Proposals:** Each Proponent must submit a complete response in accordance with the requirements of this RFP. All required Forms must be completed and submitted in full.
 - 4.1. Proposals shall be signed by hand by a principal of the Proponent with the authority to enter into a contract with the City. Joint Ventures or partnerships must designate one (1) joint venture/partnership to represent the joint venture/partnership in submitting and executing a Proposal. Each Proponent is responsible for the preparation of its Proposal and the costs of preparing and submitting them.
 - 4.2. Each Proponent acknowledges and agrees that each Proposal when submitted to the City will become the property of the City, without compensation to a Proponent, for the City’s use, at its sole discretion.

- 4.3. Proposals must be submitted in sealed envelope(s) or package(s) and the outside of the envelope(s) or package(s) must clearly identify the name of the project: **FC-8260: Hotel, Travel Plaza, and Mixed-Use Development** and the name and address of Proponent. All Proposals must be submitted to:

Adam L. Smith, Esq., CPPO, CPPB, CPPM, CPP
Chief Procurement Officer
Department of Procurement
55 Trinity Avenue, S.W.
City Hall South, Suite 1900
Atlanta, Georgia 30303-0307

- 4.4. A Proponent must submit **one (1) original and ten (10) copies** of its Proposal. Each Proposal must be submitted on 8½" x 11" single-sided, typed pages, using 12-point font size and such pages must be inserted in a standard three-hole ring binder. Proponent may, due to size limitations, utilize 11" x 17" pages to fulfill submittal requirements; however these sized sheets must be folded to 8½" x 11" to meet the size requirements. Each Proposal must contain an index and separate sections for the information requirements set forth in this RFP, as well as for the Forms required to be submitted.

[remainder of this page intentionally left blank]

5. **Submittals:** The following submittals must be completed and submitted with each Proposal.

Item #	Required Proposal Submittal Check Sheet ²	Check (v)
VOLUME 1		
1.	Executive Summary	
2.	Organizational Structure	
3.	Management Plan	
4.	Conceptual Submittal	
5.	Sustainability Elements	
6.	Financing Plan	
VOLUME II		
1.	Form 1: Illegal Immigration Reform and Enforcement Act Form	
2.	Form 2: Contractor Disclosure Form	
3.	Form 5: Acknowledgement of Insurance and Bonding Requirements	
4.	Form 7: Acknowledgement of Addenda	
5.	Form 8: Proponent Contact Directory	
6.	Appendix A: City's Office of Contract Compliance Submittals	
SEPARATE SEALED ENVELOPE		
7.	Form 9: Financial Offer Form	

² This table is included solely for Proponent's convenience and may be used to track the preparation and submittal of certain required information with its Proposal.

Part 3: Evaluation of Proposals

All Proposals will be evaluated in accordance with the City’s Code, other Applicable Law and the criteria specified on the Percentage Evaluation Form, considering the information required to be submitted in each Proposal. An Evaluation Committee will review the Proposals in accordance with this RFP.

All Proposals will be evaluated using the following Evaluation Form:

RELATIVE WEIGHT	GRADED ITEM	SCORE
5	Executive Summary	
5	Organizational Structure	
10	Management Plan	
35	Conceptual Submittal	
5	Sustainability Elements	
5	Financial Offer (Percentage Rent Offer)	
20	Financing Plan	
15	OCC Submittals	
100	TOTAL SCORE	

PART 4: SUBMITTAL FORMS

FORM 1: ILLEGAL IMMIGRATION REFORM AND ENFORCEMENT ACT FORMS

FORM 2: CONTRACTOR DISCLOSURE FORM

FORM 5: ACKNOWLEDGEMENT OF INSURANCE AND BONDING REQUIREMENTS

FORM 7: ACKNOWLEDGEMENT OF ADDENDA

FORM 8: PROPONENT'S CONTACT DIRECTORY

FORM 9: FINANCIAL OFFER FORM

All Respondents, including, but not limited to, corporate entities, limited liability companies, joint ventures, or partnerships, that submit a Proposal or Bid in response to this solicitation must fill out all forms in their entirety, and all forms must be signed, notarized or sealed with the corporate seal (if applicable), as required per each form's instructions.

If Respondent intends to be named as a Prime Contractor(s) with the City, then Respondent must fill out all the forms listed in this solicitation document; otherwise, Respondent may be deemed non-responsive.

FORM 1

ILLEGAL IMMIGRATION REFORM AND ENFORCEMENT ACT FORMS

All Bidders must comply with the Illegal Immigration Reform and Enforcement Act of 2011, O.G.G.A § 13-10-90, et seq. ("IIREA"). Bidders must familiarize themselves with IIREA and are solely responsible for ensuring their compliance therewith. Bidders may not rely on these instructions for that purpose. These instructions are offered only as a convenience to assist Bidders in complying with the requirements of the City's procurement process and the terms of this ITB.

1. The attached Contractor Affidavit must be filled out COMPLETELY and submitted with the bid prior to the bid due date.
2. The Contractor Affidavit must contain an active Federal Work Authorization Program (E-Verify) User ID Number and Date of Registration.
3. Where the business structure of a Bidder is such that Bidder is required to obtain an Employer Identification Number (EIN) from the Internal Revenue Service, Bidder must complete the Contractor Affidavit on behalf of, and provide a Federal Work Authorization User ID Number issued to, the Bidder itself (see Example 1 below). Where the business structure of a Bidder does not require it to obtain an EIN, each entity comprising Bidder must submit a separate Contractor Affidavit (see Example 2 below).

Example 1: ABC, Inc. and XYZ, Inc. form and submit a bid as AirportFood, LLC. AirportFood, LLC must enroll in the E-verify program and submit a single Contractor Affidavit in the name of AirportFood, LLC which includes the Federal Work Authorization User ID Number issued to AirportFood, LLC.

Example 2: ABC, Inc. and XYZ, Inc. execute a joint venture agreement and submit a Bid under the name AirportFood, JV. If, based on the nature of the JV agreement, Airport Food, JV is not required to obtain an Employer Identification Number from the IRS. The Bid submitted by AirportFood, JV must include both a Contractor Affidavit for ABC, Inc. and a Contractor Affidavit for XYZ, Inc.

4. All Contractor Affidavits must be executed by an authorized representative of the entity named in the Affidavit.
5. All Contractor Affidavits must be notarized.
6. All Contractor Affidavits must be submitted with the Bidder's Response to the ITB.
7. Subcontractor and sub-subcontractor affidavits are not required at the time of bid submission, but will be required at contract execution or in accordance with the timelines set forth in IIREA.

Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)

By executing this Subcontractor Affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with _____ (name of contractor) on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Subcontractor: _____

Name of Project: _____

Name of Public Employer: City of Atlanta

I hereby declare under penalty of perjury that the forgoing is true and correct.

Executed on _____, _____, 20__ in _____ (city), _____ (state)

Signature of Authorized Officer or Agent

Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE
ME ON THIS THE ____, DAY OF _____, 201____

NOTARY PUBLIC
My Commission Expires: _____

FORM 2
CONTRACTOR DISCLOSURE FORM
DEFINITIONS FOR THE PURPOSES OF THIS DISCLOSURE

"Affiliate"	Any legal entity that, directly or indirectly through one of more intermediate legal entities, controls, is controlled by or is under common control with the Respondent or a member of Respondent.
"Contractor"	Any person, partnership or entity having a contract with the City.
"Control"	The controlling entity: (i) possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the controlled entity, whether through the ownership of voting securities or by contract or otherwise; or (ii) has direct or indirect ownership in the aggregate of fifty one (51%) or more of any class of voting or equity interests in the controlled entity.
"Respondent"	<p>Any individual, partnership or entity that submits a response to a solicitation.</p> <p>If the Respondent is an individual, then that individual must complete and sign this Contractor Disclosure Form where indicated.</p> <p>If the Respondent is a partnership (including but not limited to, joint venture partnership), then each partner in the partnership must complete and sign a separate Contractor Disclosure Form where indicated.</p> <p>If the Respondent is a legal entity (e.g., corporation, limited liability company), then an authorized representative of that entity must complete and sign this Contractor Disclosure where indicated.</p> <p>If the Respondent is a newly formed entity (formed within the last three years), then an authorized representative of that entity must complete and sign this Contractor Disclosure Form where indicated, and each of the members or owners of the entity must also complete and sign separate Contractor Disclosure Form where indicated.</p>

Instructions: Provide the following information for the entity, partner or individual completing this Disclosure (the "Individual/Entity").

A. Basic Information:

1. Name of Respondent:

2. Name of the authorized representative for the Respondent:

B. Individual/Entity Information:

Principal Office Address:

Telephone and Facsimile Numbers:

E-Mail Address:

Name and title of Contact Person for the Individual/Entity:

Is the individual/Entity authorized to transact business in the state of Georgia?

- Yes **(Attach Certificate of Authority to transact business in Georgia from Georgia Secretary of State.)**
- No

C. Questionnaire

If you answer "YES" to any of the questions below, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, the name of the court and the file or reference number of the case, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your Proposal.

1. Please describe the general development of the Respondent's business during the past ten (10) years, or such shorter period of time that the Respondent has been in business.

2. Are there any lawsuits, administrative actions or litigation to which Respondent is currently a party or has been a party (either as a plaintiff or defendant) during the past ten (10) years based upon fraud, theft, breach of contract, misrepresentation, safety, wrongful death or other similar conduct? **YES** **NO**

3. If "yes" to question number 2, were any of the parties to the suit a bonding company, insurance company, an owner, or otherwise? If so, attach a sheet listing all parties and indicate the type of company involved. **YES** **NO**

4. Has the Respondent been charged with a criminal offense within the last ten (10) years? **YES** **NO**

5. Has the Respondent received any citations or notices of violation from any government agency in connection with any of Respondent's work during the past ten (10) years (including OSHA violations)? Describe any citation or notices of violation which Respondent received. **YES** **NO**

6. Please state whether any of the following events have occurred in the last ten (10) years with respect to the Respondent. If any answer is yes, explain fully the circumstances surrounding the subject matter of the affirmative answer:

Whether Respondent, or Affiliate currently or previously associated with Respondent, has ever filed a petition in bankruptcy, taken any actions with respect to insolvency, reorganization, receivership, moratorium or assignment for the benefit of creditors, or otherwise sought relief from creditors? **YES** **NO**

Whether Respondent was subject of any order, judgment or decree not subsequently reversed, suspended or vacated by any court permanently enjoining Respondent from engaging in any type of business practice? **YES** **NO**

Whether Respondent was the subject of any civil or criminal proceeding in which there was a final adjudication adverse to Respondent which directly arose from activities conducted by Respondent. **YES** **NO**

7. Has any employee, agent or representative of Respondent who is or will be directly involved in the project, in the last ten (10) years:

(a) directly or indirectly, had a business relationship with the City? **YES** **NO**

(b) directly or indirectly, received revenues from the City? **YES** **NO**

(c) directly or indirectly, received revenues from conducting business on City property or pursuant to any contract with the City? **YES** **NO**

8. Whether any employee, agent, or representative of Respondent who is or will be directly involved in the project has or had within the last ten (10) years a direct or indirect business relationship with any elected or appointed City official or with any City employee? **YES** **NO**

9. Whether Respondent has provided employment or compensation to any third party intermediary, agent, or lobbyist to directly or indirectly communicate with any City official or employee, or municipal official or employee in connection with any transaction or investment involving your firm and the City? **YES** **NO**

10. Whether Respondent, or any agent, officer, director, or employee of your organization has solicited or made a contribution to any City official or member, or to the political party or political action committee within the previous five (5) years? **YES** **NO**

11. Has the Respondent or any agent, officer, director, or employee been terminated, suspended, or debarred (for cause or otherwise) from any work being performed for the City or any other Federal, State or Local Government? **YES** **NO**

12. Has the Respondent, member of Respondent's team or officer of any of them (with respect to any matter involving the business practice or activities of his or her employer been notified within the five (5) years preceding the date of this offer that any of them are the target of a criminal investigation, grand jury investigation, or civil enforcement proceeding? **YES** **NO**

13. Please identify any Personal or Financial Relationships that may give rise to a conflict of interest as defined below *[Please be advised that you may be ineligible for award of contract if you have a personal or financial relationship that constitutes a conflict of interest that cannot be avoided]*:

(a) Personal relationships: executives, board members and partners in firms submitting offers must disclose familial relationships with employees, officers **YES** **NO**

and elected officials of the City of Atlanta. Familial relationships shall include spouse, domestic partner registered under section 94-133, mother, father, sister, brother, and natural or adopted children of an official or employee.

(b) Financial relationships: Respondent must disclose any interest held with a City employee or official or family members of a City employee or official, which may yield, directly or indirectly, a monetary or other material benefit to the Respondent or the Respondent's family members. Please describe:

YES

NO

D. REPRESENTATIONS

Anti-Lobbying Provision. All respondents, including agents, employees, representatives, lobbyists, attorneys and proposed partner(s), subcontractor(s) or joint venturer(s), will refrain, under penalty of the respondent's disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process.

Certification of Independent Price Determination/Non-Collusion. Collusion and other anticompetitive practices among offerors are prohibited by city, state and federal laws. All Respondents shall identify a person having authority to sign for the Respondent who shall certify, in writing, as follows:

"I certify that this bid/proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid or offer for the same supplies, labor, services, construction, materials or equipment to be furnished or professional or consultant services, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of city, state and federal law and can result in fines, prison sentences, and civil damages awards. By signing this document, I agree to abide by all conditions of this solicitation and offer and certify that I am authorized to sign for this Respondent/Offeror."

Certify Satisfaction of all Underlying Obligations. (If Applicable) If a Contract is awarded through this solicitation, then such Contractor should know that before final payment is made to a Contractor by the City, the Contractor shall certify to the City in writing, in a form satisfactory to the City, that all subcontractors, materialmen suppliers and similar firms or persons involved in the City contract have been paid in full at the time of final payment to the Contractor by the City or will be paid in full utilizing the monies constituting final payment to the Contractor.

Confidentiality. Details of the proposals will not be discussed with other respondents during the selection process. Respondent should be aware, however, that all proposals and information submitted therein may become subject to public inspection following award of the contract. Each respondent should consider this possibility and, where trade secrets or other proprietary information may be involved, may choose to provide in lieu of such proprietary information, an explanation as to why such information is not provided in its proposal. However, the respondent may be required to submit such required information before further consideration.

Equal Employment Opportunity (EEO) Provision. All bidders or offerors will be required to comply with sections 2-1200 and 2-1414 of the City of Atlanta Code of Ordinances, as follows: During the performance of the agreement, the Contractor agrees as follows:

- a.) The Contractor shall not discriminate against any employee, or applicant for employment, because of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation. As used here, the words "shall not discriminate" shall mean and include without limitation the following:

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

The Contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

- b.) The Contractor shall, in all solicitations or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation.
- c.) The Contractor shall send to each labor union or representative of workers with which the Contractor may have a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Contractor's commitments under the equal employment opportunity program of the City of Atlanta and under the Code of Ordinances and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.
- d.) The Contractor shall furnish all information and reports required by the contract compliance officer pursuant to the Code of Ordinances, and shall permit access to the books, records, and accounts of the Contractor during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.
- e.) The Contractor shall take such action with respect to any subcontractor as the city may direct as a means of enforcing the provisions of paragraphs (a) through (h) herein, including penalties and sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in or is threatened with litigation as a result of such direction by the city, the city will enter into such litigation as is necessary to protect the interest of the city and to effectuate the equal employment opportunity program of the city; and, in the case of contracts receiving federal assistance, the Contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.
- f.) The Contractor and its subcontractors, if any, shall file compliance reports at reasonable times and intervals with the city in the form and to the extent prescribed by the contract compliance

officer. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of the Contractor and its subcontractors.

- g.) The Contractor shall include the provisions of paragraphs (a) through (h) of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.
- h.) A finding, as hereinafter provided, that a refusal by the Contractor or subcontractor to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:
 - 1.) Withholding from the Contractor in violation all future payments under the involved contract until it is determined that the Contractor or subcontractor is in compliance with the provisions of the contract;
 - 2.) Refusal of all future bids for any contract with the City of Atlanta or any of its departments or divisions until such time as the Contractor or subcontractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in the Code of Ordinances;
 - 3.) Cancellation of the public contract;
 - 4.) In a case in which there is substantial or material violation of the compliance procedure herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of Contractors, subcontractors or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.

Prohibition on Kickbacks or Gratuities/Non-Gratuity. The undersigned acknowledges the following prohibitions on kickbacks and gratuities:

It is unethical for any person to offer, give or agree to give any employee or former employee a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

It is unethical for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

It is also unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

Declaration

Under penalty of perjury, I declare that I have examined this Contractor Disclosure Form and all attachments to it, if applicable, and, to the best of my knowledge and belief all statements contained herein and in any attachments, if applicable, are true, correct and complete.

I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same supplies, services, construction, or professional or consultant services, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of city, state and federal law and can result in fines, prison sentences, and civil damages awards. I agree to abide by all conditions of this solicitation and offer and certify that I am authorized to sign for this Respondent.

Sign here if you are an individual:

Printed Name: _____

Signature: _____

Date: _____

Subscribed and sworn to or affirmed by _____ **(name) this** ___ **day of** _____, **20**__.

Notary Public of _____(state)

My commission expires: _____

Sign here if you are an authorized representative of a responding entity or partnership:

Printed Name of Entity or Partnership: _____

Signature of authorized representative: _____

Title: _____

Date: _____, **20**__

Subscribed and sworn to or affirmed by _____ **(name), as the** _____ **(title) of** _____ **(entity or** partnership name) **this** ___ **day of** _____, **20**__.

Notary Public of _____(state)

My commission expires: _____

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FORM 5

Acknowledgment of Insurance and Bonding Requirements

I, _____, on behalf of _____, Proponent, acknowledge that if selected as the successful Proponent for **FC-8260: Hotel, Travel Plaza and Mixed Used Development**. Proponent shall comply completely and promptly with all insurance requirements contained in the Agreement attached to this Solicitation and appendices thereto, pertaining to insurance.

Proponent understands that it is expected to share these requirements with potential sureties and insurance brokers, agents, underwriters, etc. prior to any award of an Agreement and to take all necessary steps to ensure compliance with the applicable requirements without delay. Proponent understands, acknowledges and agrees that any failure to fully comply with these requirements within ten (10) days of the date Proponent receives a final Agreement document from the City may result in the forfeiture of the Proposal guarantee submitted with this Proposal and/or the disqualification of Proponent from further consideration for the Agreement.

By executing this Acknowledgement of Insurance Requirements, I represent that the Proponent understands and agrees to comply unconditionally with all requirements related to insurance contained in the Agreement attached to this Solicitation. Further, by signing below, I represent that I am authorized to make the representations contained herein on behalf of Proponent.

Dated this _____ day of _____, 2015.

Corporate Proponent: [Insert Corporate Name] _____ By: _____ Print Name: _____ Title: _____ _____ Corporate Secretary/Assistant Secretary (Seal)	Non-Corporate Proponent: [Insert Proponent Name] _____ By: _____ Print Name: _____ Title: _____ _____ Notary Public (Seal) My Commission Expires: _____
--	---

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FORM 7

ACKNOWLEDGMENT OF ADDENDA

Each Respondent must complete and submit an acknowledgement with its solicitation that it has received all Addenda issued for this solicitation. This form has been included and may be used to satisfy this requirement.

This is to acknowledge receipt of the following Addenda for **FC-8260: Hotel, Travel Plaza and Mixed Used Development**.

NONE []

_____; and
_____.

Date: _____, 2015

Corporate Proponent:

[Insert Corporate Proponent Name]

By: _____

Print Name: _____

Title: _____

Corporate Secretary/Assistant
Secretary (Seal)

Date: _____, 2015

Non-Corporate Proponent:

[Insert Non-Corporate Proponent Name]

By: _____

Print Name: _____

Title: _____

Notary Public (Seal)
My Commission Expires: _____

FORM 8

Proponent Contact Directory³

<i>NAME</i>	<i>POSITION/TITLE</i>	<i>MAILING ADDRESS</i>	<i>PHONE NUMBER</i>	<i>FAX NUMBER</i>	<i>EMAIL ADDRESS</i>

³ The purpose of the Proponent Contact Directory is to provide the City with a centralized, easily identified source of important contacts and other information regarding Proponent. This Directory should include the names, positions/titles, mailing addresses, phone and fax numbers and e-mail addresses for Proponent's Project Manager (primary) and at least one other (secondary) person authorized to represent the Proponent for purposes of this RFP.

FORM 9

Financial Offer Form

FC-8260 Hotel, Travel Plaza, and Mixed-Use Development at
Hartsfield-Jackson Atlanta International Airport

The undersigned having (a) examined carefully the accompanying Instructions to Proponents, and the Ground Lease, at Hartsfield-Jackson Atlanta International Airport, (b) visited the Airport, (c) became familiar with all terms and conditions specified in the Instructions and the Ground Lease and with the proposed operation of the Developments hereby submits this Financial Offer Form for compensation and privilege operating the Development at the Airport to be paid to the City by the undersigned in consideration of the execution of said Ground Lease Agreement by the City and the performance of all terms and conditions therein agreed by the Developer on its part to be kept and performed.

Percentage Gross Revenue per Category:

Category(s)	Percentage of Gross Revenue Proposed
_____	_____
_____	_____
_____	_____
_____	_____

Signature: _____

Name : _____

Title: _____

Company: _____

PART 5: GROUND LEASE AGREEMENT

**CITY OF ATLANTA
HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT**

FC-8260

HOTEL, TRAVEL PLAZA, AND MIXED-USE DEVELOPMENT

GROUND LEASE AGREEMENT



26.5 Acre Property Located at

Hartsfield-Jackson Atlanta International Airport

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (“Ground Lease” or “Lease Agreement”), is made and entered into on this the ____ day of _____ (“Effective Date”), by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia (the “City” or “Lessor”) and _____, a _____ corporation (“Lessee”) (collectively the City and Lessee shall be referred to as the “Parties”).

RECITALS

WHEREAS, the City owns and operates Hartsfield-Jackson Atlanta International Airport (the “Airport”), which includes an approximately 26.5 acres of developable land located west and southwest of the Airport’s Domestic Terminal in Clayton and Fulton Counties and the City of College Park, Georgia, and more particularly described below (the “Development Tracts”); and

WHEREAS, Lessee desires to lease up to 26.5 acres (the “Leased Premises”), as defined in Subsection 1.01 below, within the Development Tracts for use in designing, constructing, financing, operating and maintaining an Iconic Hotel, Travel Plaza, and Mixed-Use Development (the “Development”), and the City is willing to lease such Leased Premises to Lessee under the terms and conditions hereinafter set forth; and

WHEREAS, the Development is proximate to the Airport and the City desires to develop, or have others develop, the land with high quality facilities designed for the use by firms engaged in passenger service/business space and other services; and

WHEREAS, the terms and conditions of this Lease Agreement must be approved by the Federal Aviation Administration (“FAA”).

WHEREAS, the award and execution of this Lease Agreement is authorized by Resolution No. _____, adopted by the City’s Council on _____ (date), and approved by the city’s Mayor on _____ (date), a copy of which is attached to this Lease Agreement as **Exhibit B**.

WHEREAS, the City will incur no liability hereunder until it has been duly executed by Lessee, returned to City with all required submittals, including insurance and bonding, executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney, or his or her designee, as to form and delivered to Lessee.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL TERMS AND CONDITIONS hereinafter set forth, the City hereby leases and demises to Lessee, and Lessee hereby hires and takes from the City for its exclusive use, and for the uses and purposes herein enumerated, the Leased Premises hereinafter described, subject to the following terms and conditions.

AGREEMENT

The Parties hereto agree to the above Recitals and as follows:

1. LEASED PREMISES.

1.01 Description of Leased Premises. The Leased Premises herein demised consists of approximately 26.5 acres of land (1,154,340 square feet) of the Development Tracts, as more particularly delineated and described on the survey and legal description (to be added to the Lease Agreement upon final negotiations) attached hereto as Exhibit A and made a part hereof by this reference. Lessee is entitled to lease a maximum of twenty-six and a half (26.5) acres as follows:

1.01.1 Ten (10) acres located due west of the Domestic Terminal, the majority of which will be available on the Effective Date, with a small portion of the tract available after January 2017 (“Hotel Development Tract”); thirteen (13) acres located adjacent (southeast) to North Terminal Parkway, available after January 2017 (“Mixed-Use Development Tract”); and three and one half (3.5) acres located proximate to the split between North Terminal Parkway and South Terminal Parkway, available on the Effective Date (“Travel Plaza Development Tract”) (all hereinafter referred to as the “Leased Premises”).

1.01.2 The Leased Premises are being accepted by Lessee in their “as-is” condition as the same exists on the Effective Date hereof, and all necessary improvements thereto and equipment required therein shall be constructed or installed by Lessee at no cost or expense to the City, but subject to prior written approval of plans and specifications, not to be unreasonably withheld, by the Aviation General Manager for the City.

1.02 Ingress and Egress. Lessee, its officers, directors, employees, patrons, customers, invitees, guests, and suppliers of materials or furnishers of services shall have the right of ingress to and egress from the Leased Premises, subject to such reasonable rules and regulations as may be established by other governing jurisdictions as respecting such use, and subject to any and all applicable law.

1.03 “Use it or Lose It” Provision. The City of Atlanta, Department of Aviation may at its sole discretion, re-possess any portion of Leased Premises described below upon Lessee’s failure to meet the required development milestones as delineated in this Lease Agreement.

2. USE OF LEASED PREMISES.

- 2.01 Authorized Uses of Premises and Improvements: Lessee shall design, construct, finance, operate and maintain a hotel, a travel plaza and mixed-use development (“Development”) on the Leased Premises. Lessee’s use of the Leased Premises shall be limited in accordance with and subject to any restrictions provided in this Lease Agreement, including but not limited to the Program Requirements as provided in **Exhibit E**. The Leased Premises, and all improvements thereon, shall be used only for such uses and purposes as are a part of or incidental to the operation by Lessee of the Development and support facilities, and ancillary uses (“Permitted Uses”).
- 2.02 Signs. Lessee may install signs (e.g., informational and directional signs) on and about the Leased Premises, subject to prior written approval by the Aviation General Manager.
- 2.03 Unauthorized Uses: The Lessee shall not use or permit the use of the Leased Premises or any improvements constructed or operated thereon for (1) any illegal purpose; (2) any purpose not authorized hereunder; (3) any use that materially interferes with the City’s operation of the Airport; (4) any use that is not acceptable to the FAA; or (5) any purpose, with the exception of the Development, which would invalidate or unreasonably increase the property and casualty insurance premium rates paid by the City on any insurance policies of the City or any policies of insurance written on behalf of the Lessee under this Agreement, except that if the Lessee or any sublessee undertakes any activity which is not illegal or unauthorized but which causes an increase in City’s premium, then the Lessee may undertake such activity provided that it receives prior written authorization from the City regarding such activity and it pays or causes the payment of any additional premium charged to the Lessor resulting from such activity.
- 2.04 Lessee shall not do anything, or cause or permit anything to be done, in or about the Leased Premises, which will create a nuisance, or in any way obstruct or interfere with the rights of others, or injure or annoy them, or allow any sale by auction on the Leased Premises, or use or allow the Leased Premises to be used for any improper, immoral, or unlawful purpose, or any purpose which violates applicable rules or regulations issued by any governmental entity having jurisdiction over the Leased Premises, or obstruct the streets, roads or common passageways, in front of, within, or adjacent to the Leased Premises, or do or permit to be done anything in any way tending to injure the reputation of the City or the Airport.
- 2.05 Restrictions on Use of Leased Premises.

- 2.05.1 Improvements to Premises. All development, construction, and use of improvements on the Leased Premises shall be in accordance with the applicable provisions of the Ground Lease, including but not limited to **Exhibit C**, and/or the “DOA Design Guidelines and/or Tenant Project Submittal Guidelines” for the Airport, the applicability of which will be determined by the City, a copy of which is on file in the Facilities Division of the Department of Aviation and all applicable laws, rules and regulations of any governmental entity having jurisdiction over the Leased Premises.
- 2.05.2 Obstruction of Ingress and Egress. Lessee shall not obstruct ingress and egress to other facilities nor any utility easement in its use of the Leased Premises.
- 2.05.3 Parking/Storage Outside Leased Premises. Lessee shall not use any area outside of its Leased Premises for the purpose of parking or storing materials, vehicles, or equipment.
- 2.05.4 Hazardous Materials. The Lessee acknowledges that it has made itself fully aware of the existing conditions of the Leased Premises and conducted all testing, sampling and other reviews necessary in its sole judgment to assess the environmental conditions of the Leased Premises and after having done so, accepts the Leased Premises same “as-is”. Except in strict compliance with all Environmental Laws and any other applicable requirements, Lessee shall not allow the entrance of Hazardous Materials, as defined below, from the Leased Premises into the sewage and storm water drainage system serving the Airport or any other surrounding jurisdictions. Other than those materials necessary for the operation of the Development, Lessee shall not cause or permit any Hazardous Materials to be placed, held, stored, and processed on or at the Leased Premises. Lessee shall not release or otherwise dispose of any Hazardous Materials at the Leased Premises. Lessee hereby agrees to indemnify the City from and against any breach by Lessee of the obligations stated in the preceding sentences, and agrees to defend and hold the City harmless from and against any and all loss, damage, cost and/or expenses (including, without limitation, fines assessed against the Lessee, the City or others for whom the City may be responsible, damages for the loss or restriction on use of rentable or usable space or of any amenity on the Airport, damages arising from any adverse impact on marketing of space on the Airport, and sums paid in settlement of claims, attorneys’ fees, consultants’ fees, and expert fees) which arise during or after the Term as a result of such breach. This indemnification

of the City by the Lessee also includes, without limitation, costs incurred in connection with any investigation of the site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water, during the Term of this Agreement, on the Leased Premises which results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material on the Leased Premises caused or permitted by the Lessee results in any contamination of the Leased Premises, the Lessee shall promptly take all actions at its sole expense as are necessary to return the Leased Premises (and any other affected property) to the condition existing prior to the introduction of such Hazardous Material to the Leased Premises; provided that the City's approval of such actions, and the contractors to be used by the Lessee in connection therewith, shall first be obtained.

2.05.4.1 Lessee shall operate and maintain the Development at the Leased Premises and shall manage any Hazardous Materials at the Leased Premises in strict compliance with all Environmental Laws and shall provide Landlord notice within ten (10) days of Lessee's receipt of any verbal or written notice of: (1) any violation of Environmental Laws or (2) any release or disposal of Hazardous Materials at the Leased Premises. Lessee shall cure any breach of this Subsection immediately and, if applicable, in accordance with the terms hereof.

2.05.4.2 As used herein, the term "Applicable Law(s)" means all federal, state, municipal, City or local statutes, laws, ordinances, codes, rules, regulations, standards, executive orders, consent orders, orders and guidance from regulatory agencies, judicial decrees, permits, licenses or other governmental requirements of any kind, now in effect or that come into effect during the Term (and any present or future amendments to such Applicable Laws) that relate to: (i) the business of City; (ii) the business of Lessee; (iii) this Agreement; (iv) the Airport; or (v) any other matters relating to this Agreement.

2.05.4.3 As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority or the

United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (b) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act ("FWPCA"), or (c) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act ("RCRA"), or (d) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") or (e) otherwise defined as a hazardous, toxic, or regulated substance under any Environmental Laws.

2.05.4.4 As used herein, the term "Environmental Laws" shall mean all federal, state and local statutes, laws, codes, rules, regulations, ordinances, orders, standards, permits, licenses or requirements (including consent decrees, judicial decisions and administrative orders), presently in force, as amended or re-authorized, pertaining to the protection, preservation, conservation, or regulation of the environment, or imposing requirements relating to public or employee health and safety, including, without limitation, the FWPCA, RCRA, CERCLA, the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300F et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., and O.C.G.A. § 12-8-60 et seq., each as may be amended or re-authorized.

2.05.4.5 The City and its employees, representatives and agents shall have access to the Leased Premises during reasonable hours and upon reasonable notice to the Lessee in order to conduct periodic environmental inspections and tests of Hazardous Material contamination on or at the Leased Premises. Such periodic environmental inspections shall not be performed in a manner which will disrupt the operations of the Lessee or any of its Subtenants.

3. TERM.

- 3.01 Term. This Lease Agreement shall become effective on the Effective Date, as defined herein. The Term of this Agreement (the “Term”) shall end, unless terminated earlier, fifty (50) years after the Effective Date.
- 3.02 Effective Date. Pursuant to the City of Atlanta Code of Ordinances (“Code”), this Agreement will not become binding upon the City and the City will incur no liability under it until it has been duly executed by the Lessee, returned to the City with all required submittals, including insurance and bonding, approved by the City Attorney as to form, executed by the Mayor, and attested to by the Municipal Clerk (“Effective Date”) and delivered to the Lessee.
- 3.03 Commencement Date. For purposes of this Agreement, the “Commencement Date” shall be the date after the Effective Date that Lessee receives a Notice to Proceed (“NTP”) from the City’s Department of Procurement (“DOP”). However, Lessee’s requirements and obligations hereunder will not commence until the City releases the Premises or portion thereof to the Lessee.
- 3.04 Mandatory Milestones. Lessee shall receive a Certificate of Beneficial Occupancy on or before the dates specified below or Lessee will be in default under this Lease Agreement.

3.04.1 Hotel Development Tract.

- 3.04.1.1 The Hotel construction must be completed within two (2) years from the Commencement Date.
- 3.04.1.2 Including the portion of the Hotel Development Tract on which the Hotel is developed, the construction of any other agreed upon facilities must be completed on at least seven (7) acres of land on the Hotel Development Tract within five (5) years from the Commencement Date.
- 3.04.1.3 Upon the 5-year anniversary of the Commencement Date of the Lease Agreement, no more than three (3) acres of land within the Hotel Development Tract may remain incomplete in its development; such land, if any, shall be referred to as “Hotel Residual Land”. However, development on such Hotel Residual Land must have commenced within five (5) years of the Commencement Date and must be completed within seven (7) years of the Commencement Date. There shall be no adjustment to the Term or required milestones of the

Lease Agreement associated with Hotel Residual Land or development thereon.

3.04.1.4 If Lessee fails to accomplish these milestones, the undeveloped portion of the Hotel Development Tract shall be forfeited and shall be returned to the City and removed from the description of the Leased Premises as defined herein.

3.04.2 Travel Plaza Development Tract.

3.04.2.1 The Travel Plaza construction must be completed within two (2) years from the Commencement Date.

3.04.2.2 Including the portion of the Travel Plaza Development Tract on which the Travel Plaza is developed, the construction of any other agreed upon facilities must be completed on at least two (2) acres of land on the Travel Plaza Development Tract within five (5) years from the Commencement Date.

3.04.2.3 Upon the 5-year anniversary of the Commencement Date of the Lease Agreement, no more than one and one-half (1.5) acres of land within the Travel Plaza Development Tract may remain incomplete in its development; such land, if any, shall be referred to as "Travel Plaza Residual Land". However, development on such Travel Plaza Residual Land must have commenced within five (5) years of the Commencement Date and must be completed within seven (7) years of the Commencement Date. There shall be no adjustment to the Term or required milestones of the Lease Agreement associated with Travel Plaza Residual Land or development thereon.

3.04.2.4 If Lessee fails to accomplish these milestones, the undeveloped portion of the Travel Plaza Development Tract shall be forfeited and shall be returned to the City and removed from the description of the Leased Premises as defined herein.

3.04.3 Mixed-Use Development Tract.

- 3.04.3.1 Construction of the minimum 30,000 sq. ft. Class A office space must be completed within two (2) years from the Commencement Date.
 - 3.04.3.2 Including the portion of the Mixed-Use Development Tract which includes the minimum 30,000 square feet of Class A office space, the construction of any other agreed upon facilities must be completed on at least eight (8) acres of land on the Mixed-Use Development Tract within five (5) years from the Commencement Date.
 - 3.04.3.3 Upon the 5-year anniversary of the Commencement Date, no more than five (5) acres of land within the Mixed-Use Development Tract may remain undeveloped; such land, if any, shall be referred to as “Mixed-Use Residual Land”. However, development on such Mixed-Use Residual Land must have commenced within five (5) years of the Commencement Date and completed within seven (7) years of the Commencement Date. There shall be no adjustment to the Term or required milestones of the Lease Agreement associated with Mixed-Use Residual Land or development thereon.
 - 3.04.3.4 If Lessee fails to accomplish these milestones, the undeveloped portion of the Mixed-Use Development Tract shall be forfeited and shall be returned to the City and removed from the description of the Leased Premises as defined herein.
- 3.05 Renewals. This Lease Agreement is subject to a single, ten (10) year renewal to be exercised at the sole discretion of the City. Notice of the City’s intention to renew this Lease Agreement will be provided to Lessee within thirty (30) days of the end of the forty-fifth (45th) anniversary of the Effective Date. Renewal shall require the approval of the City Council and, if granted, will require the execution of an appropriate renewal document.
- 3.06 Inspection Prior to Expiration of Term. A walk through inspection of the Leased Premises and the Development shall be made by the Aviation General Manager or his designee and a representative of the Lessee prior to the expiration of the Term hereof, for the purpose of noting deficiencies in the maintenance of the Leased Premises and the Development. The Lessee shall deliver, to the satisfaction of the City, within ten (10) days of the walk through a schedule detailing the time period during which any deficiencies shall be cured.

4. DESIGN AND CONSTRUCTION REQUIREMENTS.

- 4.01 Improvements, Equipment and Fixtures. Lessee shall commence and proceed with reasonable diligence to construct all necessary improvements and facilities, and to install all necessary equipment and fixtures, required to establish and operate the Development and shall comply with all federal, state, city and county regulations, laws, rules and ordinances and obtain all required permits and licenses required to construct the Development. The Development shall be constructed at no cost to the City.
- 4.02 Construction Schedule. Lessee shall complete construction of the Development so as to achieve the milestones referenced above.
- 4.03 All Design and Construction Requiring City Approval. No exterior improvements, shall be erected or placed on the Leased Premises without prior written approval from the City's Aviation General Manager, which approval shall not be unreasonably withheld, and no alterations shall be made to the Development, or to any other improvements or facilities constructed on the Leased Premises, without prior written approval by the City's Aviation General Manager or his designee, which approval shall not be unreasonably withheld. Any and all construction and or renovations by lessee during the term of this Lease Agreement shall be accomplished in accordance with the terms and conditions of **Exhibit C - Design and Construction Requirements** and/or the "DOA design Guidelines and/or the Tenant Project Submittal Guidelines" for the Airport, the applicability of which will be determined by the City. The Design and Construction Requirements are hereby incorporated into the Lease Agreement.
- 4.04 Removal and Demolition. Lessee shall not remove or demolish, in whole or in part, any leasehold improvements upon the Leased Premises without the prior written consent of the Aviation General Manager who may, in his discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement specified in such consent, but the Aviation General Manager shall not withhold his consent unreasonably and shall not impose unreasonable conditions on his consent.
- 4.05 Payment and Performance Bonds. Lessee shall, at no expense to the City, cause to be made, executed, and delivered to the City in form and substance as shown in **Exhibit D** hereto, or otherwise satisfactory to the City, insurance and corporate surety bonds guaranteeing the faithful performance and completion of the Development and the payment of wages for services engaged and of bills and materials supplied and equipment used in performance of the work on the Development.

5. RENT.

5.01 Generally.

5.01.1 Lessee hereby covenants and agrees to pay to the City in lawful money of the United States of America without deduction or offset, at the City's principal place of business as identified in this Lease Agreement or at such place or places or to such person or persons as may be designated by the City, the following Rent as described and defined herein for the occupancy and use of the Leased Premises.

5.01.2 The term "Gross Revenue" shall include all monies paid or payable to Lessee for sales made or services rendered at or from the Development, regardless of when, where, or whether the business transaction occurs on or off of the Airport property, as well as any other revenue of any type arising out of or in connection with the Lessee's operations at the Airport, provided, however, that any taxes imposed by law which are separately stated to and paid by the customer and directly payable to the taxing authority by Lessee shall be excluded.

5.01.3 Notwithstanding that the rent under this Agreement is measured by the percentage of Gross Revenue, no partnership nor joint venture relationship between Lessee and the City is intended and none will be created.

5.01.4 Rent will be paid monthly in advance, beginning on the Commencement Date. Lessee will pay one-twelfth of the Land Rent, as defined below, on the first (1st) day of each month. By the fifteenth (15th) day of each month, Lessee will submit a report, in a form provided by the Department of Aviation, of Gross Revenue received during the previous month along with a calculation of rent to be paid and a check for any additional rent owing for the previous month.

5.01.5 Land Rent, as defined below, paid after the tenth (10th) of the month and Percentage Rent paid after the twenty-fifth (25th) day of the following month will be deemed a late payment and shall incur interest as additional rent at the rate of one-tenth of the one percent (0.1%) compounded daily from the date due until the date received by the City.

5.01.6 Rental payments shall be payable at:

**City of Atlanta Department of Aviation
P.O. Box 920500**

Atlanta, Georgia 30392

or at such other place as the Aviation General Manager may from time to time designate to Lessee in writing. Rental for a portion of a month shall be prorated, if applicable.

5.01.7 No payment by Lessee or receipt by the City of a lesser amount than the correct rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction. The City may accept such check or payment without prejudice to the City's right to recover the balance or to pursue any other remedy available under this Lease Agreement or otherwise provided by law or equity.

5.02 Rent Defined.

5.02.1 Land Rent. Land Rent is based on an appraised Fair Market Value (FMV) of \$0.30 per square foot, per year for the Hotel Development Tract; \$0.30 per square foot, per year for the Mixed-Use Development Tract; and \$0.90 per square foot, per year for the Travel Plaza Development Tract, respectively. This rate will be applicable for the first sixty (60) months following the Effective Date.

5.02.1.1 The Land Rent is subject to an annual increase of two percent (2%), except for years during the Term in which an appraisal occurs. For such years, the Land Rent will be established as stated in Section 5.02.1.5 below. Between appraisals, however, the annual increase of two percent (2%) will apply.

5.02.1.2 The FMV Land Rent will be determined by an independent, certified appraisal report every five (5) years beginning on the sixty-first (61st) month after the Effective Date until the end of the Term. If in any subsequent contract year the appraised FMV Land Rate is less than the Land Rent for the prior contract year, then such Land Rent shall remain unchanged for the subsequent contract year.

5.02.1.3 The Land Rent payable to Lessor shall never be subordinated; Lessor at all times shall have a first priority right to payment of the Land Rent.

5.02.2 Percentage Rent. Beginning on the first day of the first month following Lessee's receipt of a Certificate of Beneficial Occupancy for the developments listed below, Lessee will be obligated to pay the higher of the Land Rent described above or the total percentage of Gross Receipts, as follows:

5.02.2.1 Hotel Development. _____ percent (___%) of all Gross Revenue received.

5.02.2.2 Travel Plaza Development. _____ percent (___%) of all Gross Revenue received.

5.02.2.3 Mixed-Use Development. _____ percent (___%) of all Gross Revenue received.

5.03 Books and Records.

5.03.1 Lessee shall maintain throughout the Term and for a three (3) year period thereafter or, in the event of a claim by the City, until such claim of the City for payments hereunder shall have been fully ascertained, fixed and paid, separate and accurate daily records of Gross Revenues from all activity conducted under this Lease Agreement in accordance with generally accepted accounting principles, showing in detail all business on or transacted in, about, or from or pertaining to the Leased Premises and the Development, and Lessee shall enter all receipts arising from such business in regular books of account, and all entries in any such records shall be made at or about the time the transactions respectively occur.

5.03.2 In addition, Lessee shall maintain weekly, monthly and annual reports of Gross Revenues and transactions derived from its operations under this Lease Agreement, using a form and method as directed by the Aviation General Manager. Such forms and methods shall be employed by Lessee throughout the Term. Upon the Aviation General Manager's written request, Lessee shall make available immediately at the Airport, for inspection and copying by the Aviation General Manager or his or her designated representative, any and all books, records and accounts pertaining to its operations under this Agreement. The intent and purpose of the provisions of this Section are that Lessee shall keep and maintain records which will enable the City to ascertain, determine and audit, if so desired by the City, clearly and accurately, the share of Gross Revenues received by the City, and that the form and method of Lessee's reporting of Gross Revenues will be adequate to provide a control and

test check of all Gross Revenues derived by Lessee under this Lease Agreement.

5.03.3 Should any examination, inspection or audit of Lessee's books and records by the City disclose an underpayment by Lessee in excess of two percent (2%) of the total annual consideration due, Lessee shall promptly pay the City the amount of such underpayment, plus interest thereon at the rate of one and one-half percent (1.5%) per month, from the date due until the date collected, and shall reimburse the City for all costs incurred in the conduct of such examination, inspection, or audit. If the City deems it necessary to utilize the services of legal counsel in connection with collecting the reimbursement for such examination, inspection or audit, then Lessee shall reimburse the City for reasonable attorneys' fees and litigation expenses as part of the aforementioned costs incurred.

5.03.4 Not later than ninety (90) days after each annual anniversary of the Effective Date, Lessee shall furnish to the Aviation General Manager an unqualified report, certified by a Certified Public Accountant of the Gross Revenues. Said report shall not be made public except as required by law. Lessee shall furnish the Aviation General Manager with such other financial or statistical reports as the Aviation General Manager from time to time may request.

5.03.5 Upon request by the Aviation General Manager, Lessee shall furnish to the City copies of its quarterly State of Georgia sales and use tax returns covering the Leased Premises as well as pertinent portions of Lessee's Georgia and federal income tax returns at the time of filing, and any amendments thereto. All copies of such returns must be certified as exact copies of the original documents by a Certified Public Accountant. Lessees shall also promptly notify the Aviation General Manager of and furnish to the City copies of any audit reports covering the Leased Premises conducted by the Department of Revenue of the State of Georgia or the Internal Revenue Service. All of the books, records and accounts required by this Section to be maintained by Lessee, or true and complete copies thereof, shall be maintained by Lessee in the greater Atlanta area.

6. COMPLIANCE WITH LAWS AND REGULATIONS.

6.01 Lessee shall not at any time during the term hereof:

- 6.01.1 Omit or fail to procure at the appropriate time any permit or license necessary for any activities or operations on the Leased Premises, and shall not omit or fail to pay, before delinquent, any cost, charge or expense of any kind or nature required to be paid by Lessee under this Lease Agreement; or
 - 6.01.2 Omit or fail to do anything or do or permit anything to be done on or about the Leased Premises, or bring or keep anything on the Leased Premises or in any improvement or facility erected thereon, which will in any way conflict with any law, ordinance, rule or regulation required to be kept and observed by the Lessee which is now in force or which may hereinafter be enacted or promulgated by any public authority having jurisdiction over the Leased Premises; or create or suffer to be created a nuisance, or commit or suffer to be committed any waste in or upon the Leased Premises; or
 - 6.01.3 Use or allow the Leased Premises to be used for any immoral or unlawful purposes; or
 - 6.01.4 Commit or suffer to be committed in or on the Leased Premises any other act or thing which may unreasonably disturb the quiet enjoyment of any other tenant at the Airport or individual(s) of surrounding private property.
- 6.02 Airport Rules and Regulations. The occupancy and use by Lessee of the Leased Premises and the rights herein conferred upon Lessee shall be subject to such reasonable Airport rules and regulations as are now or may hereafter be prescribed by the City through the lawful exercise of its powers; provided, however, that no such rule or regulation shall be of such nature as to interfere with or constitute any derogation of or infringement upon the rights and privileges herein granted to Lessee.

7. RESPONSIBILITY FOR OPERATION AND MAINTENANCE OF THE LEASED PREMISES.

- 7.01 Generally. The Lessee shall be responsible for performance of all operation and maintenance of the Development including any and all repairs in the Leased Premises and all improvements in accordance with the provisions of this Section and **Exhibit F**, and the cost shall be paid by Lessee. All work shall be accomplished by Lessee without cost or expense to the City.
- 7.02 Lessee's Responsibility.

7.02.1 Lessee shall, throughout the Term of this Lease Agreement and without cost or expense to the City, keep and maintain the Leased Premises and all improvements, landscaping, fixtures, and equipment, which may now or hereafter exist thereon, in good and sanitary order and repair and in good, safe, and presentable condition, consistent with generally accepted commercial business practices. If after thirty (30) calendar days following Lessee's receipt of written notice from the City, Lessee fails to maintain or repair the Leased Premises or the improvements thereon, then the City may, but shall not be obligated to, enter upon the Leased Premises and perform such maintenance or repair, and Lessee shall pay the cost thereof to the City upon demand; provided, however, that if such items cannot be repaired within said thirty-day period, then Lessee shall not be in default and the City may not exercise its option herein if Lessee has commenced repairs within said thirty-day period and diligently pursues same to completion. Any unpaid amounts under this Section shall bear interest at the rate of one and one-half percent (1.5%) per month until paid in full.

7.02.2 Lessee shall pay for any and all capital improvements at or on the Leased Premises.

7.03 Abandonment. Lessee shall not vacate nor abandon the Leased Premises at any time during the Term hereof; and, if the Lessee shall abandon, vacate, or surrender the Leased Premises or be dispossessed by operation of law or otherwise, all of Lessee's improvements on the Leased Premises shall become the property of the City. In such event, any personal property belonging to Lessee and left upon the Leased Premises shall, at the option of the City, be deemed to be abandoned by Lessee and shall, at the option of the City, become the property of the City.

7.04 Liens. Lessee shall keep the Leased Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligations incurred by Lessee, Lessee's employees, agents, or contractors.

7.05 Taxes. During the Term hereof, Lessee shall pay or cause to be paid, prior to delinquency, any lawful taxes, and any assessments levied or assessed: (a) on the Leased Premises, including the Development; (b) on all property interests hereunder or in the Leased Premises; and (c) on any improvements, fixtures, and equipment now or hereafter existing on the Leased Premises and on any personal property on, in or about any buildings or improvements therein. It is understood, however, that Lessee may pay any such taxes and assessments under protest, and, without liability, cost or expense to the City, may, in good faith, contest the validity or amount thereof.

7.05.1 On or before the Effective Date, the Lessee shall provide written notification to the City and each taxing body with jurisdiction over the Leased Premises of the Lessee's interest and the Term of this Lease Agreement.

7.06 Utilities.

7.06.1 Utility Services. Lessee shall, at its own cost and expense, arrange for delivery of any and all utilities to the Leased Premises, including, but not limited to, electrical, gas, telephone, data, sewer and water lines and storm drainage. Lessee shall thereafter maintain, or cause to be maintained, all such utilities on the Property, including the points of connection.

7.06.2 Waiver of Damages. Lessee hereby expressly waives and releases the City from any and all claims for damages arising or resulting from failures or interruptions of utility services furnished by the City or others, including but not limited to electricity, gas, water, plumbing, sewage, telephone, data or communications. In any event, the City shall restore promptly any of such services which are provided by the City when the cause of the interruption has been removed.

7.06.3 Utility Charges. All charges for utility services to the Leased Premises shall be paid by Lessee promptly when due. Lessee shall take all necessary steps to promptly and properly challenge any disputed utility charges and to resolve any such disputes in a timely manner and shall promptly discharge any liens that arise as the result of unpaid utility charges, as provided herein. In no event shall the City be liable for any utility charges attributable to the Leased Premises during the Term or otherwise arising from the use or occupation of the Leased Premises by Lessee or Lessee's assignees or subtenants.

8. TRASH AND REFUSE.

8.01 Removal and Disposal. It is hereby expressly stipulated that the quick and efficient removal or treatment of trash, clippings, refuse, garbage and other debris on-site in accordance with approved processes and disposal of trash, clippings, refuse, garbage, and other debris from the Leased Premises is essential, and Lessee shall arrange for such removal and disposal of same at Lessee's cost and at no cost or expense to the City and in accordance with applicable laws and ordinances.

- 8.02 Storage Containers. For any and all material, whether generated internally or externally not be reprocessed or recycled, such material shall be stored in closed containers suitably screened and protected from public view, pending their removal and disposal, and such storage shall not generate odors, attract rodents or insects, or become offensive in any manner. The storage area shall be kept neat and clean at all times.
- 8.03 Deleterious Wastes. Lessee shall prevent the entrance of objectionable quantities of petroleum products and other deleterious wastes into the sewage and storm water drainage systems serving the Leased Premises or other surrounding jurisdictions, unless the same shall first be treated in accordance with and in full compliance with all applicable laws, regulations, and procedures of Federal, State, County, and City authorities having jurisdiction with respect to such matters. In the event that the City is required by any federal or state agency having jurisdiction in such matters, to pay a fine or other penalty due to the failure of Lessee to comply with this Subsection, then in such event Lessee shall reimburse the City the full amount of such fine or penalty promptly upon receipt of invoice therefore from the City.

9. INDEMNIFICATION; INSURANCE AND BONDING REQUIREMENTS

- 9.01 General Indemnity. Lessee shall indemnify and hold City, its agencies and its and their respective officers, directors, employees, advisors, and agents, successors and permitted assigns (“City Indemnitees”), harmless from any losses, liabilities, damages, demands and claims, and all related costs (including reasonable legal fees and costs of investigation, litigation, settlement, judgment, interest and penalties) arising from claims or actions based upon:
- 9.01.1 Lessee’s or Lessee’s employees or agent’s (“Lessee’s Personnel”) performance, non-performance or breach of this Agreement;
- 9.01.2 compensation or benefits of any kind, by or on behalf of Lessee Personnel, or any subcontractor, claiming an employment or other relationship with Lessee or such subcontractor (or claiming that this Lease Agreement creates an inherent, statutory or implied employment relationship with City or arising in any other manner out of this Lease Agreement by such Lessee Personnel or subcontractor);
- 9.01.3 any actual, alleged, threatened or potential violation of any Applicable Laws by Lessee or Lessee Personnel, to the extent such claim is based on the act or omission of Lessee or Lessee Personnel, excluding acts or omissions by or at the direction of City;

9.01.4 death of or injury to any individual caused, in whole or in part, by the tortious conduct of Lessee or any individual or third party or individual, partnership, agent, association, corporation, limited liability company, firm or other form of business enterprise, trustee, executor, administrator, successor, permitted assign, legal representative and/or recognized legal entity (“Person”) acting for, in the name of, at the direction or supervision of or on behalf of Lessee; and

9.01.5 damage to, or loss or destruction of, any real or tangible personal property caused, in whole or in part, by the tortious conduct of Lessee or any Person acting for, in the name of, at the direction or supervision of or on behalf of Lessee.

9.02 Insurance and Bonding Requirements. Lessee shall procure and maintain, in effect throughout the Term of this Lease Agreement, insurance coverage and bonds as set forth in **Exhibit D**. The City reserves the right to determine appropriate levels of insurance coverage at any time during the Term. At a minimum, the City shall evaluate the levels of insurance coverage every five (5) years throughout the Term and require that Lessee provide amended and updated insurance certificates accordingly.

10. DAMAGE OR DESTRUCTION OF THE LEASED PREMISES, DEVELOPMENT OR OTHER IMPROVEMENTS.

10.01 Damage to the Leased Premises or Other Improvements. In the event that any part of the Leased Premises, Development, or other improvements on the Leased Premises, is so damaged by fire or other cause as to make such part untenable or practically unusable for the purposes provided for hereunder, or if any part of the Development, or other improvements on the Leased Premises is rendered practically unusable for the purpose for which it was formerly used because of damage to other portions of the Leased Premises or improvements, then Lessee shall repair any such damage as expeditiously as possible and without cost to the City and make every temporary provision as reasonably practical to continue to operate any such part of Leased Premises or improvement as fully as possible during the period of reconstruction, and Lessee’s obligation to pay rent hereunder shall not be affected.

10.02 Partial Damage to the Leased Premises or Other Improvements. In the event that any part of the Leased Premises, Development, or other improvements on the Leased Premises, is partially damaged by fire or other cause so as to require repair even though it is tenantable or practically useable for the purpose for

which it was formerly used, Lessee shall repair any such damage as expeditiously as possible and without cost to the City.

11. INSPECTION OF THE LEASED PREMISES.

The City or its duly Authorized Representative may enter upon the Leased Premises, including the Development, and any other improvements on the Leased Premises, at all reasonable times, upon not less than twenty-four (24) hours' notice to Lessee, during the Term hereof for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to the rights of the City. No prior notice shall be required in the event of an emergency threatening the public health, safety or welfare, provided the appropriate governmental agency or agencies are responding to such a threat.

12. TITLE.

At the completion of the Term of this Lease Agreement, Title to the Development and any and all other improvements on the Leased Premises shall pass to and be vested in the City. Lessee agrees to promptly execute any and all documents that City may reasonably present that may be required to accomplish such transfer.

13. EVENTS OF DEFAULT BY LESSEE.

13.01 In addition to events of default otherwise defined and described in this Lease Agreement, each of the following events shall constitute an event of default by Lessee. Lessee shall have not less than sixty (60) days following receipt of written notice from the City of any such event of default by Lessee to cure or obviate the same.

13.01.1 Lessee's violation of any Applicable Law, Federal Aviation Administration of Environmental Protection Agency regulation.

13.01.2 Lessee's failure to pay the Rent under the terms and conditions provided for herein.

13.01.3 Lessee's failure to pay any lawful tax or assessments agreed to be paid by the Lessee in the Section titled, "Taxes" of this Lease Agreement in accordance with the terms of said Section.

13.01.4 Lessee's failure to keep, perform, or observe any term, covenant, or condition of this Lease Agreement agreed to be kept, performed, or observed by Lessee.

13.01.5 Lessee's filing of a voluntary petition in bankruptcy or the assignment of all or substantially all of the Lessee's assets for the benefit of Lessee's creditors or the institution of proceedings in bankruptcy against Lessee or the appointment of a receiver of the assets of Lessee; provided, however, that if such proceedings or appointments are involuntary, then they shall not be considered an event of default by Lessee unless Lessee fails to procure a dismissal thereof or is diligently pursuing such dismissal thereof within sixty (60) days after institution of such involuntary bankruptcy proceedings or appointment of such receiver.

14. TERMINATION.

14.01 Duties Regarding Structures and Improvements at Time of Termination. Improvements constructed or installed by Lessee on the Premises shall remain the property of Lessee until the termination of this Lease. Upon termination, whether at the expiration of the term, or earlier in the event of default, at Landlord's sole discretion Lessee shall either: (i) remove, at Lessee's sole expense, all improvements and structures within ninety (90) days after termination; or (ii) leave one or more structures or improvements on the Premises. If the City does not allow structures or improvements to remain on the Premises, Lessee shall, in addition to removing the improvements and structures, perform all repairs or restoration necessary to leave the Premises in good condition satisfactory to the City, including, but not limited to, removal of paving and improvements other than the structures. If the City allows structures or improvements to remain on the Premises, then the structures or improvements shall become the property of the City without compensation to Lessee. Upon vacation of the Premises in all cases, Lessee shall leave the Premises in good and clean condition, free of debris, trash or personal property.

14.02 Holding Over. Should Lessee hold over said Leased Premises after this Lease Agreement has terminated in any manner, during such holding over Lessee shall be deemed merely a tenant at sufferance at a rental rate to be fixed by the City, payable in advance, but otherwise on the same terms and conditions as herein provided. Notwithstanding anything herein to the contrary, the rental rate to be fixed by the City under this Section shall not exceed 125% of the market rate of comparable commercial property located in and about the Leased Premises at the time of the expiration or earlier termination of this Lease Agreement. During such month-to-month tenancy, all other terms of this Agreement and any amendments hereto will continue to govern the relationship of the Parties.

14.03 City's Rights to Repossess the Leased Premises. It is covenanted and agreed that the City reserves the right to further develop or improve the Airport, including all

landing areas and taxiways as it may see fit, regardless of the desires or views of the Lessee and without Lessee's interference or hindrance. If development or improvement of the Airport, landing areas or taxiways requires Lessee to vacate some or all of the Leased Premises, the City shall have the right to terminate such portion of this Lease Agreement at any time during the Term. In such event, City will provide written notice to Lessee at least One Hundred and Eighty (180) days prior to the effective date of such termination.

14.04 Termination by City for Cause. City may at its option, by giving written notice to Lessee, terminate this Lease Agreement:

14.04.1 for a material breach of the Lease Agreement by Lessee that is not cured by Lessee within the time provided for herein following the date on which City provides written notice of such breach;

14.04.2 immediately for a material breach of the Lease Agreement by Lessee that is not reasonably curable within the time provided for herein;

14.04.3 immediately upon written notice for numerous breaches of the Lease Agreement by Lessee that collectively constitute a material breach or reasonable grounds for insecurity concerning Lessee's performance; or

14.04.4 immediately for engaging in behavior that is dishonest, fraudulent or constitutes a conflict of interest with Lessee's obligations under this Lease Agreement or is in violation of any City Ethics Ordinances.

14.05 Re-procurement Costs. In addition to all other rights and remedies City may have, if this Lease Agreement is terminated by City pursuant to the above subsection entitled "Termination by City for Cause," Lessee will be liable for all costs reasonably and necessarily incurred by City in the completion of Lessee's obligations hereunder, including the cost of administration of any agreement awarded to other Persons for completion. If City improperly terminates this Agreement for cause, the termination for cause will be considered a termination for convenience in accordance with the provisions of the Section entitled "Termination by City for Convenience."

14.06 Termination by City for Insolvency. City may terminate this Lease Agreement immediately by delivering written notice of such termination to Lessee if Lessee: (a) becomes insolvent, as that term may be defined under Applicable Law, or is unable to meet its debts as they mature; (b) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors; (c) is adjudicated bankrupt or makes an assignment for the benefit of its creditors generally; (d) fails to deny or contest the material allegations of an

involuntary petition filed against it pursuant to any Applicable Law relating to bankruptcy, arrangement or reorganization, which is not dismissed within sixty (60) days; or (e) applies for or consents to the appointment of any receiver for all or any portion of its property.

14.07 Termination by City for Necessity. The City shall have the right to cancel this Lease Agreement if the FAA or other proper Federal Agency withdraws its approval from the Airport or an order is issued by any Court of competent jurisdiction, either of which restricts the use of the Airport in such a manner as to materially interfere with the operation of the Development or the Leased Premises.

14.08 Effect of Termination. Unless otherwise provided herein, termination of this Lease Agreement, in whole or in part and for any reason, shall not affect: (a) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination; or (b) any remedies to which a Party may be entitled under this Lease Agreement, at law or in equity. Upon termination of this Lease Agreement, Lessee shall immediately: (i) discontinue Services on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the terminated Services; (ii) inventory, maintain and turn over to City all work product, licenses, equipment, materials, plant, tools, and property furnished by Lessee or provided by City for performance of the terminated Services; (iii) promptly obtain cancellation, upon terms satisfactory to City, of all purchase orders, subcontracts, rentals or any other agreements existing for performance of the terminated Services, or assign those agreements, as directed by City; (iv) comply with all other reasonable requests from City regarding the terminated Services; and (v) continue to perform in accordance with all of the terms and conditions of this Agreement any portion of the Services that are not terminated.

15. CLAIMS, COUNTERCLAIMS AND DISPUTES.

15.01 Claim/Dispute Resolution Procedures. All claims, counterclaims, disputes and any other matters in question that may be asserted or raised by Lessee under, or relating to, the Lease Agreement or the breach of it shall be processed in accordance with the provisions of this Lease Agreement and are subject to audit by the City.

15.02 Liability. Lessee shall not be entitled to any damages, and neither the City nor its designated representatives shall be liable to Lessee or any subcontractors in tort (including, without limitation, negligence) or contract, except as specifically provided in the Lease Agreement.

15.03 When Notice and Claim Submittal Become Due. For any claim Lessee may bring under these Claim/Dispute Resolution Procedures to be valid, it shall be based upon written notice promptly delivered by Lessee to the City, but in no event later than seven (7) days after the occurrence of the event giving rise to the claim, and stating the general nature of the claim. The responsibility to substantiate a claim shall rest with the Lessee.

15.04 Requirements for Lessee's Claims.

15.04.1 For all Lessee claims seeking damages, or any change to any Milestone, Lessee shall submit with the claim an affidavit certifying that:

15.04.1.1 The Claim is made in good faith, damages or the Ground Lease requirement for which the Lessee believes the City is liable, and covers all direct, supplemental, indirect, consequential, serial and cumulative costs and delays to which Lessee is entitled as a result of the occurrence of the claimed event; and

15.04.1.2 The affidavit shall be executed by a senior officer of Lessee.

15.04.2 The attention of Lessee is drawn to state and federal laws regarding penalties for false claims. The City will prosecute Lessee to the fullest extent of the law for the submission of a false, fictitious or unsubstantiated claim.

15.04.3 A claim for an adjustment to any Milestone shall be supported by an analysis of the Project Plan detailing the impact of the event giving rise to the claim.

15.05 Determination on a Claim. If Lessee and City cannot successfully negotiate a resolution of any claim or dispute, Lessee agrees to participate in good faith in non-binding mediation if requested by the City. The cost of mediation will be split equally between Lessee and City. If a resolution cannot be reached through mediation the Lessee's sole appeal of the City's Final Determination is to institute legal action in Fulton Superior Court within sixty (60) days after Final Determination.

15.06 Disputes.

15.05.1 Any claim that is denied by the City shall be considered a dispute for purposes of these Claim/Dispute Resolution Procedures.

- 15.05.2 Pending final resolution of any claim or dispute, including litigation, Lessee shall proceed diligently with performance of the Ground Lease, and comply with any decision of the City.
- 15.05.3 In the event the City is a prevailing party in any litigation brought under or to enforce the provisions of the Lease Agreement, Lessee shall pay to the City all of the City's costs, expenses and fees associated with the litigation and the preparation thereof, including, but not limited, to reasonable attorneys' fees, expert witness fees, and all expenses incurred. Lessee shall pay the City's reasonable attorneys' fees and other costs whether the services are performed by the City's employees or by independent counsel or both.
- 15.07 Failure to Follow Procedures. The City must receive written notice of all claims and disputes in strict compliance with these Claim/Dispute Resolution Procedures and the notice provisions contained in the Lease Agreement in order to investigate such claim or dispute and to make decisions that will eliminate or minimize any additional costs or delays to the Parties' obligations under this Lease Agreement. Failure by Lessee to meet all of the requirements of and times in these Claim/Dispute Resolution Procedures shall be deemed an intentional waiver by Lessee of any right to file a lawsuit seeking redress of any type. Compliance with all the requirements of and times in these Claim/Dispute Resolution Procedures is an absolute condition precedent to Lessee having the right to file a lawsuit seeking redress of any type. In the event of non-compliance by Lessee, the City is entitled to have any lawsuit dismissed with prejudice by showing that Lessee did not strictly comply with all of the requirements of these Claim/Dispute Resolution Procedures.
- 15.08 Venue. Lessee acknowledges and agrees that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of or relating to the Lease Agreement shall be in the Federal District Court for the Northern District of Georgia or the State Courts in Fulton County, Georgia. Lessee hereby consents and submits to the exclusive personal jurisdiction of such courts, and consents, submits to and agrees that venue for such a legal action or proceeding is proper in said courts and county, regardless of Lessee's domicile. Lessee hereby expressly waives all rights under applicable law or in equity to object to the jurisdiction and venue in said courts and county with respect to such legal action or proceeding.

16. REDELIVERY OF PREMISES.

Lessee shall, upon expiration or termination of this Lease Agreement in any manner, quit and deliver up the Leased Premises and all improvements thereon to the City peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by Lessee or the City, reasonable wear and tear thereof excepted. Lessee shall have the right to remove trade fixtures and personal property, but not leasehold improvements.

17. QUIET ENJOYMENT.

Lessee, upon payment of the Rent and all other charges to be paid by Lessee under the terms of this Lease Agreement and upon observing and keeping all of the covenants, terms, and provisions of this Lease Agreement on the part of Lessee to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the use of the Leased Premises during the term of this Lease Agreement. City warrants that it holds sufficient title to the Development Tract to permit the City to perform its obligations hereunder.

18. LIMITATIONS ON ASSIGNMENT, TRANSFER, AND SUBLETTING.

18.01 Lessee shall not sell, assign, or transfer any portion of this Lease Agreement without the prior written consent of the City's Aviation General Manager, which shall not be unreasonably withheld, but may be reasonably conditioned based on what may be in the best interest of the City and the Airport.

18.02 Lessee shall not sublease the Leased Premises or any portion thereof or improvements thereon or any privilege granted with respect to the operation of the Leased Premises or any portion thereof or improvements thereon, without the prior written consent of the City's Aviation General Manager.

18.03 No assignee for the benefit of Lessee's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Lease Agreement by virtue of this section.

18.04 The identity of any assignee and the terms and conditions of any assignment shall be subject to the City's prior written approval. The City's consent to the form of any such contract, together with any material modifications of such contract, shall not be unreasonably withheld, conditioned or delayed, provided such contract is consistent with the provisions of this Agreement, and that the term does not extend beyond the Term of this Agreement.

18.05 Subject to the restrictions above, the provisions of this Lease Agreement shall bind and inure to the benefit of any successors and authorized assigns of the parties hereto.

19. WAIVERS.

No waiver by either party hereto at any time of any of the terms, conditions, covenants, or provisions of this Lease Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or provision herein contained, nor of the strict and prompt performance thereof by either party. No delay, failure, or omission of the City to re-enter the Leased Premises or to exercise any right, power, privilege, option, or remedy arising from any default, and no subsequent acceptance of rentals then or thereafter accrued, shall impair any such right, power, privilege, option, or remedy, or be construed to be a waiver of any default or acquiescence therein. No right, power, privilege, option, or remedy of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is expressly stipulated that each and all of the rights, powers, privileges, options, or remedies given to the City or Lessee by this Lease Agreement are cumulative and no one of them shall be exclusive of the others or exclusive of any remedies provided by law, and that the exercise of one right, power, privilege, option, or remedy by the City or Lessee shall not impair the right to exercise any other right, power, privilege, option, or remedy.

20. AGENT FOR SERVICE OF PROCESS.

If Lessee is not a resident of the State of Georgia, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Lessee shall register with the Secretary of State of the State of Georgia, as a foreign corporation, and Lessee hereby designates:

Name: _____

as its agent for the purpose of accepting service of process issued by any court in the State of Georgia for any breach or default of the terms, conditions, covenants, or provisions of this Lease Agreement, and service shall be made as provided by the laws of the State of Georgia for service upon a nonresident. It is further expressly agreed, covenanted, and stipulated that if for any reason such service of process is not possible, and as an alternative method of service of process, then Lessee may be personally served with such process out of the State of Georgia by the registered mailing of such

Complaint and process to the Lessee at the address set out hereafter in this Lease Agreement, and that such service shall constitute valid service upon Lessee as of the date of mailing, and Lessee shall have thirty (30) days from the date of mailing to respond thereto. It is further expressly agreed that Lessee is amenable to the process so served, submits to the jurisdiction, and waives any and all obligations and protest, any laws to the contrary notwithstanding.

21. WAIVER OF CLAIMS.

Lessee hereby waives any claims against the City and its elected officials, officers, agents, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Lease Agreement or any part hereof, or by any judgment or award in any suit or proceedings declaring this Lease Agreement null, void, voidable, or delaying the same, or any part hereof, from being carried out; provided, however, that such waiver shall not apply to any claims arising out of condemnation, eminent domain, or similar government action.

22. SAFETY AND SECURITY ARRANGEMENTS.

22.01 Lessee shall be totally responsible for safety and security of the Development, the Lessee's employees, the general public, vendors and tenants. Lessee shall be responsible for initiating, maintaining and supervising all safety and security precautions required in connection with the Development in accordance with applicable Laws, Codes and Regulations. Lessee shall provide the City's Authorized Representative a copy of the Construction and Operation and Maintenance safety plans as a courtesy and not for the City's comment or approval.

22.02 The Lessee shall report promptly in writing to the Authorized Representative accidents in connection with the Construction and Operation and Maintenance of the Development which results in death, any injury requiring medical treatment other than first aid administered at the Development, or property damage, giving full details and statements of witnesses.

22.03 Lessee shall ensure all employees are aware of and comply with the City's Security requirements attached to this Lease Agreement marked **Exhibit G**.

23. PUBLIC USE AND FEDERAL GRANTS.

23.01 Grant Agreements. The Leased Premises and the Airport are subject to the terms of those certain sponsor's assurances made to guarantee the public use of the Airport as incidental to grant agreements between the City and the United States of America, as amended, and the City represents that none of the

provisions of this Lease Agreement violate any of the provisions of the Sponsor's Assurances in the various Grant Agreements.

- 23.02 Non-Exclusive Rights. Nothing contained in this Lease Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.
- 23.03 Right to Develop the Airport. The City hereby reserves the right, but has no obligation, to further develop and improve the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxi-lanes, as City may deem reasonably necessary and desirable in order to serve the best interests of the City and the traveling public; provided, however, that nothing herein contained shall be construed as a waiver of any right or privilege granted to Lessee by the City hereunder or in any other agreement in effect between Lessee and the City.
- 23.04 Subordination of Lease. This Lease Agreement shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America, its boards, agencies, or commissions relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds on the development of the Airport or operation of facilities thereon.
- 23.05 Federal Non-Discrimination Covenant. Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination in the use of the Leased Premises or the facilities thereon, (2) that, in the construction of any improvements on, over, or under the land comprising the Leased Premises and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, and (4) that, in the event of breach of any of the above discrimination covenants, the City shall have the right to terminate this Lease Agreement and to re-enter and repossess said land, the facilities thereon, and hold the same as if this Lease Agreement had never been made or issued. Provision (4) shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

23.06 Right to Amend. In the event that the FAA or its successors shall require any modifications or changes in this Lease Agreement as a condition precedent to the granting of funds for the improvement of the Airport, Lessee hereby consents to such amendments, modifications, revisions or supplements or deletions of any of the terms, conditions, or requirements of this Lease Agreement as may reasonably be required to obtain such funds; provided, however, that in no event shall Lessee be required, pursuant to this provision, to accept an increase in the rent or fees provided for hereunder or to accept a change in the use or to accept a reduction in the size of the Leased Premises, or to accept any change which would adversely affect the rights of Lessee's tenant occupying the Leased Premises, Lessee's lender, mortgagee, beneficiary, payee, or any trustee registered with the City.

24. CERTIFICATION OF NON-DISCRIMINATION COVENANT.

By execution of this Lease Agreement, Lessee certifies, to the extent applicable, as follows: "We the supplier of goods, materials, equipment or services covered by this bid or contract will not discriminate in any way in connection with this contract in the employment of any person, or refuse to continue the employment of any person, on account of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, or disability, or political affiliation of such person."

25. NOTICES.

All notices to be given hereunder shall be in writing and shall be deemed to have been given when deposited in the United States mail, postage prepaid, certified or registered, addressed as follows (or to such other address as from time to time may be designated by either party by written notice to the other party):

CITY: City of Atlanta
Department of Aviation
P.O. Box 20509
6000 N. Terminal Parkway
Atrium Suite 4000
Hartsfield International Airport
Atlanta, GA 30320
ATTN:

LESSEE: _____

26. PERSONNEL REQUIREMENTS.

26.01 Personnel. Lessee shall provide adequate staff for the performance of the services to be performed by Lessee pursuant to this Lease Agreement, as determined from time to time by Lessee in its reasonable discretion. Lessee shall select employees who are competent and who have been properly trained and have sufficient expertise to provide the services required under this Lease Agreement. In the event City deems any of the personnel to be incompetent, careless, or otherwise objectionable, it shall advise Lessee of same and Lessee shall either replace the individual or take whatever steps are necessary to remedy the situation to City's satisfaction. Lessee shall be solely responsible for the payment of all wages, salaries, benefits, if any, and other amounts due to its personnel and shall be responsible for the payment of all federal, state and local employment taxes and all other obligations pertaining to the employment of the personnel, including but not limited to social security, income tax withholding, workers' compensation, unemployment, and any applicable group insurance coverage.

26.02 Project Manager. Lessee has appointed and shall maintain, during the Term, a "Project Manager," initially identified as _____, who shall reside during Lessee's performance of its Development-related obligations in the metropolitan Atlanta area, and who shall: (i) be fully familiar with all aspects of the Development, the Services and the Deliverables; (ii) have full authority to make day-to-day decisions on behalf of and to bind Lessee during the progress of the Development and shall have full control of the Lessee's personnel involved in provision of the Services and the Deliverables; (iii) ensure Lessee's compliance with its obligations under this Lease Agreement; (iv) maintain close cooperation with City; and (v) regularly be at and readily be able to come to the Leased Premises during the Development or attend meetings with City. Lessee shall not voluntarily remove the Project Manager from his or her position with respect to the Project without City's prior written approval, except in cases where Lessee reasonably and in good faith concludes that the Project Manager has failed to or is unwilling or unable to perform his or her Development-related duties in an effective manner.

26.03 Removal Right. City has the right to require the removal and replacement of any key manager of Lessee involved in the Development (including, without limitation, Lessee's Project Manager or Lead Designer) if City determines in good faith that such individual is not properly managing any part of the Development.

City shall make any such request discretely and, only after proper consultation with Lessee and good faith efforts to resolve the problems with the Lessee. Lessee is responsible for any labor costs arising in connection with the replacement of any Development-related personnel.

26.04 Additional Project Management Related Duties. The Parties shall endeavor to keep one another fully apprised of any material developments, delays or problems associated with its Development-related obligations.

26.05 Representatives. Upon execution of this Lease Agreement, City shall designate in writing to Lessee the name of the individual who is to be City's Authorized Representative to act on behalf of City in accordance with the provisions of this Lease Agreement. Upon execution of this Lease Agreement, Lessee shall designate in writing to City the name of the person who is to be Lessee's Authorized Representative to act on behalf of Lessee in accordance with the provisions of this Lease Agreement. From time to time following the execution hereof, City may change or replace its representative and Lessee may change or replace Lessee's representative upon seven (7) days written notice to the other party, delivered to such party in the manner and at the address specified in "Notices" section herein.

27. RELATIONSHIP BETWEEN THE PARTIES.

The City is neither a joint venturer with nor a partner or associate of Lessee with respect to any matter provided for in this Lease Agreement. Nothing herein contained shall be construed to create any such relationship between the parties or to subject the City to any obligation of Lessee whatsoever.

28. LESSEE'S REPRESENTATIONS, WARRANTIES AND COVENANTS.

Lessee hereby represents and warrants to, and covenants with, City that:

28.01 Lessee is a _____ corporation duly formed, validly existing and in good standing under the laws of the State of Georgia. Lessee has all requisite power and authority to enter into this Lease Agreement.

28.02 The execution, delivery and performance by Lessee of this Lease Agreement have been duly authorized by all necessary action and will not violate the charter documents of Lessee or result in the breach of or constitute a default under any material Lease Agreement to which Lessee is a party or by which Lessee or its material assets may be bound or affected.

28.03 This Lease Agreement has been duly executed and delivered by Lessee and this Lease Agreement and the documents referred to herein constitute valid, binding and enforceable obligations of Lessee.

28.04 City can rely on the accuracy and correctness of all information provided by Lessee pursuant to this Lease Agreement.

29. NO CONFLICTS.

This Lease Agreement is not prohibited by and does not conflict with any other contracts, leases, instruments, judgments or decrees to which Lessee is a party or is otherwise subject.

30. CITY'S REPRESENTATIONS.

City hereby represents and warrants to, and covenants with, Lessee that:

30.01 City is a municipal corporation, validly existing under the laws of the State of Georgia.

30.02 City has a requisite power and authority to enter into this Lease Agreement.

30.03 The execution, delivery and performance by City of this Lease Agreement has been duly authorized by all necessary action of City.

31. CONFIDENTIALITY AND OWNERSHIP OF WORK PRODUCT.

31.01 Confidentiality and Non-Exclusivity. Except as may be required by Applicable Law or court order, each of City and Lessee agree to hold in strict confidence the existence and the terms of this Lease Agreement and further agree that each will not, without the prior written consent of the other, disclose to any third party (other than, to the extent necessary, City's and Lessee's advisors, subconsultants, lenders, affiliates and its parent companies) the economic terms or the subject matter of the Development or any other information (marked as confidential) provided by or on behalf of the other party.

31.02 Non-Disclosure Obligations. In connection with the exercise of their rights and the performance of their obligations under this Lease Agreement, the Parties are likely to gain knowledge of each other's Trade Secrets and Confidential Information. Each Party acknowledges that any unauthorized disclosure or use of the other Party's Trade Secrets or Confidential Information would be likely to injure the other Party irreparably. Except as is specifically required or permitted by this Lease Agreement, neither Party shall, without the express prior written consent of the other Party, redistribute, market, publish, disclose or divulge to

any other person or entity, or use or modify for use, directly or indirectly in any way for any Person: (i) any of the other Party's Confidential Information during the Term and for five (5) years thereafter; and (ii) any of the other Party's Trade Secrets at any time during which such information shall constitute a Trade Secret (before or after the end of the Term). Each Party acknowledges that its misuse or unauthorized disclosure of the other Party's Confidential Information or Trade Secrets shall entitle the other Party to injunctive or other equitable relief.

31.02.1 For purposes of this Lease Agreement the following terms shall have the following meanings:

31.02.1.1 "Trade Secrets" means information (including, without limitation, confidential business information, technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, lists of actual or potential customers or suppliers) that: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

31.02.1.2 "Confidential Information" means, with respect to a Party, all valuable, proprietary and confidential information belonging to or pertaining to the Party that does not constitute a Trade Secret of the Party and that is not generally known by or available to the Party's competitors but is generally known only to the Party and those of its employees, independent Lessees, clients or agents to whom such information must be confided for internal business purposes.

31.02.2 On or prior to the Effective Date, Lessee shall have provided City with a written description of all information or data that City will be exposed to that Lessee believes constitutes its Confidential Information or Trade Secrets.

31.03 Georgia Open Records Act. Notwithstanding the above, information provided to the City is subject to disclosure under the Georgia Open Records Act ("GORA"). Pursuant to O.C.G.A. § 50-18-72(a)(34), "[a]n 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.].”

- 31.04 Non-Confidential Information. The foregoing non-disclosure and non-use covenants shall not apply to any information or data of a Party that the other Party can show by clear and convincing evidence is at the time of use or disclosure by the other Party readily available to the public other than as a result of or through an unauthorized disclosure.
- 31.05 Compelled Disclosure. In the event either Party or anyone to whom the Party transmits Confidential Information or Trade Secrets is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or any similar process) to disclose any of such information, the Party so compelled will provide prompt written notice of the requirement to disclose to the other Party so that the notified Party may seek a protective order or other appropriate remedy, waive compliance with the provisions of this Lease Agreement or both. In the event that the protective order or other remedy is not obtained or that the notified Party waives compliance with the provisions of this Lease Agreement, the legally compelled Party will furnish only that portion of the Confidential Information or Trade Secrets that is legally required to be disclosed and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the disclosed information.
- 31.06 Public Communications. All press releases and other public communications of any sort relating to this Lease Agreement or the Services shall be subject to the prior approval of City. Any use of City’s or Airport’s name in any advertising or marketing materials shall also be subject to the prior written approval of City.
- 31.07 Equitable Relief in the Event of Breach. Lessee and City shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the confidentiality, non-disclosure or non-use covenants of this Lease Agreement by the other Party because of the likely irreparable harm that would result from such a breach. Those remedies, however, shall not be deemed to be the exclusive remedies for a breach of this Lease Agreement or other Applicable Laws governing Trade Secret or Confidential Information use or disclosure by Lessee, City or their respective representatives, but shall be in addition to all other remedies available by law or equity.

32. GOVERNING LAW; INTERPRETATION.

33.01 Governing Law. This Lease Agreement shall be governed by the laws of the State of Georgia without giving effect to any choice of law principles that could result in the application of the laws of any other jurisdiction as more fully set forth in the Dispute Resolution Section of the Lease Agreement.

33.02 Lease Agreement Interpretation. All questions concerning interpretation or clarification of this Lease Agreement or applicable standards and codes, including the discovery of conflicts, discrepancies, errors or omissions, or the acceptable performance thereof by Lessee, shall be immediately submitted in writing to the Authorized Representative for resolution. In resolving conflicts, discrepancies, errors or omissions, including, but not limited to, interpretations pursuant to this subsection, the following order of precedence will be used:

- 32.01.1 Ground Lease Agreement;
- 32.01.2 Exhibit E - Program Requirements;
- 32.01.3 Exhibit C - Design and Construction Requirements;
- 32.01.4 Exhibit F - Operations and Maintenance Requirements;
- 32.01.5 Exhibit I – Milestones and Liquidated Damages;
- 32.01.6 Exhibit G – Airport Security Requirements; and
- 32.01.7 Lessee Submittals.

33. COMPLIANCE WITH CITY REGULATIONS.

33.01 Obligation of Lessee to Comply. Lessee acknowledges that it has received a copy of and is familiar with any and all applicable City Rules and Regulations (“City Rules”). Lessee agrees that all employees assigned to fulfill this Lease Agreement shall read and agree to all City Rules. Lessee will be responsible for acquainting each Lessee employee with the contents of the City Rules and ensuring that each employee abides by them. Lessee represents and warrants that no employee of City, or any employee of any City-affiliated company, is employed by Lessee, or is receiving or has received any compensation or any other remuneration now or at any other time from Lessee, or any agent of Lessee. Lessee shall provide its employees, representatives and work vehicles with identity badges, or other identification materials required by the City in accordance with current City requirements. All employees of Lessee shall abide by all City Rules while on City premises, including but not limited to the Leased

Premises and the Development. City shall have the right to modify the City Rules or promulgate additional work rules, and Lessee and its agents and employees shall comply with such modified or additional rules immediately following Lessee's receipt of a written copy thereof. All individuals employed or engaged by Lessee to perform Services for City under any job classification shall possess the expertise, knowledge, and experience requirements of said classification, including any professional licenses and/or certifications required. The City Rules include, but are not limited to the following:

33.01.1 Contingent Fees. Lessee represents and warrants that it has not employed or retained any Person, other than a bona fide employee working for Lessee, to solicit or secure this Lease Agreement, and that Lessee has not paid or agreed to pay any Person, other than a bona fide employee working for Lessee, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Lease Agreement. For a breach or violation of the above warranty, and upon such a finding after notice and hearing, and without limiting such other rights or remedies City may have pursuant to this Lease Agreement or pursuant to Applicable law, City shall have the right to terminate this Lease Agreement without liability, and at its discretion, deduct from the Lease Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

33.01.2 Prohibition Against Kickbacks or Gratuities. Lessee acknowledges the following prohibitions on kickbacks and gratuities:

33.01.2.1 It is unethical for any person to offer, give or agree to give any employee or former employee a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore.

33.01.2.2 It is unethical for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection

with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

33.01.2.3 It is also unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

33.01.3 Equal Employment Opportunity Policy. During the performance of the Lease Agreement, Lessee agrees as follows:

33.01.3.1 The Lessee shall not discriminate against any employee, or applicant for employment, because of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation. As used here, the words "shall not discriminate" shall mean and include without limitation the following:

33.01.3.1.1 Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

33.01.3.1.2 The Lessee agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

- 33.01.3.2 The Lessee shall, in all solicitations or advertisements for employees, placed by or on behalf of the Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation.
- 33.01.3.3 The Lessee shall send to each labor union or representative of workers with which the Lessee may have a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Lessee's commitments under the equal employment opportunity program of the City of Atlanta and under the Code and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Lessee shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.
- 33.01.3.4 The Lessee shall furnish all information and reports required by the contract compliance officer pursuant to the Code, and shall permit access to the books, records, and accounts of the Lessee during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.
- 33.01.3.5 The Lessee shall take such action with respect to any sub-Lessee as the city may direct as a means of enforcing the provisions of this policy, including penalties and sanctions for noncompliance; provided, however, that in the event the Lessee becomes involved in or is threatened with litigation as a result of such direction by the city, the city will enter into such litigation as is necessary to protect the interest of the city and to effectuate the equal employment opportunity program of the city; and, in the case of contracts receiving federal assistance, the Lessee or the city may request the United States to enter into such litigation to protect the interests of the United States.

- 33.01.3.6 The Lessee and its sub-Lessees, if any, shall file compliance reports at reasonable times and intervals with the city in the form and to the extent prescribed by the contract compliance officer. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of the Lessee and its sub-Lessees.
- 33.01.3.7 The Lessee shall include the provisions of this equal employment opportunity policy in every subcontract or purchase order so that such provisions will be binding upon each sub-Lessee or vendor.
- 33.01.3.8 A finding, as hereinafter provided, that a refusal by the Lessee or sub-Lessee to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:
- 33.01.3.8.1 Withholding from the Lessee in violation all future payments under the involved contract until it is determined that the Lessee or sub-Lessee is in compliance with the provisions of the contract;
 - 33.01.3.8.2 Refusal of all future bids for any contract with the City of Atlanta or any of its departments or divisions until such time as the Lessee or sub-Lessee demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in the Code;
 - 33.01.3.8.3 Cancellation of the public contract;
 - 33.01.3.8.4 In a case in which there is substantial or material violation of the compliance procedure herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of Lessees, sub-Lessees or other organizations, individuals or groups who prevent or seek to prevent

directly or indirectly compliance with the policy as herein provided.

- 33.01.4 Anti-Competitive Practices. The Lessee certifies and warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Lessee, to solicit or secure this Lease Agreement; and that the Lessee has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for the Lessee, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Lease Agreement. For the breach or violation of the above warranty, and upon a finding after notice and hearing, the City shall have the right to terminate the Lease Agreement without liability, and, at its discretion, to deduct from the Lease Agreement, or otherwise recover the full amount of, such fee, commission, percentage, gift or consideration.
- 33.01.5 City's business non-discrimination policy. See Code Sections 2-1358 and 2-1387.
- 33.01.6 City's ethics in public contracting policy. See Code Sections 2-1481 through 2-1490.
- 33.01.7 City's conflicts of interest policy. See Code Section 2-1482.

34. MISCELLANEOUS PROVISIONS.

- 34.01 Identity of Owner and Manager. The City is the owner of record of the property of which the Premises is a part. The person authorized to manage the property, which includes the Premises, is the Aviation General Manager of the Department of Aviation.
- 34.02 Delegation of Authority. Any act, whether discretionary or ministerial, that the Aviation General Manager is authorized or required to perform under this Lease Agreement may be performed by such person or persons as the Aviation General Manager shall designate in writing to perform such acts.
- 34.03 Recording Prohibited. Neither City nor Lessee shall be entitled to record this Lease Agreement, any memorandum or short form of this Lease Agreement or any affidavit with respect to this Lease Agreement.
- 34.04 Severability. If any provision of this Lease Agreement or the application thereof to any person or circumstance shall become invalid or unenforceable to any

extent, such provision shall be struck and severed and the remainder of this Lease Agreement shall not be affected and shall continue to be enforceable to the greatest extent of the law. Each covenant and agreement contained in this Lease Agreement shall be construed to be a separate and independent covenant and agreement and the breach of any such covenant or agreement by City shall not discharge or relieve Lessee from Lessee's obligation to perform each and every covenant and agreement of this Lease Agreement to be performed by Lessee.

- 34.05 Time of the Essence. Time is of the essence with regard to each provision of this Agreement.
- 34.06 Drug-Free Workplace Policy. Lessee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on any City property, including, but not limited to, the Leased Premises.
- 34.07 Interpretation. The language of this Lease Agreement shall be construed according to its fair meaning, and not strictly for or against either City or Lessee. This Lease Agreement shall be construed and performed according to the laws of the State of Georgia. In the event of a dispute with regard to interpretation of any provision of this Lease Agreement, the parties agree to bring suit and be subject to the jurisdiction of the Fulton County Superior Court.
- 34.08 Section Headings. The section headings contained herein are for the convenience of City and Lessee and are not to be used to construe the intent of this Lease Agreement or any part thereof, nor to modify, amplify, or aid in the interpretation or construction of any of the provisions thereof.
- 34.09 Reference to Clause or Section. When reference in this Lease Agreement is made to a specific clause with a specific title set forth in a section heading or section number, such reference will include all sections and subsections of such clause.
- 34.10 No Third-Party Beneficiary. The provisions of this Lease Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any third person, nor shall this Lease Agreement be deemed to have conferred any rights, express or implied, upon any third person unless otherwise expressly provided for herein.
- 34.11 Fraud and Misrepresentation. Any written or oral information provided by Lessee, directly or indirectly related to the performance of the services required by this Lease Agreement, constitutes material representations upon which the City relies for the requirements of the Lease Agreement and compliance with

local, state and federal laws, rules and regulations. Lessee agrees to notify the City immediately of any information provided to the City that it knows and/or believes to be false and/or erroneous and immediately provide correct information to the City and take corrective action. Lessee further agrees to notify the City immediately of any actions or information that it believes would constitute fraud or misrepresentation to the City in performance of this Lease Agreement, whether or not such information actually constitutes fraud and/or misrepresentations, by contacting the Integrity Line 1-800-884-0911. Lessee agrees to place signage provided by the City regarding the Integrity Line at the location to which Lessee's employees report to perform the services required by this Lease Agreement. Lessee acknowledges and agrees that a finding of fraud or other impropriety on the part of the Lessee or any of its subcontractors may result in suspension or debarment of the Lessee; and the City may pursue any other actions or remedies that the City may deem appropriate. Lessee agrees to include this clause in its subcontracts and take appropriate measures to ensure compliance with this provision.

34.12 Integrated Agreement, Modification. This Lease Agreement contains all the agreements of the parties and cannot be further amended or modified except by written agreement. If the parties hereto previously have entered into or do enter into any other lease, license, permit or agreement covering the Leased Premises or facilities at the Airport, this Lease Agreement and the terms, conditions, provisions and covenants hereof shall apply only to the Leased Premises herein particularly described, and this Lease Agreement or any of the terms, conditions, provisions or covenants hereof shall not in any way or in any respect change, amend, modify, alter, enlarge, impair or prejudice any of the rights, privileges, duties or obligations of either of the parties hereto under or by reason of any other said lease, permit, license or other agreement between said parties.

34.13 Force Majeure. Neither party shall be deemed to be in breach of this Lease Agreement by reason of a failure to perform any of its obligations hereunder to the extent that such failure is caused by strike or labor troubles, unavailability of materials or utilities, riots, rebellion, terrorist attack, insurrection, invasion, war, action or interference of governmental authorities, acts of God, or any other cause whether similar or dissimilar to the foregoing which is reasonably beyond the control of the parties (collectively "Force Majeure Event"). If either party claims the occurrence of a Force Majeure Event, such party must promptly give notice to the other of the existence of such Force Majeure Event, the nature and extent thereof, the obligation hereunder affected thereby and the actions to be taken to abate or terminate such event. Notwithstanding the existence of any Force Majeure Event, this Clause shall not apply to and Lessee shall not be

relieved of its obligation to pay Rent or other sums due hereunder, such obligation being absolute and unconditional.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officials or officers, to be attested, and their respective seals to be hereunto affixed, as of the day and year first above written.

ATTEST:

XXXXXXXXXXXXXXXXXXXX

Member/Manager

By: _____
XXXXXXXXXX

Name: _____

Title: _____

ATTEST:

CITY OF ATLANTA:

Municipal Clerk

By: _____
Mayor

RECOMMENDED:

APPROVED:

Aviation General Manager

Chief Procurement Officer

APPROVED AS TO FORM:

Sr. Assistant City Attorney

EXHIBIT A

Survey and Legal Description of the Property – Leased Premises

EXHIBIT B

Legislation

Ground Lease

EXHIBIT C

DESIGN AND CONSTRUCTION REQUIREMENTS

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Attachments

Attachment 1: Scheduling Requirements

Attachment 2: Quality Control Program

Attachment 3: Lessee's Interim Lien Waiver

ARTICLE I

DEFINITIONS

All definitions listed below are applicable to this **Exhibit C** to the Ground Lease.

Definitions. As used in this **Exhibit C** to the Ground Lease, the following terms shall have the meanings indicated unless a different meaning is specifically provided or unless the context otherwise requires:

“Acceptance” means CITY’s written acceptance of a Deliverable or Work in accordance with the terms of this Ground Lease.

“Action” means any demand, assertion, claim, action or proceeding, judicial or otherwise.

“AOA” means the Aircraft Operating Area, which is any area of the Airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. The AOA shall include paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway, or apron.

“Airport” means Hartsfield-Jackson Atlanta International Airport.

“Applicable Law” means all federal, state, municipal, CITY or local statutes, laws, ordinances, codes, rules, regulations, standards, executive orders, consent orders, orders and guidance from regulatory agencies, judicial decrees, permits, licenses or other governmental requirements of any kind, now in effect or that come into effect during the Term (and any present or future amendments to such Applicable Laws) that relate to: (i) the business of CITY; (ii) the business of Lessee; (iii) this Lease Agreement; (iv) the sustainability initiative, (v) the Airport; or (vi) any other matters relating to this Lease Agreement.

“Approval” means all permits, permissions, consents, approvals and licenses from all government authorities having jurisdiction or approval rights with respect to the Project and as otherwise described in this Lease Agreement.

“Beneficial Occupancy” means the stage of construction before Final Acceptance at which the Lessee does occupy the building, structure or facility, or a portion thereof, for the purpose it was constructed.

“Calendar Day” means every day of each year. All dates and durations on the Project are based on Calendar Days.

“Change of Control” means with respect to a legal entity: (i) the sale of all or substantially all of the entity’s assets to a third party; (ii) a merger of the legal entity with another entity, including, without limitation merger structures where the legal entity survives the merger (e.g. reverse or forward triangular mergers); or (iii) a transaction or related series of transactions resulting in the

sale of the stock, membership units or other equity of the entity (a) constituting either fifty-one percent (51%) or more of the equity of the entity or (b) giving the purchaser Control of the entity.

“CITY” means the CITY of Atlanta, a municipal corporation of the State of Georgia.

“CITY Rules” means such codes of ethics, business standards, and/or work rules of the CITY that are from time to time modified.

“CITY’s Representative” means the authorized agent of the CITY for monitoring the Lessee’s performance of the sustainability initiative, and for conducting the activities and discharging the CITY’s responsibilities arising from this Lease Agreement. The Department of Aviation Assistant General Manager is designated as the CITY’s Representative for this Ground Lease. CITY will provide written notice to Lessee in the event the CITY’s Representative changes.

“Claim” means a written demand or assertion by the Lessee seeking an extension or shortening of any Milestone, the adjustment or interpretation of Lease Agreement terms, or other relief arising under or relating to the Lease Agreement following denial of a submittal for Change Notice Request.

“Code” means the Code of Ordinances of the CITY of Atlanta, Georgia Ordinances.

“Consent of Surety” means a written confirmation from the Surety approving an action.

“Construction Documents” means the sealed Plans and Specifications of Lessee that are issued for construction. The Design Architect and Design Engineer shall be licensed by the State of Georgia. The Program Requirements establish the obligations of Lessee to meet certain parameters. The Program Requirements will be modified through the CITY’s acceptance of Design Architect’s /Engineer’s deliverables for design and the Construction Documents as set forth in **Exhibit C** and in this Lease Agreement.

“Contractor” means the “Lessee” when used from time to time in this Ground Lease.

“Critical Path Method” means the method of project scheduling set forth on **Exhibit C, Attachment 1** and/or in **Exhibit I**.

“Deadline” means any timeframe or deadline for performing any Services or delivering any Deliverables, as provided in this Ground Lease, including, without limitation, the Deadlines set forth on **Exhibit I**.

“Deliverables” means Plans, Specifications, Drawings, Equipment, Software, Materials, systems, or other items that are to be designed, developed, and procured by or through Lessee for CITY in connection with the Project.

“Design Architect” means the firm(s) selected or to be selected by Lessee, with CITY’s reasonable approval, responsible for the design of the Project.

“Design Engineer” means the firm(s) selected or to be selected by Lessee, with CITY’s reasonable approval, for the engineering design of the Project under the direction and supervision of the Design Architect.

“Drawings” means the graphic and pictorial portions of the Construction Documents showing the design, location and dimensions of the Work, including plans, elevations, sections, details, schedules and diagrams.

“Emergency Telephones” or “ETEL” means emergency telephone system for the public.

“Equipment” means all equipment, machinery, and associated supplies that are required to be delivered to CITY pursuant to this Ground Lease.

“Firm(s)” means any individual, partnership, corporation, association, joint venture or other legal entity permitted by law to practice or offer professional or consultant services.

“Final Completion” means the sustainability initiative or a specific portion thereof shall be deemed Finally Completed when the Lessee so certifies to the City in writing and the Lessee has provided the City with “As-Built Drawing and Specifications”, commissioning documentation in digital format, and copies of all maintenance manuals and digitally recorded maintenance training sessions.

“Force Majeure Event” shall mean (a) strikes, labor disputes, work stoppages, or picketing (legal or illegal); (b) adverse weather conditions not reasonably foreseeable or unusually severe weather; (c) acts of God, including, without limitation, floods, hurricanes, tornadoes, high winds, sinkholes, landslides, earthquakes, epidemics, quarantine and pestilence; (d) fires or other casualties; (e) freight embargoes; (f) governmental actions, restrictions or moratoria; (g) acts of a public enemy, civil commotion, riots, insurrections, acts of war, blockades, terrorism, effects of nuclear radiation or national or international calamities; (h) sabotage or vandalism; (i) condemnation or other exercise of the power of eminent domain; (j) the passage or enactment of, or the interpretation of, any governmental requirement, and the orders of any governmental authority having jurisdiction over Lessee or the Work; (k) delays in any approval process of any governmental authority to the extent such delays are not due to any fault, negligence, or lack of diligence of Lessee or its agents, employees, contractors, subcontractors, or consultants; (l) actions of CITY (and its agents, employees or other representatives) not permitted by the Ground Lease or by law; (m) inconvenience, delays, inefficiencies or loss experienced by Lessee caused by the presence and operations of other CITY contractors working within the limits of the Project; and (n) restraint or other act by court or public authority to the extent such delays are not due to any fault, negligence, or lack of diligence of Lessee or its agents, employees, contractors, subcontractors, or consultants. Force Majeure shall in any event exclude: (a) lack of sufficient funds or any other financial difficulty of Lessee, and (b) adverse weather (1) occurring during non-work periods or on any day which is not a workday, unless Lessee can demonstrate that said weather impeded the Work the following day; or (2) which shall not result in a direct and actual delay in Lessee’s performance of Work at the time of such inclement weather.

“GAAP” means generally accepted accounting principles in effect in the United States of America from time to time.

“Governmental Authority(ies)” means any federal, state and/or local agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over all or a portion of the Work.

“Insolvency/Bankruptcy Event” shall be deemed to have occurred if Lessee: (i) is subject to a petition for relief under the laws of the United States codified as Title 11 of the United States Code; (ii) is subject to an involuntary petition for relief under the United States bankruptcy laws; (iii) seeks, consents to or does not contest the appointment of a receiver, custodian or trustee for itself or for all or any part of its property; (iv) files a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of any state or other competent jurisdiction; (v) admits in writing that it is generally not paying its debts as those debts become due; (vi) gives notice to any governmental body of insolvency or pending insolvency; (vii) suspends material business operations; (viii) becomes “insolvent” as that term is defined under applicable fraudulent transfer or conveyance laws; or (ix) makes an assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors.

“Intellectual Property Rights” means a) copyrights, trademarks, moral rights, and any other rights to any form or medium of expression, (b) trade secrets, privacy rights, and any other protection for confidential information or ideas, (c) patents and patent applications, (d) any items, information or theories which are protectable or registrable under any of the copyright, patent, trade secret, trademark, confidentiality or other similar laws, and (e) any other similar rights or interests, recognized by Applicable Law.

“Leased Premises” means the location where the sustainability initiative and Systems are to be constructed, installed and implemented and where any related sustainability initiatives are to be performed.

“Lessee Default” shall be deemed to have occurred if CITY in good faith concludes that one or more of the following has occurred: (i) Lessee fails to meet a Milestone or a Deadline or CITY reasonably concludes that such a failure is imminent; (ii) Lessee’s acts or omissions materially jeopardize the ability of Lessee or CITY to perform its material obligations under this Ground Lease (a “Material Adverse Event”); (iii) Lessee fails to make prompt payment in full to any of its employees, agents, Subconsultants, mechanics, materialmen, or laborers; (iv) Lessee violates any Applicable Law; (v) Lessee or Lessee’s insurer fails to provide notice regarding the cancellation or amendment of the insurance required by this Ground Lease; (vi) Lessee fails in any respect to meet any of its obligations under this Ground Lease, or (vii) any representation or warranty of Lessee in this Ground Lease is or becomes false.

“Material Safety Data Sheet” means a document that provides pertinent information about the nature of a particular chemical substance or mixture, which Material Safety Data Sheet is developed by the manufacturer or formulator of the hazardous substance or mixture. The specific

criteria for a Material Safety Data Sheet are defined and prescribed in Title 29 of the Code of Federal Regulations, Section 1910.1200.

“Material Adverse Effect” means an actual or, in CITY’s good faith opinion, an imminent, material adverse effect, change, or impact on the quality or timeliness of the Deliverables or Services or the ability of either Party to meet its obligations under this Ground Lease.

“Materials” means all supplies, products, tools, appliances, Equipment, Software and utilities that are needed or used by Lessee to build, construct, install, integrate, implement, test, commission, operate, maintain and support the Project.

“Milestone” means any required steps, stages, phases and service levels associated with the Deliverables or Services that Lessee is required to meet, including, without limitation, the Milestones set forth on **Exhibit I**.

“Notice to Proceed” means formal written notice from CITY to Lessee directing Lessee to begin performing its obligations under this Lease Agreement, which may be issued contemporaneously with or after the formal execution of this Lease Agreement by CITY.

“Permits” means permits, consents, approvals, authorizations, certificates and approvals from all Governmental Authorities, quasi-Governmental Authorities, which are required for the planning, design, construction, completion, use and occupancy of the Project and the Project Improvements.

“Person” means an individual, partnership, corporation, joint stock company, trust (including a business trust), unincorporated association, joint venture or any other entity, the United States, or a federal, state or political subdivision thereof or any agency or court of such state or subdivision.

“Program Requirements” means the program for the design, construction and equipping of the sustainability initiative as set forth in **Exhibit E** and made a part of this Ground Lease.

“Project” shall mean the Deliverables and Work required from Lessee pursuant to this Lease Agreement as defined by the Program Requirements and the permitted drawings and specification.

“Project Schedule” means the time period for performing components of the Work, including phasing of construction, times of commencement and completion required of each component of construction, and ordering and delivery of equipment requiring long lead-time, following the requirements as attached as **Exhibit C, Attachment 1**, as the same may be updated from time to time by Lessee in accordance with the terms of this Ground Lease.

“Request For Proposal” means CITY’s solicitation for proposals for the work governed by this Lease Agreement.

“Response” means all responses, proposals and other information submitted by Respondents in response to CITY’s Request For Proposal.

“Services” means all services, tasks, functions, or assignments to be performed by Lessee for CITY under this Lease Agreement, whether one-time or recurring. This Lease Agreement uses the term “Deliverable” to refer, generally, to tangible deliverables (e.g. Drawings, Plans, Specifications, Software, equipment, etc.) and “Services” to refer to tasks, functions and related obligations of Lessee, but for purposes of this Lease Agreement, unless context clearly suggests otherwise, “Deliverables” shall be deemed to include “Services” and “Services” shall be deemed to include “Deliverables.”

“Software” means any computer programs and applications, in both human readable source code and machine readable object code format, that comprise a part of or are to be delivered in connection with the System, as a Deliverable or in conjunction with the Services, together with any modifications, bug fixes, updates, upgrades, new versions and derivative works associated with those computer programs and applications, and all associated documentation supplied in accordance with the Ground Lease.

“Specifications” means the written requirements for materials, equipment, construction systems and standards and workmanship for the Work and performance of related services, as depicted by the Design Architect in the Ground Lease Documents.

“Subcontractor” means any Person that Lessee has contracted to perform Work required under the Lease Agreement.

“Substantial Completion” or “Substantially Completed” means the Project, or a specified portion thereof, shall be deemed Substantially Completed or having achieved Substantial Completion when (a) the Work is sufficiently complete in accordance with the Ground Lease Documents so the Lessee can occupy or utilize the Project, or a specified portion thereof, for its intended use, and (b) the Lessee has inspected all Work, and certifies that the Work, except as noted, is completed in accordance with the Ground Lease Documents and prepared a punchlist identifying all incomplete and non-conforming items of Work and (c) the Lessee has obtained all necessary permits and regulatory approvals necessary for the Lessee to occupy and begin use or operation and (d) all operations and maintenance manuals have been accepted by Lessee and copies have been provided to the City.

“Suppliers” means suppliers selected and engaged by Lessee to supply materials and equipment necessary for the Deliverables and Work.

“Surety” means the corporation, partnership, or individual, other than the Lessee, executing payment or performance bonds which are furnished to the CITY by the Lessee.

“Work” means all of the administrative, manufacturing and supply, installation, construction, check-out, testing, verification, acceptance, management, documentation, and other duties and Services of the Lessee to produce and deliver a fully functioning Project, that satisfies all of the requirements of this Lease Agreement.

ARTICLE II

LESSEE’S RESPONSIBILITIES

2.1 Design and Construction Obligation.

(i) Lessee shall not begin performing Services until it has received a Notice to Proceed. Lessee shall assume all financial and other risks for performing or preparing to perform the Services prior to receiving the Notice to Proceed.

(ii) Subject to the provisions of this Ground Lease, Lessee hereby undertakes to cause and obtain the (i) design, permitting, and construction of the Work in accordance with this **Exhibit C, Design and Construction Documents** pursuant to **Exhibit E, Program Requirements**, (ii) to cause Substantial Completion of the same to occur on or before the Scheduled Completion Date, as the same may be extended pursuant to the provisions of this Lease Agreement, and (iii) to equip the Project in accordance with the Program Requirements. All costs, expenses and expenditures in connection with the permitting, design and construction of the Work, including, without limitation, the amounts owing to the Subcontractors and Suppliers for supervision, transportation, labor, materials or Permits or other matters in connection with the Work, shall be paid by Lessee.

(iii) Lessee shall manage, direct and cause the permitting, design, construction and equipping of the Work, and shall coordinate the activities of all Subconsultants, Subcontractors and Suppliers involved therein. Lessee shall meet with the Design Architect and other Persons providing design Services or construction Work on a regular and frequent basis and as specifically provided herein in order to assure the performance of the Work in accordance with the terms of this Ground Lease. To the extent Lessee has, obtains, or retains rights under any Subcontract pertaining to the Work, Lessee will exercise such rights in accordance with all approval and consent provisions provided to CITY in this Ground Lease. Lessee shall ensure that all warranties provided by the Subcontractors, including, without limitation, the architectural, engineering and other design consultants, are consistent with the terms of this Lease Agreement.

(iv) Lessee shall provide all labor, materials, equipment and all services required to implement the scope defined by the Lessee’s construction drawings and specifications, as accepted by CITY and in accordance with the Program Requirements.

(v) Lessee shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other non-

construction services furnished by the Lessee under this Lease Agreement. The Lessee shall, without compensation, correct or revise any errors or deficiency in the designs, drawings, specifications and other non-construction services and perform any necessary rework or modifications including any damage to real personal property, resulting from the design error or omission.

(vi) The standard of care for all design services performed under this Lease Agreement shall be the care and skill ordinarily used by members of the architectural or engineering professions practicing under similar conditions at the same time and locality. Notwithstanding the above, in the event that the Ground Lease specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.

(vii) The Lessee will be responsible for acquiring all required utilities and coordinating the design and installation with the appropriate agencies and the DOA. This would include, but not limited to, natural gas, water, sewer and electrical power. Current existing capacity for all utilities will need to be verified by the Lessee to determine if increased capacity and/or improvement to existing systems are required. The current Airport sewer system will not be available for this Development and a potential solution utilizing the Airport's SkyTrain bridge structure to access the City of College Park sewer system on the west side of I85 may be available for consideration and will need the approvals of the appropriate agencies and the DOA.

(viii) Neither the City's review nor acceptance of the services required under this Ground Lease, shall be construed as a waiver of any rights under this Ground Lease or any cause of action arising out of performance of this Ground Lease. The Lessee shall remain liable to the City in accordance with applicable law for all damages to the City caused by the Lessee's negligent performance.

(ix) The rights and remedies of the City provided for under this Ground Lease are in addition to any other rights and remedies provided by Applicable Law.

2.2 Services to be Performed by Lessee. Lessee shall cause the Project to be designed and constructed in an orderly, expeditious and efficient manner in accordance with the Applicable Laws, the Program Requirements, the Project Schedule, and the Construction Documents. Without limiting Lessee's obligations hereunder, Lessee shall:

(x) comply with the requirements of **Exhibit C, Attachment 1;**

(xi) retain the services of the Design Architects and consultants and coordinate the design of the Project to achieve all of the Program Requirements set forth in **Exhibit E;**

(xii) direct, coordinate and supervise the preparation of all submissions necessary in connection with the Permits to be obtained by Lessee, as appropriate and as notified by CITY, negotiate with and act as liaison to the Governmental Authorities in connection with obtaining such Permits. Lessee shall obtain and provide to the appropriate Governmental Authorities all drawings, documents, information, consents and such other items necessary to secure the Permits. All applications and other documents submitted by or on behalf of Lessee in connection with the Permits shall be available for review by CITY both prior to and after submission to the Governmental Authorities. Lessee shall keep CITY fully apprised of the status of processing the Permits and shall deliver copies of the Permits promptly after issuance by the Governmental Authorities. Notwithstanding anything to the contrary contained herein, Lessee shall not be required to obtain operational permits required for CITY business activities but will endeavor to identify and inform CITY of all required operational permits (including permits for the operation of power generation and fuel systems) not less than sixty (60) days prior to the Scheduled Completion Date.

(xiii) cause the construction services specified in the Ground Lease to be performed by a General Contractor licensed in the State of Georgia;

(xiv) negotiate, procure and retain the services of Subconsultants, Subcontractors and Suppliers, who shall, among other things, execute the design and construction of the Project;

(xv) investigate, hire, contract with, train, pay, supervise and, when necessary, engage the personnel reasonably required to be employed or engaged in order to properly and timely perform the Work. Such personnel shall in every instance be deemed independent contractors, agents or employees, as the case may be, of Lessee and not of CITY, and all matters pertaining to the employment, engagement, supervision, compensation, promotion and discharge of such independent contractors, agents or employees shall be the sole responsibility of Lessee. All salaries, wages, commissions and other compensation or expense of personnel employed by Lessee hereunder, including so-called fringe benefits, medical and health insurance, pension plans, social security, taxes, workers' compensation insurance and all other expenses of Lessee are and shall be the responsibility of and paid by Lessee. Lessee shall use reasonable efforts to cause all personnel used by Lessee, the Design Architect, the Design Engineer, and any Subconsultants or Subcontractors in the performance of the design and/or construction of the Project to be qualified by training and experience to perform their assigned tasks; CITY shall have the right to require Lessee and any Person to replace any on-site personnel that CITY finds reasonably objectionable with other staff available to Lessee and reasonably acceptable to CITY.

(xvi) procure and maintain, and require the Design Architects and Subconsultants and Subcontractors to procure and maintain, with responsible companies

reasonably acceptable to CITY, insurance coverage as set forth in **Exhibit D**. Such insurance shall in any event name the CITY as an additional insured, as their interests may appear. Such insurance shall include waivers by the respective insurance carriers of any and all rights of subrogation against the CITY, and Lessee shall promptly provide CITY with certificates evidencing such insurance;

(xvii) investigate and make a full timely written report to the insurance carriers of any accident at the Project, claim for damages relating to the design and/or construction of the Project, and damage to or destruction of the Project (and the estimated cost of repair thereof), and prepare and file any and all reports required by any insurance carriers in connection therewith;

(xviii) maintain at its regular business office separate, true and proper books, records, accounts, journals and files regarding its business transactions associated with the Project, and the design and construction of the Project, containing contracts, Ground Leases, all design documents (including, without limitation, the Construction Documents), shop drawings, change orders, applications for payment, Permits, rental Ground Leases and records, insurance policies, correspondence, receipts, bills, equipment purchase orders and vouchers, and all other documents and papers pertaining to the Project and/or the design and construction thereof; all financial records relating to Project accounting shall be prepared in accordance with GAAP, consistently applied, and shall be available for audit, review and copying by CITY for a period of three (3) years after Final Acceptance of the Project;

(xix) at all times during the term of this Ground Lease, take such action as may be necessary to comply with any and all Applicable Laws, to the extent that such Applicable Laws are susceptible of being complied with by Lessee or Persons under its control;

(xx) promptly furnish to CITY, upon receipt by Lessee, copies of any and all legal notices received by Lessee affecting the Project, including, without limitation, notices from Governmental Authorities, and any other notice not of a routine nature;

(xxi) promptly notify CITY of any Action that is initiated or threatened in connection with the Project or against Lessee in connection with the Project.

ARTICLE III

DESIGN OF THE PROJECT

3.1 Design Consultants.

Lessee shall provide a copy of such Design Subcontract and all amendments thereto to CITY for its review and comment. Lessee shall deliver to CITY a copy of all other

contracts with any other consultants engaged by Lessee to perform design services in connection with the Project.

3.2 Development of Design Documents.

(i) Attached hereto as **Exhibit E** is the Program Requirements with respect to the contemplated Project. The Program Requirements may not be modified nor may the scope and/or quality of Work set forth therein be modified without the approval in writing by CITY. Within the times set forth in the accepted Project Schedule, Lessee shall cause the Design Architects to prepare and deliver, to CITY, Construction Documents as described herein.

(ii) Lessee shall cause the Design Architects to timely prepare and deliver to CITY, but in no event later than the date set forth in the accepted Project Schedule unless otherwise agreed to in writing by CITY, for the review of CITY, complete Construction Documents, including Drawings, Plans and Specifications setting forth in detail all requirements for the Construction Documents.

(iii) Lessee shall update as necessary, the Project Schedule setting forth the dates for delivery of the various design Deliverables and for the review thereof, durations of design phases and dates for required submittals and bid packages, and of all design meetings with the Design Architects, coordinated with the requirements of the Project Schedule, and shall deliver a copy of the Project Schedule and updates thereof to CITY sufficiently in advance to afford CITY an opportunity to review the Project Schedule and to attend and participate in such meetings. Lessee shall prepare, or cause the Design Architects to prepare, minutes of each design meeting reflecting the decisions made, CITY comments given and objections raised at the meeting, and shall use its best efforts to accomplish distribution thereof to CITY and others in attendance within seven (7) days after each meeting. Such minutes shall be reviewed, amended if necessary, and approved at the next design meeting following the distribution thereof. Lessee is encouraged to propose "fast tracking" of Construction activities to maintain the Project Schedule.

(iv) No change from a previously accepted design concept shall be permitted unless CITY agrees to the change in writing.

(v) Design will be accomplished in accordance with the Department of Aviation Design Guidelines located at <http://apps.atlanta-airport.com/engineeringguidelines/elements.asp?submod=main&typeid=1> and stamped by a Professional Engineer licensed in the State of Georgia.

(vi) CITY design reviews will occur at the Schematic Design, 65% Design Development, and 95% Construction Document design phases.

3.3 CITY's Review and Approval.

(i) Any matters which are to be submitted to CITY for CITY's review or consent shall be submitted to CITY under cover of a request for approval which shall state when Lessee wishes to have CITY's response. If information which CITY reasonably deems necessary to fully accomplish its review of the matter in question is not provided to CITY, the applicable review period shall not commence until such information has been furnished to and received by CITY. During the course of such review, Lessee and CITY shall proceed in good faith and Lessee shall make available to CITY such Persons involved in either the preparation of the subject drawings and documents or the construction of the Project described therein as CITY shall reasonably request for the purpose of consultation and explanation of the subject drawings and documents. On or before the expiration of the review period, CITY shall prepare and submit to Lessee in writing any comments, suggestions, modifications or objections it may have to the subject drawings and documents. Otherwise, if CITY consents or approves the submission, CITY will execute a written modification of the Program Requirements.

ARTICLE IV

CONSTRUCTION OF THE PROJECT

4.1 Duties of Lessee. Lessee shall, or shall require Subcontractors engaged by it to perform the Work to, diligently pursue, perform and prosecute the Work to completion, in accordance with the Program Requirements, the accepted Project Schedule and the Construction Documents, the entire construction of the Project and shall, subject to Force Majeure Delays and adjustments permitted by the terms of this Ground Lease, cause Substantial Completion to occur on or before the Scheduled Completion Date.

4.2 Award of Contracts. Before awarding any subcontracts, Lessee shall furnish to CITY in writing the names of the Persons (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work and the bidding package Lessee proposes to use. CITY will promptly reply to Lessee in writing stating whether or not the CITY has reasonable objection to any such proposed Person or bid package. Failure of CITY to reply within seven (7) days after such information has been furnished to and received by CITY shall constitute approval thereof. Upon the execution of such Subcontracts, Lessee shall provide copies thereof to CITY. Except as otherwise provided herein, amounts owing under subcontracts and other such Ground Leases, including costs, fees and expenses of Persons retained by Lessee or Lessees on behalf of Lessee in connection with the construction of the Project, shall be the responsibility of Lessee. Lessee shall require that Lessees and Persons performing the Work obtain the Permits and insurance required by this Ground Lease and the contracts to be obtained by them and shall provide CITY with copies of such Permits and the required insurance certificates.

4.3 Supervision of Construction. Lessee shall supervise and coordinate the construction of the Work so that the Project is constructed, equipped, furnished and completed in a good and workmanlike manner and in accordance with the terms of this Ground Lease. Lessee shall be responsible for the payment of all costs and expenses incurred in connection with the construction of the Work. Lessee shall enforce substantial compliance with the terms of the Ground Leases with the Design Architects, Subcontractors and Suppliers and require their performance substantially in accordance therewith. Lessee shall administer the subcontracts for the design and construction of the Work and require that Work be continuously and diligently performed in order to achieve Beneficial Occupancy on or before the scheduled completion date, as the same may be adjusted pursuant to the terms hereof. Without limiting the foregoing, Lessee shall or shall cause the Subcontractors to:

(i) coordinate and schedule the Work as it progresses and the inspections of the Work by consultants, review inspection reports, schedule and conduct preconstruction and construction meetings, review and revise estimates of construction costs, and implement courses of action when requirements of Subcontracts for the design or construction of the Work are not being fulfilled, including the termination of any Subcontractors which are not in substantial compliance with its Subcontract and has failed to cure such noncompliance;

(ii) negotiate and prepare bid packages for any portion of the Work necessary for the award of Subcontracts as set forth herein, coordinate selections and procedures therefore and maintain harmonious labor relations;

(iii) negotiate final payments and/or final settlements with all parties involved in the construction of the Work. Lessee shall commence, defend and settle in good faith such legal actions and proceedings concerning the design and construction of the Work (other than defense of CITY in legal actions or proceedings in which CITY is a defendant, which defense shall be assumed by CITY's attorneys) as are necessary or required in the opinion of Lessee and retain counsel in connection therewith. If any claims or liens are filed with respect to the Project by Subconsultants, Subcontractors or Suppliers of Lessee, take such action as is necessary to cause the release, removal or bonding off thereof within fourteen (14) days of notice of the filing thereof;

(iv) cause any defects in the construction of the Work or in the installation or operation of any equipment or fixtures therein to be corrected during construction and applicable warranty periods;

(v) hold weekly job meetings with all job-site personnel, including Subcontractors and Subconsultants, and the Design Architects, as appropriate and necessary, during the construction of the Project to review the progress of development of the Project and completion of the Work. CITY shall be given notice of and permitted to

attend such meetings and any other meeting involving all or some of such parties. If requested by Lessee, CITY shall confer with Lessee regarding the need or appropriateness of CITY's attendance at a particular meeting; however, the foregoing shall not obligate CITY to attend nor prevent CITY from attending any such meeting(s). Lessee shall cause copies of minutes of any and all such meetings to be prepared and delivered to the participants and CITY;

(vi) record the progress of the Project and submit written progress reports to CITY including information on each Subcontractor's work, as well as the entire Project, showing percentages of completion. Lessee shall keep a daily log containing a record of each Subcontractor's work on the site, number of workers, identification of equipment, Work accomplished, problems encountered and other similar relevant data as CITY may require.

(vii) advise CITY of any delays or anticipated delays in meeting the Project Schedule and of the actual dates on which the various stages and construction indicated on the Project Schedule are started and completed;

(viii) if construction of the Work does not progress in accordance with the dates required by the Project Schedule, as it may be adjusted pursuant to the terms of this Lease Agreement, or if it is unlikely that such dates will be met based on the then progress of the Work, Lessee must take reasonable steps to cause an acceleration of the Work by all available means including utilization of overtime, additional work crews and alternate material suppliers, at no cost to the CITY;

(ix) maintain at the Project Site one record copy of all Subcontracts, Drawings, Specifications, addenda, Change Orders and other modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved shop drawings product data, samples and similar required submittals. Lessee shall make all such records available to the Design Architects and upon completion of the Project shall deliver them to CITY;

(x) arrange for the delivery, storage, protection and security of materials, systems and equipment ordered by Lessee that are part of the Work until such items are incorporated into the Project, unless the materials, systems or equipment are not delivered pursuant to Lessee's Scope of Work;

(xi) comply and cooperate with, and cause the Subcontractors and Design Architects to comply and cooperate with the CITY's Rules;

(xii) cooperate and facilitate (and require Subcontractors and Design Architects to cooperate and facilitate) in the orderly transition from construction to occupancy and operation (including, without limitation, delivery of all maintenance manuals, warranties and the like);

(xiii) supervise and coordinate the completion of “punch list” items and warranty work following Substantial Completion;

(xiv) during the Work’s progress, require the plumbing, air conditioning, heating, ventilation, electrical, and mechanical Subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe, and duct lines whether concealed or exposed, which were otherwise not installed exactly as shown on the Contract Drawings. The Lessee shall also cause any changes to the permitted Drawing and Specifications to be noted on the As-built Drawings and Specifications. Each Drawing shall be noted “As Built” and shall bear the date and name of the Subcontractors that performed the work. CAD filed of the record drawings shall be updated by the Lessee to reflect their “As Built” condition. Lessee shall provide City with both a hard copy and digital copy of the “As Built” Drawings and Specifications; and

(xv) Lessee shall provide City both digital and hard copies of all systems commissioning’s and maintenance training associated with the Project.

4.4 Correction of Work. Upon notice from CITY that CITY reasonably determines that construction is not proceeding in accordance with the Construction Documents as they may be modified as permitted under this Ground Lease, Lessee shall cause any such nonconforming work to be re-executed by the party responsible therefore.

4.5 Construction Change Orders.

(i) CITY may, at any time and from time to time, by a written Change Order Request (“COR”) cause changes in the Work. Such changes may include, but are not limited to, changes in the Construction Documents, the Schedule or the Program Requirements. The CITY, without invalidating this Ground Lease and without notice to surety, may order changes in the Project, or changes that result from other acts or occurrences as set forth elsewhere in this Ground Lease, the Work, consisting of additions, deletions, or other revisions (“Changes”). All Changes shall be authorized by a Change Order, either a Bilateral Change Order or a Unilateral Change Order, signed by the CITY before the Change is implemented.

(ii) In the event a COR would impact the Project Schedule Lessee shall deliver to CITY Lessee’s written statement setting forth in detail the effect that such change would have on the Project Schedule, together with a statement of the known effect, if any, of all COR’s to date on the Project Schedule (“Change Order Quotation”).

(iii) Upon receipt of any Change Order Quotation, CITY shall review such proposal. Upon completion of such review, CITY, at its sole discretion, shall have the option to (i) accept the Change Order Quotation, in which event the parties shall be deemed to have agreed to the Change Order Quotation, (ii) enter into negotiations with Lessee concerning any aspect of the Change Order Quotation, or (iii) reject the Change

Order Quotation in writing, in which event the COR shall be deemed withdrawn and Lessee shall construct the Work pursuant to the Construction Documents without regard to such COR. Any failure of CITY to respond to a Change Order Quotation within seven (7) Days of delivery to CITY thereof shall be deemed disapproval of such Change Order Quotation and withdrawal of such COR. Upon CITY's acceptance of a Change Order Quotation, either as originally submitted or as modified with the Ground Lease of Lessee and CITY, Lessee shall cause the work required by such COR to be performed and the Project Schedule and the construction costs shall be adjusted as provided in the applicable Change Order Quotation.

(iv) Lessee's signature on a Change Order shall constitute a full, final and complete waiver and settlement of any and all claims, demands, and causes of action that Lessee has or may have in the future arising out of or relating to the Change Order and the occurrences, acts, omissions, or events upon which the Change Order is based. No "reservation of rights" or other attempt by Lessee to reserve rights arising from the Change Order shall be effective unless CITY and Lessee shall both agree in writing to the reservation within the four corners of the Change Order. This is defined as a "Bilateral Change Order." A Bilateral Change Order will be used to modify the Ground Lease adjustments to Milestones for the Change requires authorization by CITY Council.

(v) A "Unilateral Change Order" is an order to the Lessee issued by the CITY after the execution of this Ground Lease implementing a Change upon which the CITY and Lessee have not reached full agreement. A Unilateral Change Order will provide the scope of the Change. If the CITY and the Lessee cannot agree to the terms of a Change Order Request, the CITY shall have the right to issue a Unilateral Change Order directing the Lessee to proceed with the Change and the Lessee shall promptly proceed with implementing the Change.

(vi) Change Notice Requests. If at any time Lessee believes that acts or omissions of CITY or its designated representatives constitute a change to the Work not covered by a Change Notice, Lessee shall within seven (7) calendar days after such act or omission submit a written Change Notice Request explaining in detail the basis for the request. If Lessee intends to assert a Claim under this Clause, it must, within seven (7) calendar days after receipt of a Change Notice or at the time of submission of a Change Notice Request provide written notification of such intent.

(vii) If a Change Order Request or Change Notice Request is rejected by the CITY Representative, and Lessee intends to assert a Claim, Lessee must do so in strict compliance with the requirements set forth in the Dispute Resolution Section of the Ground Lease Agreement .

4.6 Payment and Performance Bonds.

Bonding Requirements. Lessee shall, upon award of this Ground Lease and prior to the commencement of construction, cause the Lessee's General Contractor to furnish Payment and

Performance Bonds in the amount of one hundred (100%) percent of the value of construction with the CITY named as a dual obligee. Such bonds shall be on the form attached as **Exhibit D-1**, issued by a surety company meeting the requirements set forth below in the penal sum equal to the value of construction as a guarantee of the full and faithful performance of the Services in accordance with the terms and provisions of this Ground Lease, of the discharge of all debts of the Lessee to its employees, Subconsultants, Subcontractors and Suppliers and in compliance with Applicable Law and **Exhibit D**. The bonding requirement may be accomplished through the Lessee's General Contractor so long as the CITY is named as a dual obligee. All bonds shall be issued in a form and by a surety acceptable to CITY and contain the surety's waiver of notice of all contract changes made pursuant to this Ground Lease. The Lessee and its surety agree that the penal sum of the bonds will be adjusted in the event of a Change in order that the penal sums of the bonds is always equal to the value of construction. The bonds shall be subject to the approval of CITY and shall be in a form satisfactory to CITY. Lessee shall provide CITY with evidence of the bonds if and whenever requested by CITY. The bonds shall be submitted and will be dated by CITY prior to commencement of construction.

Surety Requirement. Bonds shall be executed by a corporate surety satisfactory to CITY and meet the following minimum financial security requirements: (i) surety shall have a current Best's rating of not less than A-, and current Best's financial size category of not less than Class IX; (ii) surety shall be authorized by the Georgia Insurance Commissioner pursuant to a valid and current Certificate of Authority to conduct and transact surety business in the State of Georgia; and (iii) surety shall be a U.S. Treasury Circular 570 listed company. The surety shall appoint an agent for service in Atlanta, Georgia, upon whom all notices shall be served. The person executing the bonds on behalf of the surety shall file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney, and certified to by an official of the surety.

Changes in Bond. In the event the value of construction is changed, Lessee shall, within ten (10) days, deliver to CITY an amendment or rider to the bond increasing the final amounts of the bond to reflect the changed construction value or new bond shall be furnished in the final amount of the new value of construction. These bond(s) shall remain in effect through the period of performance, including the period of warranty, and as required under Georgia law.

Limitation on Effect of Bonds. The requirements contained in this Ground Lease as to forms and limits of the required bonds, as well as CITY's approval of bond coverage to be maintained by Lessee, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Lessee under this Ground Lease.

4.7 Delays and Extensions of Time.

Extension of Time For Performing. If Lessee is delayed in the commencement or progress of the Services wholly or primarily because of a Force Majeure Event or by other causes that CITY in its sole discretion may determine justify an extension of time, then Lessee's deadline for

performing the specifically affected Work shall be extended for such reasonable time as CITY may determine, but only: (i) if and to the extent such event or circumstance is beyond the reasonable control of Lessee; (ii) if and to the extent Lessee shall have taken all reasonable precautions to prevent delays associated with any such event or circumstance if the possibility of such event or circumstance was actually known or under the circumstances reasonably should have been known in advance to Lessee; (iii) if and to the extent such event or circumstance is not caused by Lessee's or Lessee's agents', materialmen's, Qualified Subconsultants', Subcontractors' or employees' acts or omissions; (iv) if and to the extent Lessee shall have taken all reasonable actions to mitigate the delays resulting from such event or circumstance; (v) if and to the extent that such event caused a delay of material activities associated with the Project; and (vi) if Lessee strictly complied with the requirements this Section.

Notice of Force Majeure. If Lessee is justifiably (as set forth above) delayed in performing because of a Force Majeure Event, Lessee shall, as soon as practicable **and to the extent reasonably possible within** twenty-four (24) hours after its awareness of the likely effects of the Force Majeure Event, provide to CITY written notice of the Force Majeure Event and shall, within seven (7) days **or within a mutually agreed time period** after the Force Majeure Event has ended, provide to CITY a written description of the impact caused on the performance of the Work by the Force Majeure Event, its steps for avoiding Material Adverse Effects from the Force Majeure Event, its actions to mitigate Material Adverse Effects caused by the Force Majeure Event and its steps for bringing Lessee back into compliance with the requirements of this Ground Lease.

Sole Remedy. For delays in the performance of Services justifiably caused by a Force Majeure Event, an extension in the time for completing the reasonably affected Services shall be Lessee's sole and exclusive remedy for any such delay. During the Design and Construction of the Sustainability Initiative, Lessee shall take commercially reasonable steps to avoid or minimize the potential effects of any Force Majeure Event.

No Damage for Delay. Lessee agrees that no monetary recovery may be claimed or obtained by Lessee in the event of a delay caused by Force Majeure Events or owner caused delays.

4.8 Liquidated Damages.

(i) Lessee and CITY recognize that time is of the essence of this Ground Lease and that CITY will suffer financial loss if the Work is not Substantially Completed by the Scheduled Completion Date, as the same may be extended in accordance with the provisions of this Ground Lease. CITY and Lessee also recognize the delays, expense and difficulties involved in proving, in court proceedings, or otherwise, the actual loss suffered by CITY if the Work is not Substantially Completed by such date.

(ii) If Lessee at any time believes that it is likely to miss a Deadline or Milestone, Lessee shall promptly notify CITY of the likely delay and the likely extent of the delay and shall make diligent efforts to avoid or minimize the delay or any Material Adverse Effects resulting from the delay. If a Deliverable or Work is not performed to completion in

accordance with all of the requirements of this Ground Lease prior to any applicable Deadline, Lessee shall pay to CITY as liquidated damages an amount equal to the amount specified in **Exhibit I** for each day during which Lessee has failed timely to meet such Deadline or Specification.

- (iii) The Parties further agree that the liquidated damages provided herein shall be the sole and exclusive remedy for the unexcused failure of the Lessee to meet any Deadlines or Milestones, provided that the failure did not result in a For Cause termination of the entire Ground Lease Agreement. The exclusivity of liquidated damages for CITY damages from delay in no way limits CITY's legal and contractual rights for all other types of damages that may arise under this Ground Lease.

ARTICLE V

PREVENTION OF LIENS

5.1 Liens. The Lessee agrees to keep the Work, the Job Site, the Project and the CITY's property free and clear of all liens related to labor and materials furnished in connection with the Work. The Payment Bond is intended to secure payment for labor and materials furnished in connection with the Work and the CITY's public property is not subject to liens.

5.2 Prevention of Liens and Encumbrances. Lessee shall take all actions within its control, including, without limitation, the execution, acknowledgement, delivery and filing of such waivers, releases and other documents, to prevent any mechanics' or materialmen's liens or any other liens or encumbrances from being filed on or in connection with any real property or improvements owned or leased by CITY as a result of or in connection with Lessee's performance or any other act or omission of Lessee or any Subconsultant. If any such lien or encumbrance is filed in connection with or placed on such property or improvements and if Lessee does not cause the lien or encumbrance to be fully and effectively released and discharged, or does not cause the lien or encumbrance to be bonded over in a manner acceptable to CITY, CITY shall be entitled, without prejudice to any other rights or remedies available to it, to pay directly to the holder of the lien or encumbrance all sums necessary to obtain the immediate release and discharge such lien. As each subcontractor completes its Work, Lessee will submit executed lien releases to the CITY for each subcontractor in the form of **Exhibit C, Attachment 3**.

ARTICLE VI

LICENSES AND PERMITS

6.1 Licenses and Permits. Lessee shall obtain, maintain and enforce all licenses necessary for Lessee's execution of the Work and the building permit and renewals thereof

and shall cause to be paid all fees and taxes which may be due and owing from time to time to federal, state and municipal authorities incidental to the Work to be provided by Lessee under this Ground Lease.

6.2 Permits. Lessee shall obtain, at its expense, all permits, licenses, certifications, clearances and approvals (“Permits”) desirable or necessary for the performance and completion of the Work in accordance with this Ground Lease and Applicable Law except for those Permits either obtained by the CITY on behalf of or covering Lessee. Lessee shall submit to CITY, before commencing the Services, evidence of all required Permits.

ARTICLE VII

INSURANCE AND BONDING

7.1 Liability Insurance. Lessee shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Georgia for the period this Ground Lease is in effect, the insurance coverages set forth in **Exhibit D**.

7.2 Waiver. Neither CITY nor Lessee shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to property or injury to persons, or any resulting loss of income, or losses under worker’s compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees, if and to the extent any such loss or damage is covered by insurance benefiting the party suffering such loss or damage.

ARTICLE VII

WARRANTY

8.1 Prohibition Against Assignment by Lessee. Lessee shall not transfer or attempt to transfer this Ground Lease or any rights herein or delegate its responsibilities hereunder and any such transfer or delegation or attempt to transfer or delegation shall be void and shall constitute a default under the provisions of this Ground Lease.

8.2 Warranty. Lessee warrants to CITY that all materials and equipment furnished under this Ground Lease will be of good quality and new and of recent manufacture, unless otherwise required or permitted by the Construction Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform with the requirements of the Construction Documents, including the Protocol Acceptance Testing. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy prescribed by law or the Construction Documents. Lessee shall indemnify, defend and hold CITY harmless from

all claims, losses, damages and expenses (including attorneys' fees or court costs) arising out of any failure of Lessee to perform warranty work within any applicable time period specified in the Construction Documents, or, if no such time period is specified, within a reasonable period of time, and shall pay to CITY all such losses, damages and expenses (including attorneys' fees, court or mediation costs) as may be incurred by CITY as a result of such failure, provided that, with respect to manufacturers' warranties, the failure occurs within the applicable trade Subconsultant's warranty period stipulated in the Specifications.

8.3 General Representations and Warranties of Lessee. In addition to any other representations and warranties of Lessee set forth in this Ground Lease, Lessee represents and warrants to CITY, as follows: (i) neither the execution, delivery nor performance of this Ground Lease by Lessee violates or conflicts with, or will violate or conflict with, any provision of Lessee's organizational or governing documents or instruments, any Ground Lease or other instrument or restriction to which Lessee is a party or by which Lessee or its property is bound or encumbered, or any Applicable Laws; (ii) the execution, delivery and performance of this Ground Lease has been duly authorized by Lessee's governing body and by any other necessary legal actions of Lessee, and this Ground Lease constitutes the valid and binding obligation of Lessee, enforceable in accordance with its terms, except as such enforceability may be limited by general principles of equity or bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally; (iii) Lessee is licensed, certified and otherwise authorized to perform the Work, and Lessee is not, with respect to the operation of its business or its performance of the Services, required to hold or maintain any license, permit, certification or other authorization that it does not currently hold and maintain; (iv) there are no actions, suits, claims or proceedings (pending or threatened) against, by, or affecting Lessee in any court or before any arbitrator or governmental agency or authority that may have an adverse effect on Lessee's assets, its financial condition, the operation of its business or its ability to perform its obligations under this Ground Lease; (v) Lessee has not been charged with, and to the best knowledge of Lessee, is not under investigation with respect to any charge concerning any violation of any provision of any Applicable Law with respect to its business, including, without limitation, those laws and regulations concerning the Services; (vi) all of the information provided by Lessee in its Response to the RFP was true, complete and accurate as of the final date of the date when the Response was complete and provided to CITY; (vii) Lessee (A) has, and each of Lessee's employees and Subconsultants that will perform the Services has, the necessary knowledge, skills, experience, qualifications, rights and resources to perform the Services in accordance with this Ground Lease, and (B) has successfully performed the Services or services that are substantially equivalent to the facilities, nor is the Lessee an affiliate of a high cost lender or a predatory lender, as defined by CITY of Atlanta Code Section 58-102.

8.4 Services Warranties of Lessee. Lessee warrants to CITY that: (i) all Deliverables and the System itself, once installed and implemented, shall meet or exceed all Specifications; (ii) it shall perform all Services in a professional, first-class and expert

manner and in accordance with the highest standards of its industry; (iii) all work shall conform to the highest standards of the engineering observed on successfully completed, large, complex projects; (iv) all Materials used by it in the Project and all Deliverables shall be of clear title, not subject to any lien or encumbrance and of the most suitable grade of their respective kinds for their intended uses, shall be free of any defect in equipment, material, design or workmanship and shall be of merchantable quality and fit for the purposes for which they are intended by CITY; and (v) any Software and other technology or other Deliverable furnished to CITY by Lessee or used in connection with the Services shall be non-infringing on the Intellectual Property Rights of any third party wherever located.

8.5 Subcontractors. All Subcontractors', manufacturers', and suppliers' express or implied warranties and guarantees respecting any part of the Services and any Materials used therein shall be obtained and enforced by Lessee for the benefit of CITY without the necessity of separate transfer or assignment thereof, provided that, if directed by CITY Representative, Lessee shall assign such warranties and guarantees in writing to CITY. CITY may bring suit at its expense to enforce a Subcontractor's or manufacturer's warranty.

8.6 No Limitation. This warranty shall not limit CITY's rights with respect to latent defects.

ARTICLE IX

TESTS AND INSPECTIONS; UNCOVERING AND CORRECTION OF WORK

9.1 Tests And Inspections.

Access of CITY. CITY shall at all times have the right to inspect Lessee in its preparation for or performance of the Services or delivery of the Deliverables, including for purposes of assessing (i) work quality, (ii) conformity of Lessee's work with the Specifications, and (iii) Lessee's conformity with its representations, warranties and covenants in the Ground Lease. This inspection right applies to all Lessee facilities directly or indirectly involved in the Project, all books and records relating to it and all personnel and Subconsultants involved in the Project. Lessee shall, without additional charge, provide reasonable facilities and assistance for the safety and convenience of the CITY's representatives in connection with such inspections. CITY's inspection shall not relieve Lessee of any responsibilities under this Ground Lease or constitute CITY's "acceptance" of any Services or Deliverables.

(i) Meet the requirements of the Quality Control Program attached as **Exhibit C, Attachment 2.**

(ii) If the Design Architects, CITY or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included above, Lessee will, upon written instruction from CITY, make

arrangements for such additional testing, inspection or approval by an entity acceptable to CITY, and Lessee shall give timely notice to CITY and the Design Architects of when and where tests and inspections are to be made so CITY may observe such procedures. CITY shall bear such costs except as provided below.

(iii) If CITY's and the Design Architects' observation of any inspection or testing undertaken pursuant to this Article reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply with (1) the requirements of the Construction Documents or (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, CITY will have the authority to order inspection and/or testing of such items or elements of the Work, or of a representative number of such items or elements of the Work, as it may in its reasonable opinion consider necessary or advisable, and Lessee shall, unless such inspection or testing reveals no failure to comply or such failure is as a result of defects in the Drawings and Specifications which Lessee did not or could not have known, bear all costs thereof, including the Architect's additional services, if any are required, made necessary thereby.

(iv) The cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by Lessee. If, during the course of the performance of any testing, inspection, control, balancing, adjusting, or similar work by Lessee or any Lessee, it is the reasonable opinion of the Design Architects and CITY that that Lessee or any Lessee has failed to perform such work in a satisfactory manner, Lessee shall retain the services of a testing laboratory or service organization which is satisfactory to CITY for the evaluation and testing of such Work. If the Work is found to be performed in a satisfactory manner, CITY shall reimburse Lessee for its out-of-pocket costs for such testing or service. If it is found to be performed in an unsatisfactory manner, Lessee will bear all costs and expenses.

(v) In connection with testing and inspection services performed at the expense of CITY, Lessee shall provide samples of materials and/or elements of the Work required as test specimens and shall provide incidental labor and facilities at the Site reasonably required in support of such services.

9.2 Uncovering Of Work. If a portion of the Work is covered contrary to requirements specifically expressed in the Construction Documents, it must, if required in writing CITY, be uncovered for observation by CITY and be replaced without change in the Scheduled Completion Date. If a portion of the Work has been covered in accordance with the Construction Documents which CITY has not specifically requested to observe prior to its being covered, CITY may request to see such Work and it shall be uncovered by Lessee.

9.3 Correction Of Work. Lessee shall promptly correct Work rejected by CITY or failing to conform to the requirements of the Construction Documents whether or not fabricated,

installed or completed. Lessee shall pay for correcting such rejected Work, including additional testing and inspections and any cost, loss, or damages to CITY resulting from such failure or defect. This obligation shall survive termination of this Ground Lease. If, within one (1) year after the Substantial Completion, or within the applicable time period specified in the warranties established above or in an applicable special warranty required by the Construction Documents, any of the Work is found to be defective or not in accordance with the Construction Documents, Lessee shall correct it promptly after receipt of written notice from CITY to do so unless CITY has previously given Lessee a written acceptance of such condition. This obligation shall survive acceptance of the Work under this Ground Lease and termination of the Ground Lease. CITY shall give such notice promptly after discovery of the condition. Lessee shall remove from the Site portions of the Work which are not in accordance with the requirements of the Construction Documents and are neither corrected by Lessee nor accepted by CITY. If Lessee fails to commence correction of nonconforming Work within ten (10) working days after its receipt of CITY's notice to correct such Work, subject to availability of materials, and thereafter diligently pursue such correction to completion, CITY may correct it by any commercially reasonable means. If Lessee does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from CITY, CITY may remove it and may store the salvable materials or equipment at Lessee's expense. If Lessee does not pay costs of such removal and storage within ten (10) working days after written notice, CITY may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by Lessee. If such proceeds of sale do not cover costs which Lessee should have borne, the Ground Lease Sum shall be reduced by the deficiency. If payments then or thereafter due Lessee are not sufficient to cover such amount, Lessee shall pay the difference to CITY. Lessee shall pay for the cost of making good all work of CITY or its separate Lessees destroyed or damaged by such correction or removal. Nothing contained in this Ground Lease shall be construed to establish a period of limitation with respect to other obligations which Lessee might have under the Construction Documents. Establishment of the time period of one (1) year as described in this Subparagraph relates only to the specific obligation of Lessee to correct the Work, and has no relationship to the time within which the obligation to comply with the Construction Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Lessee's liability with respect to Lessee's obligations other than specifically to correct the Work. If CITY prefers to accept Work which is not in accordance with the requirements of the Construction Documents, CITY may do so instead of requiring its removal and correction.

9.4 Non-Exclusive Remedies. The remedies set forth in this Article shall be in addition to all other remedies of CITY under the Construction Documents, at law or in equity.

ARTICLE X

HAZARDOUS MATERIALS AND DIFFERING SITE CONDITIONS

10.1 Limitation on Use of Hazardous Materials. Lessee may use Hazardous Materials in the Project only if this use is absolutely necessary and CITY has been notified at least thirty (30) days prior to the use of the Hazardous Materials. Any Hazardous Materials used by Lessee, and any containers or Materials that come into contact with the Hazardous Materials, shall be processed, distributed, treated, stored, placed, removed, transported and disposed of by Lessee in accordance with all Applicable Laws. Lessee will not transport to, or store on, CITY's property or the Jobsite any Hazardous Materials not intended for the Project.

10.2 Material Safety Data Sheet Requirement. Lessee shall submit a Material Safety Data Sheet to CITY two (2) days before initial transport to, or use on, CITY's property or the Jobsite of any Hazardous Materials. Lessee shall insert these provisions relating to Material Safety Data Sheets in all subcontracts, at any tier, for delivery, transport, or use of Hazardous Materials on CITY's property or the Jobsite in connection with this Ground Lease.

10.3 Notice of toxic or Hazardous Materials. In the event the Lessee encounters on the Jobsite material reasonably believed to be toxic or Hazardous Materials or waste, which has not been addressed in this Ground Lease, the Lessee will immediately stop work in the affected area and notify the CITY in writing of the condition. Pending receipt of written instructions from the CITY, the Lessee will not resume work in the affected area.

10.4 Information on Subsurface Conditions. Lessee is required to make investigations of subsurface conditions in the Jobsite, such investigations are made by the Lessee for the purpose of study and design. If the CITY provides any geotechnical information, neither CITY nor its agents, representatives and consultants assume any responsibility whatsoever in respect to the sufficiency or accuracy of any investigations, the records thereof, or of the interpretations set forth and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout such areas, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered.

EXHIBIT C

ATTACHMENT 1

SCHEDULE REQUIREMENTS

1. General Requirements

- 1.1. The Work under this Ground Lease shall be planned, scheduled, executed, reported and accomplished using the Precedence Diagramming Critical Path Method (hereinafter referred to as CPM), in calendar days, unless otherwise specifically provided in the Ground Lease Documents.
- 1.2. Lessee shall have within its employ or under contract, throughout the execution of the Work under this Ground Lease, personnel with expertise in CPM scheduling and experience with the specified scheduling program so as to ensure its effective and efficient performance under this section.
- 1.3. The Project Schedule shall be computerized by the Lessee utilizing the latest version of Oracle Primavera P6, hereinafter referred to as Primavera. It is required that the Lessee shall have sufficient capabilities to perform this Work. Any and all costs incurred by the Lessee in researching and/or educating its personnel in CPM or Primavera are to be borne by the Lessee and will not be reimbursed by the CITY.
- 1.4. The primary objectives of the requirements of this section are: (a) to insure adequate planning and execution of the Work by Lessee; (b) to assist Authorized Representative in evaluating progress of the Work; (c) to provide for optimum coordination by Lessee of its trades, Subcontractors, and Suppliers, and of its Work with the work or services provided by any separate Contractors; (d) to permit the timely prediction or detection of events or occurrences which may affect the timely prosecution of the Work; (e) to provide a mechanism or tool for use by the Authorized Representative, and Lessee in determining and monitoring any actions of the Lessee which may be required in order to comply with the requirements of the Ground Lease Documents relating to the completion of the various portions of the Work by the Ground Lease Time specified in the Ground Lease Documents.
- 1.5. Lessee is responsible for determining the sequence of activities, the time estimates for the detailed construction activities and the means, methods, techniques and procedures to be employed. The Project Schedule shall represent the Lessee's best judgment of how it will prosecute the Work in compliance with the Ground Lease requirements. Lessee shall ensure that the Project Schedule is current and accurate and is properly and timely monitored, updated and revised as Project conditions may require and as required by the Ground Lease Documents.
- 1.6. Lessee shall provide the basic data relating to activities, durations, Specified Ground Lease milestones, and sequences to Authorized Representative as part of Lessee's Draft Baseline Schedule and Final Baseline Schedule submittal, discussed later in this Exhibit. This data shall reflect the Lessee's actual plan for the Project and shall fully comply with all requirements of the Ground Lease Documents and this Exhibit.
- 1.7. At the discretion of the Authorized Representative, Lessee shall coordinate and interface with others performing work for the CITY in the same area and shall coordinate its activities with all parties including the Owner, Consultants, Suppliers and other Contractors.

- 1.8. Lessee shall include in the Project Schedule all interface points with others. These points shall be in the form of Start Milestones for deliverables due to the Lessee from others and as Finish Milestones for deliverables that Lessee must supply to others.
- 1.9. Should Lessee intend or plan to complete the Work, or any portion thereof, earlier than any applicable Specified Milestone Date or the Ground Lease Time, Lessee shall give timely and reasonable Notice of this fact to Authorized Representative. The CITY shall have the sole discretion to accept or reject such early completion plan by Lessee. Schedule improvement is always encouraged whenever possible. However, since interface with other parties performing work at Hartsfield-Jackson Atlanta International Airport (ATL) is necessary, the CITY and its representatives shall have no duty or obligation to agree to, or to cooperate with Lessee regarding any early completion plan or proposal by Lessee and shall not be liable for any damages of Lessee because of the rejection by the CITY of said plan.

2. Schedule Development, Submittal and Approval

- 2.1. Development of the Project Schedule is a multi-step process with each step requiring defined information and input of project team members. The development process includes the Schedule Orientation Session, Draft Schedule, and Final Schedule.
- 2.2. **Schedule Orientation Session:** Lessee shall, upon notification from the Authorized Representative, attend a schedule orientation session relating to the Schedules and Reports requirements for this Project. The schedule orientation session is designed to review in detail the objectives of the Schedules and Reports requirements. Lessee shall arrange for its Project Manager, Superintendent, and Project Scheduler to attend the schedule orientation session. The following items will be discussed during the orientation session: (a) The procedures and requirements for the preparation of the Project Schedule; (b) how the requirements of the Ground Lease Documents will be monitored and enforced by the Authorized Representative (c) long-lead items and time requirements for the Work by Subcontractors will be identified and included in the schedule.
- 2.3. The Lessee shall provide the Project Schedule in a format that is acceptable to Authorized Representative.
- 2.4. **Draft Baseline Schedule:** Within fifteen (15) calendar days of the schedule orientation session or NTP the Lessee shall complete and submit a draft of its Project Schedule (Draft Baseline Schedule).
- 2.5. The Draft Baseline Schedule shall represent the Lessee's best judgment and intended plan for completion of the Work in compliance with Ground Lease Milestone Dates in the Ground Lease Documents. The Ground Lease Milestone Dates shall be included in the Draft Baseline Schedule as zero duration finish milestones. The Draft Baseline Schedule shall take into account all foreseeable activities to be accomplished by other interfacing Lessees, interface dates with utility owners, CITY's operations and others.
- 2.6. The Authorized Representative shall have the right to require the Lessee to modify any Lessee data or any portion of the Lessee's Draft Baseline Schedule to comply as required herein, with Lessee bearing the expense thereof, which the Authorized Representative reasonably determines to be: (a) impracticable, (b) based upon erroneous calculations or estimates, (c) unreasonable, (d) required in order to ensure proper coordination by Lessee of the Work of its Subcontractors and with the work or services being provided by other interfacing Contractors, (e) necessary to avoid undue interference with the CITY's operations or those of any utility owners or adjoining property owners, (f) necessary to ensure completion of the Work by the Ground Lease Milestone Dates set forth in the Ground Lease Documents, (g) required in order for Lessee to comply with the requirements of Paragraph 1.8 hereof or any other

requirements of the Ground Lease Documents or this Exhibit, (h) not in accordance with the Lessee's actual operations, unless the revision or modification will change the original scope of Work.

- 2.7. **Final Baseline Schedule:** No later than fourteen (14) calendar days after the Draft Baseline Schedule is returned with comments to the Lessee by the Authorized Representative, the Lessee shall complete and submit the Final Baseline Schedule to the Authorized Representative for acceptance.
- 2.8. Upon review of the Final Baseline Schedule by the Authorized Representative, the Lessee will be notified in writing as to acceptance, reasons for rejection, or any revisions required.
- 2.9. The accepted Final Baseline Schedule will be “frozen” and shall become the “**Project Schedule**” for the Work and shall be used to monitor and record progress and evaluate revisions. This Final Baseline Schedule shall be established as the target schedule for the Ground Lease and shall not be changed, altered or revised. A copy of the accepted Final Baseline Schedule shall be used to establish progress reporting in accordance with Section 4 of this Exhibit. The CITY will not recognize or accept any other schedule.
- 2.10. Lessee shall include, as part of the Final Baseline Schedule submittal to the Authorized Representative, a narrative report indicating anticipated allocation by Lessee of the following resources and work shifts for each activity which it proposes to be utilized on the Project, (a) Labor resources, (b) Equipment resources, and (c) Whether it proposes the Work to be performed on single, double or triple shifts, and whether it is to be done on a 5, 6, or 7-day work week basis.

3. Schedule Content and Format

- 3.1. Except for non-construction activities such as, procurement, delivery, or submittal development, Lessee shall differentiate activities of the schedule so that no single activity shown has a duration longer than fifteen (15) calendar days unless the Authorized Representative, in its sole discretion, shall approve a longer duration for certain activities.
- 3.2. The Draft Baseline Schedule and Final Baseline Schedule submittals shall consist of two (2) copies of the Primavera generated bar chart schedule, representing all activities which are part of the Lessee’s plan on 11” x 17” paper, in color, and a Primavera generated backup XER file of the schedule on electronic media acceptable to the Authorized Representative. The submittal shall also include the narrative report.
- 3.3. The Draft Baseline Schedule and Final Baseline Schedule submittals must contain or be able to demonstrate that the following items have been addressed: (a) Project name, WBS, Ground Lease and Task Order numbers (if applicable); (b) Lessee name; (c) Revision or edition number; (d) activities of completed Work ready for use by next trade, CITY, etc.; (e) activities relating to different areas of responsibility such as subcontracted Work which is distinctly separated from that being done by the Lessee directly; (f) distinct and identifiable subdivisions of Work such as structural slabs, beams, columns; (g) locations of Work within the Project that necessitates different times or crews to perform; (h) outage schedules for existing utility services that will be interrupted during the performance of the Work; (i) acquisition and installation of equipment and materials supplied and/or installed by CITY or separate Contractors; (j) material to be stored on site; (k) Ground Lease Milestone Dates, (l) procurement of long lead items and (m) QA & QC Activities.

- 3.4. For all major equipment and materials to be fabricated or supplied for the Project, the Final Baseline Schedule shall show a sequence of activities including, (a) preparation of shop drawings and sample submissions, (b) a minimum of ten (10) calendar days for the DOA's review of shop drawings and samples or such time as specified in the Ground Lease Documents, (c) shop fabrication, delivery and storage; (d) erection; and, (e) testing of equipment and materials.
- 3.5. The Final Baseline Schedule shall include late completion dates for the Work that is no later than the required Ground Lease Milestone Dates. The bar chart submittal shall be drawn based upon the early start dates of activities shown on the graphic.
- 3.6. Lessee shall identify the activities which constitute the controlling operations or critical path of the schedule. No more than 30 % of the activities shall be critical. Critical is defined as total float less than one (1) calendar day.
- 3.7. All activity durations shall be given in calendar days.

4. Updating of Project Schedule/Progress Reports

- 4.1. At least once a month, the Lessee shall arrange for its Project Manager and Superintendent to meet at the Project site with the Authorized Representative to review Lessee's updated Project Schedule as prepared by Lessee. Said update shall show up-to-date and accurate progress data and shall be based upon Lessee's best judgment; and said update shall be prepared by Lessee in consultation with all principal Subcontractors and Suppliers. The Lessee shall also submit with the each update an electronic copy, XER file, of the updated Project Schedule along with one (1) copy of the schedule on 11" x 17" paper.
- 4.2. Lessee shall adjust the data date ("as of date") to reflect the current update period as required by the Authorized Representative. The required monthly data date shall be the last Friday of every month. This shall also be consistent with the cutoff for the application for payment.
- 4.3. The updated Project Schedule shall show activity commencement and completion dates for each activity and remaining durations in calendar days.
- 4.4. **Monthly Progress Report:** Lessee shall submit a narrative report which shall include, but not be limited to, a description of problem areas, current and anticipated delaying factors and their impact, explanations of corrective actions planned or taken, any newly planned activities or changes in sequence and proposed logic for a Recovery Schedule, if required, as further described herein. The report shall also include the updated Project Schedule updated as of the last Friday of the month and a narrative describing actual Work accomplished during the reporting period.
- 4.5. **Weekly Progress Report:** A rolling four-week detailed schedule showing, by day, one week of actual progress and a three-week look-ahead forecast showing all activities for that period. Variation from approved schedules and plans shall be noted and rationalized.

5. Recovery Schedule

- 5.1. Should the updated Project Schedule at any time during Lessee's performance, show in the sole opinion of the Authorized Representative, that the Lessee is fourteen (14) or more calendar days behind schedule for any Ground Lease Milestone Date, or should Lessee be required to undertake actions under this Section, the Lessee shall prepare a Recovery Schedule at no additional cost to the CITY (unless the Owner is solely responsible for the event or occurrence which has caused the schedule slippage)

explaining and displaying how Lessee intends to reschedule its Work in order to regain compliance with the Project Schedule during the immediate subsequent pay period.

5.2. If the Lessee believes that all of the lost time can be recovered within thirty (30) days, the Lessee will be permitted to prepare a Recovery Schedule as set forth below. However, if the Lessee believes it will take more than thirty (30) calendar days to recover all of the lost time, it shall prepare and submit a request for revision to the "Baseline Project Schedule" and comply with all of the requirements of a Schedule Revision as set forth in Section 7 of this Exhibit. If Liquidated Damages are applicable to this Ground Lease/Task Order, a revision to the "Baseline Project Schedule" will not change the accrual or assessment of Liquidated Damages unless, in the sole opinion of the Authorized Representative, a revision of the Liquidated Damages terms and conditions is warranted.

5.2.1. The Lessee shall prepare and submit to the Owner's Representative a one-month maximum duration Recovery Schedule incorporating the best available information from Subcontractors and others which will permit a return to the original accepted "Baseline Project Schedule" at the earliest possible time. The Lessee shall prepare a Recovery Schedule to same level of detail as the originally accepted "Baseline Project Schedule" for a maximum duration of one month. This Recovery Schedule shall be prepared in coordination with other separate Lessees on the Project and shall not alter Lessee Milestone Dates.

5.2.2. Within two (2) working days after submission of Recovery Schedule to the Authorized Representative, the Lessee shall participate in a conference with the Authorized Representative to review and evaluate the Recovery Schedule. Within two (2) working days of conference, the Lessee shall submit the revisions necessitated by the review for the Authorized Representative's review and acceptance. The Lessee shall use the approved Recovery Schedule as its plan for returning to the original accepted "Baseline Project Schedule".

5.2.3. During the period of time that the Recovery Schedule is in force, the Lessee shall prepare and submit to the Authorized Representative weekly updates and shall confer continuously with the Authorized Representative to assess the effectiveness of the Recovery Schedule. As a result of this conference, the Authorized Representative will direct the Lessee as follows:

5.2.3.1. If the Authorized Representative determines the Lessee is still behind schedule, the Authorized Representative will direct the Lessee as to a plan of action regarding the Recovery Schedule. However, nothing herein shall limit in any way the rights and remedies of the CITY as provided elsewhere in the Ground Lease Documents; or

5.2.3.2. If the Authorized Representative determines the Lessee has successfully complied with provisions of the Recovery Schedule, the Authorized Representative will direct the Lessee to return to the use of the approved Project Schedule.

6. Time Extensions

6.1. The Lessee is responsible for requesting time extensions for time impacts that, in the opinion of the Lessee, impact the critical path of the current schedule update. Written notices of time impacts shall be submitted to the Authorized Representative by the Lessee within ten (10) calendar days of the occurrence of the event which caused the impact and in accord with the requirements of this Exhibit.

6.2. Where an event, for which the CITY is responsible, impacts the Contractual Substantial Completion date, the Lessee shall submit a written plan which explains how (e.g., increase crew size, overtime, etc.) the impact will be mitigated along with a revised schedule. The Lessee shall also include a detailed cost

breakdown of the labor, equipment and material the Lessee would expend to mitigate the CITY caused time impact. The Lessee is responsible for preparing the mitigation plan.

- 6.3. Failure to request time or provide the required mitigation plan within the required ten (10) calendar days will result in Lessee waiving its right to a time extension and cost to mitigate the delay.
- 6.4. No time will be granted under this Ground Lease for cumulative effect of changes.
- 6.5. The CITY will not be obligated to consider any time extension request unless requirements of this Exhibit are complied with.
- 6.6. Failure of the Lessee to perform in accordance with the current schedule update shall not be excused by submittal of time extension requests.

7. Schedule Revisions

- 7.1. Schedule Revisions, as defined herein, shall refer to modifications made to activities in the Accepted Baseline Project Schedule in any of the following items: (a) Activity Original Duration; (b) changes in logical connections between activities; (c) changes in imposed constraints; (e) changes to activity descriptions.
- 7.2. Should Lessee desire to or be otherwise required under the Ground Lease Documents to make modifications or changes in its method of operation, its sequence of Work, or the durations of the activities in its Project Schedule, it shall do so in accordance with the requirements of this Attachment, Schedule Requirements, and the Ground Lease Documents. Revisions to the initial accepted Project Schedule must be accepted in writing by the Authorized Representative.
- 7.3. Lessee shall submit requests for revisions to the Project Schedule to the Authorized Representative, together with written rationale for revisions and description of logic for rescheduling work and maintaining the Ground Lease Milestone Dates listed in the Ground Lease Documents. Proposed revisions acceptable to the Authorized Representative will be incorporated into the next update of the Project Schedule.
- 7.4. Changes in activity description(s) may be done for clarification purpose only. If the proposed description change affects the Scope of Work covered by the activity, Lessee shall obtain approval of the Authorized Representative before incorporating into schedule.
- 7.5. Lessee shall be solely responsible for expediting the delivery of all materials and equipment to be furnished by him so that the progress of construction shall be maintained according to the currently approved Project Schedule for the Work. Lessee shall notify the Authorized Representative in writing, within ten (10) calendar days of the occurrence, whenever Lessee determines or anticipates that the delivery date of any material or equipment to be furnished by Lessee will be later than the delivery date indicated by the Project Schedule.

8. Float Time

- 8.1. Float or slack time, as calculated by Primavera using retained logic, associated with one chain of activities is defined as amount of time between earliest start date and latest start date or between earliest finish date and latest finish date for such activities, as calculated as part of the Project Schedule. Float or slack time shown on the Project Schedule is not for exclusive use or benefit of either the CITY or the Lessee and is available for use by either according to whichever first needs the use or benefit of the float to facilitate the effective use of available resources and to minimize the impact of Project

problems, delays or Changes in the Work which may arise during performance. Lessee specifically agrees that float time may be used by the CITY in conjunction with their review activities or to resolve Project problems. Lessee agrees that there will be no basis for any modification of the Ground Lease Milestone Dates or an extension of the Ground Lease Time, or a claim for additional compensation as a result of any Project problem, Change Order or delay which only results in the loss of available positive float in the Project Schedule.

8.2. Float time shown on the Project Schedule shall not be used arbitrarily by Lessee in a manner which, in the opinion of the Authorized Representative, unnecessarily delays separate Lessees from proceeding with their work in a way which is detrimental to the interests of the CITY. If Lessee refuses to perform Work which is available and necessary to be performed in order not to delay any separate Lessees, the CITY may, regardless of the float shown on the Project Schedule to be available for the path of activities which encompasses said Work, terminate the Lessee for default.

9. Adverse Weather Delays

9.1. Ground Lease time extensions for weather are based on the National Oceanic and Atmospheric Administration (NOAA) data for the project location. Time Extensions will only be considered for such delays which impact activities on the critical path of the Ground Lease as defined by the schedule currently accepted by the Authorized Representative at the time of the delay. However, such time extensions, if approved by the Authorized Representative, will be non-compensable. Weather delays may consist of days lost due to adverse weather conditions, days lost for dry-out of exposed soil, and/or days lost for site clean-up due to adverse weather.

9.2. The table below lists the number of work days typically lost to weather per month on critical path activities included in this Ground Lease. Working days lost due to weather in a given month in excess of those listed for that month will be considered for a non-compensatory time extension. Days are not cumulative from month to month. Such time extension must be requested by the Lessee.

Month	# of Days
January	8
February	7
March	7
April	4
May	4
June	4
July	4
August	4
September	4
October	4
November	8
December	8

10. Default

10.1. Failure of the Lessee to comply with the requirements of this Exhibit shall constitute a default by Lessee of its obligations under this Ground Lease sufficient for termination of Lessee.

EXHIBIT C

ATTACHMENT 2

QUALITY CONTROL PROGRAM

1.1 Program Plan.

Prior to commencing work at any work site, Lessee shall prepare and submit a Project specific Quality Control Plan. This plan shall cover the flow and distribution of correspondence, requests for information, procedural direction, specific technical instructions, controls instituted to assure the quality of the Work and the documenting of any other significant quality activities.

1.2 General.

The Lessee shall establish, provide, and maintain an effective Quality Control Program. Although guidelines are established and certain minimum requirements are specified herein and elsewhere in the Ground Lease, the Lessee shall assume full responsibility for accomplishing the stated purpose. The intent of this section is to enable the Lessee to establish a necessary level of control that will:

1.2.1 Adequately provide for the production of acceptable quality materials.

1.2.2 Provide sufficient information to assure both the Lessee and the Authorized Representative that the specification requirements can be met.

1.3 Quality Control program Presentation.

The Lessee shall be prepared to discuss and present, at the Pre-Construction Conference, his/her understanding of the quality control requirements. The quality control requirements contained in this section and elsewhere in the Ground Lease are in addition to and separate from the acceptance testing requirements.

1.4 Description of Program.

1.4.1 General Description.

The Lessee shall establish a Quality Control Program to perform inspection and testing of all items of work required by the technical specifications, including those performed by subcontractors. This Quality Control Program shall detail the methods and procedures that will be taken to ensure conformance to applicable specifications and Contract plans with respect to materials, workmanship, construction, finish, and functional performance. The Quality Control Program shall be effective for control of all construction work performed under this Contract and shall specifically include surveillance and tests required by the technical specifications, in addition to other requirements of this section and any

other activities deemed necessary by the Lessee to establish an effective level of quality control.

1.4.2 Quality Control Program.

The Lessee shall describe the Quality Control Program in a written document, which shall be reviewed and approved by the Authorized Representative prior to the start of any production, construction, or offsite fabrication. No partial payment will be made for materials subject to specific quality control requirements until the Quality Control Program has been reviewed. The written Quality Control Program shall be submitted to the Authorized Representative for review at least fifteen (15) calendar days before the mobilization.

The Quality Control Program shall be organized to address, at a minimum, the following items:

- 1.4.2.1** Quality control organization;
- 1.4.2.2** Submittals schedule;
- 1.4.2.3** Inspection requirements;
- 1.4.2.4** Quality control testing plan;
- 1.4.2.5** Documentation of quality control inspection activities; and
- 1.4.2.6** Requirements for corrective action when quality control and/or acceptance criteria are not met. The Lessee is encouraged to add any additional elements to the Quality Control Program that he/she deems necessary to adequately control all production and/or construction processes required by this Ground Lease.
- 1.4.2.7** Inspection of all materials, construction, plant, and equipment for conformance to the technical specifications, and as required by Section 1.2.
- 1.4.2.8** Performance of all quality control tests as required by the technical specifications and Section 1.2. Certification at an equivalent level, by a state or nationally recognized organization will be acceptable.

1.4.3 Staffing Levels. The Lessee shall provide sufficient qualified quality control personnel to monitor each work activity at all times. Where material is being produced in a plant for incorporation into the work, separate plant and field technicians shall be provided at each plant and field placement location. The scheduling and coordinating of all inspection and testing must match the type and pace of work activity. The Quality Control Program shall state where different technicians will be required for different work elements.

1.5 Submittals Schedule

The Lessee shall submit a detailed listing of all submittals (for example, mix designs, material certifications) and shop drawings required by the technical specifications. The listing can be developed in a spreadsheet format and shall include:

1.5.1 Specification item number;

1.5.2 Item description;

1.5.3 Description of submittal;

1.5.4 Specification paragraph requiring submittal; and

1.5.5 Scheduled date of submittal.

1.6 Inspection Requirements

Quality control inspection functions shall be organized to provide inspections for all definable features of work, as detailed below. All inspections shall be documented by the Lessee as specified by Section 1.2. Inspections shall be performed as necessary to ensure continuing compliance with Ground Lease requirements until completion of the particular feature of work. These shall include the following minimum requirements:

1.6.1 During plant operation for material production, quality control test results and periodic inspections shall be utilized to ensure the quality of aggregates and other mix components, and to adjust and control mix proportioning to meet the approved mix design and other requirements of the technical specifications. All equipment utilized in proportioning and mixing shall be inspected to ensure its proper operating condition.

1.6.2 During field operations, quality control test results and periodic inspections shall be utilized to ensure the quality of all materials and workmanship. All equipment utilized in placing, finishing, and compacting shall be inspected to ensure its proper operating condition and to ensure that all such operations are in conformance to the technical specifications and are within the plan dimensions, lines, grades, and tolerances specified.

1.7 Quality Control Testing Plan

As a part of the overall Quality Control Program, the Lessee shall implement a quality control testing plan, as required by the technical specifications. The testing plan shall include the minimum tests and test frequencies required by each technical specification Item, as well as any additional quality control tests that the Lessee deems necessary to adequately control production and/or construction processes. The testing plan can be developed in a spreadsheet fashion. All quality control test results shall be documented by the Lessee as required by Section Titled "Documentation".

1.8 Documentation

The Lessee shall maintain current quality control records of all inspections and tests performed. These records shall include factual evidence that the required inspections or tests have been performed, including type and number of inspections or tests involved; results of inspections or tests; nature of defects, deviations, causes for rejection, proposed remedial action; and corrective actions taken. These records must cover both conforming and defective or deficient features, and must include a statement that all supplies and materials incorporated in the work are in full compliance with the terms of the Ground Lease. Legible copies of these records shall be furnished to the Authorized Representative. The records shall cover all work placed subsequent to the previously furnished records and shall be verified and signed by the Lessee's representative. Specific Lessee quality control records required for the Ground Lease shall include, but are not necessarily limited to, the following records:

1.8.1 Inspection Reports. Each Lessee quality control technician shall maintain a log of all inspections performed for both Lessee and subcontractor operations on a form acceptable to the Authorized Representative. These technician's reports shall provide factual evidence that continuous quality control inspections have been performed and shall, as a minimum, include the following:

1.8.1.1 Technical specification item number and description;

1.8.1.2 Compliance with approved submittals;

1.8.1.3 Proper storage of materials and equipment;

1.8.1.4 Proper operation of all equipment;

1.8.1.5 Adherence to plans and technical specifications;

1.8.1.6 Review of quality control tests; and

1.8.1.7 Safety inspection.

The inspection reports shall be signed by the responsible quality control technician. The Authorized Representative shall be provided at least one copy of each inspection report on the workday following the day of record.

1.8.2 Test Reports. The Lessee shall be responsible for establishing a system, which will record all quality control test results. Test reports shall document the following information:

1.8.2.1 Technical specification item number and description;

1.8.2.2 Test designation;

- 1.8.2.3 Location;
- 1.8.2.4 Date of test;
- 1.8.2.5 Control requirements;
- 1.8.2.6 Test results;
- 1.8.2.7 Causes for rejection;
- 1.8.2.8 Recommended remedial actions; and
- 1.8.2.9 Retests.

Test results shall be submitted to the Authorized Representative prior to the start of the next day's work period. When required by the technical specifications, the Lessee shall maintain statistical quality control charts. The test reports shall be signed by the responsible quality control technician.

- 1.9 Corrective Action Requirements.** The Quality Control Program shall indicate the appropriate action to be taken when a process is deemed, or believed, to be out of control (out of tolerance) and detail what action will be taken to bring the process into control. The requirements for corrective action shall include both general requirements for operation of the Quality Control Program as a whole, and for individual items of work contained in the technical specifications. The Quality Control Program shall detail how the results of quality control inspections and tests will be used for determining the need for corrective action and shall contain clear sets of rules to gauge when a process is out of control and the type of correction to be taken to regain process control. When applicable or required by the technical specifications, the Lessee shall establish and utilize statistical quality control charts for individual quality control tests. The requirements for corrective action shall be linked to the control charts.

The Authorized Representative will notify the Lessee of any noncompliance with any of the foregoing requirements. The Lessee shall, after receipt of such notice, immediately take corrective action. Any notice, when delivered by the Authorized Representative or his designated representative to the Lessee or his/her authorized representative at the site of the work, shall be considered sufficient notice.

In cases where quality control activities do not comply with either the Lessee's Quality Control Program or the Ground Lease provisions, or where the Lessee fails to properly operate and maintain an effective Quality Control Program, as determined by the Authorized Representative, the Authorized Representative may:

- 1.9.1** Order the Lessee to replace ineffective or unqualified quality control personnel or subcontractors.

1.9.2 Order the Lessee to stop operations until an appropriate corrective action is taken.

1.10 Surveillance by the Authorized Representative

All items of material and equipment shall be subject to surveillance by the CITY at the point of production, manufacture or shipment to determine if the Lessee, producer, manufacturer or shipper maintains an adequate quality control system in conformance with the requirements detailed herein and the applicable technical specifications and plans. In addition, all items of materials, equipment and work in place shall be subject to surveillance by the CITY at the site for the same purpose.

Surveillance by the Authorized Representative does not relieve the Lessee of performing quality control inspections of either "on-site" or "off-site" Lessee's or subcontractor's work.

1.11 Plan Update.

The Quality Control Plan shall reflect the interfaces between CITY or its designated representatives, Lessee, and other relevant organizational entities. It shall contain all appropriate interface control instructions. The plan shall be updated as necessary during this Contract to reflect any changes in the plan. The Quality Control Plan shall provide for the issuance of a "stop work" order by the Lessee or Authorized Representative at any time during the Work when significant adverse quality trends and/or deviations from the approved Quality Control Program are found.

ATTACHMENT 3

**LESSEE'S INTERIM LIEN WAIVER AND RELEASE
UPON PROGRESS PAYMENT**

(To be provided by Lessee at Beneficial Occupancy of each element of the Development)

STATE OF GEORGIA

COUNTY OF _____

The undersigned, _____, has been engaged by Lessee to furnish certain materials, equipment, services, and/or labor for the construction of improvements known as the _____, together with all improvements and appurtenances attendant thereto ("Project"), which Project is being constructed in the County of _____, State of Georgia on property that is owned by the City.

Upon receipt of the sum of \$ _____, [Contractor Inc.] waives and releases any and all claims, demands, actions, causes of action or other rights it may have against Lessee and City related to the Project through the date of _____, _____ ("Current Date") and reserving those rights that [Contractor Inc.] might have in any retained amounts on account of materials, equipment, services and/or labor furnished by the undersigned to or on account of the Lessee and City or any other entity for said Project. Exceptions as follows:

(if no exception or "none" is entered above, undersigned shall be deemed not to have reserved any claim.)

[Contractor Inc.] affirms, warrants, and represents that all laborers, materialmen, mechanics, manufacturers, suppliers, and subcontractors who have furnished services, labor, equipment, or materials, or any one of these items to [Contractor Inc.] have been paid in full for all work performed and all materials, equipment, labor or services supplied to Contractor Inc. for use at the Project through and including _____, _____ (date of [Contractor Inc.]'s last prior Application for Payment).

Subject to any exceptions (if any) listed above, [Contractor Inc.] further affirms, warrants, and represents that there are no outstanding claims of any nature, Agreement or otherwise, or for any personal injury, death or property damage, arising from or associated with the performance of [Contractor Inc.]'s work on the Project through and including the date hereof which might be the basis of any claim, suit, lien, or demand that could be asserted against the Lessee and City.

This Waiver is freely and voluntarily given and the undersigned acknowledges and represents that it has fully reviewed the terms and conditions of this Waiver, that it is fully informed with respect to the legal effect of this Waiver, and that it has voluntarily chosen to accept the terms and conditions of this Waiver in return for the payment recited above. Subject to any exceptions (if any) listed above, [Contractor Inc.] agrees to indemnify, hold harmless and defend Lessee and City against any and all loss, claims, damages, costs or expense, of any nature whatsoever, including attorneys' fees, arising out of any claims or demands made by any of its employees, laborers, materialmen, subcontractors and consultants, of any tier, for materials, services, equipment and labor supplied to the Project through the Current Date.

The undersigned further agrees that making and receipt of payment and execution of this Waiver shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, including any obligations of the undersigned to City.

FOR [CONTRACTOR INC.]:

Applicable to Application for Payment No(s). _____

Signed: _____

By: _____

Title: _____

Date: _____

AFFIDAVIT

On this _____ day of _____, 20_____, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that he/she is the authorized representative of Contractor Inc. and that this document was signed under oath personally and on behalf of Contractor Inc..

Notary Public

My Commission Expires: _____

EXHIBIT D
INSURANCE & BONDING REQUIREMENTS
FC-8260: HOTEL, TRAVEL PLAZA AND MIXED USE DEVELOPMENT
(DESIGN)

A. Preamble

The following requirements apply to all work under the Agreement. Compliance is required by Service Provider. **To the extent permitted by applicable law, the City of Atlanta (“City”) reserves the right to adjust or waive any insurance or bonding requirements contained in this Exhibit D and applicable to the Agreement.** For all purposes hereunder, including but not limited to any Additional Insured Endorsements, the City shall include the City of Atlanta, its elected officials, officers, agents, and employees.

1. Evidence of Insurance and Bonding Required Before Work Begins

No work under the Agreement may be commenced until all insurance and bonding requirements contained in this Exhibit D, or required by applicable law, have been complied with and evidence of such compliance satisfactory to City as to form and content has been filed with City.

At the time Service Provider submits to City its executed Agreement, Service Provider must satisfy all insurance and bonding requirements required by this Exhibit D and applicable by law, and provide the required written documentation to City evidencing such compliance. In the event that Service Provider does not comply with such submittal requirements within the time period established by the solicitation documents applicable to the Agreement, City may, in addition to any other rights City may have under the solicitation documents applicable to the Agreement or under applicable law, make a claim against any proposal security provided by Service Provider.

If the Service Provider is an entity (e.g., corporation, limited liability company, etc.) or a partnership (e.g., general partnership, limited partnership, joint venture, etc.) then Service Provider shall tender insurance certificates and bonds in the name of Service Provider’s entity or partnership as the primary insured.

2. Project Number & Name

The project number (**FC-8260**) and name (**Hotel, Travel Plaza and Mixed Use Development**) must be referenced in the description section of the insurance certificate.

3. Minimum Financial Security Requirements

All companies providing insurance required by this Exhibit D must meet certain

minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. Upon request, the Service Provider must submit the ratings for each company to the City.

For all agreements, regardless of size, companies providing insurance or bonds under the agreement must meet the following requirements:

- i) Best's Rating not less than A-;
- ii) Best's Financial Size Category not less than Class VII;
- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia; and
- iv) All performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to City, City will notify Service Provider in writing. Service Provider must promptly obtain a new policy or bond issued by an insurer acceptable to City and submit to City evidence of its compliance with these conditions.

Service Provider's failure to comply with all insurance and bonding requirements set forth in this Exhibit D and applicable to the Agreement will not relieve Service Provider from any liability under the Agreement. Service Provider's obligations to comply with all insurance and bonding requirements set forth in Exhibit D and applicable to the Agreement will not be construed to conflict with or limit Service Provider's indemnification obligations under the Agreement.

4. Insurance and Bonds Required for Duration of Contract

All insurance and bonds required by this Exhibit D must be maintained during the entire term of the Agreement, including any renewal or extension terms, and until all work has been completed to the satisfaction of City.

5. Notices of Cancellation & Renewal

Service Provider must, notify the City of Atlanta in writing at the address listed below by mail, hand-delivery or facsimile transmission, within two (2) business days of any notices received from any insurance carriers providing insurance coverage or surety providing bonds under this Agreement and Exhibit D (including any attachments thereto) that Service Provider receives concerning the proposed cancellation, or termination of coverage or security:

Enterprise Risk Management
68 Mitchell St., Suite 9100

Atlanta, GA 30303
Facsimile No. (404) 658-7450

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

Service Provider shall provide the City with evidence of required insurance and bonding prior to the commencement of this Agreement, and, thereafter, with a certificate and/or bonds evidencing renewals or changes thereto at least fifteen (15) days prior to the expiration of previously provided certificates and/or bonds.

6. Agent Acting as Authorized Representative

Each and every agent acting as Authorized Representative on behalf of a company affording coverage under this Agreement shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the Agent to bind coverage as required and to execute the Acord Certificates of Insurance as evidence of such coverage.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the Agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

7. Certificate Holder

The **City of Atlanta** must be named as certificate holder. All notices must be mailed to the attention of **Enterprise Risk Management** at **68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303**.

8. Additional Insured Endorsements – Form CG 20 26 07 04 or Equivalent

City shall be covered as an Additional Insured, as its interest may appear, under any and all insurance required pursuant to this Agreement, and such insurance shall be primary and non-contributory with respect to the Additional Insured. However, this requirement does not apply to Workers' Compensation or Professional Liability Insurance. Additional insured status extending to ongoing and completed operations per CG 20 26 07 04 or their carrier equivalent shall be provided. Additional insured status shall be maintained following project completion equivalent to the statute of repose in the State of Georgia.

NOTE: A copy of the Additional Insured Endorsement or its equivalent must be forwarded to the Risk Management Department as soon as practicable but in no event more than ten (10) days after the effective date of the Agreement.

9. Mandatory Sub-Contractor/Consultant Compliance

Service Provider must require and ensure that all of Service Provider's subcontractors operating under the Agreement at any level are sufficiently insured and bonded.

10. Self-Insured Retentions, Deductibles or Similar Obligations

Any self-insured retention, deductible or similar obligation will be the sole responsibility of the Service Provider.

11. Waiver of Subrogation in favor of the City of Atlanta

The certificates of Commercial General Liability Insurance and Commercial Automobile Liability Insurance tendered by the Service Provider must clearly indicate a waiver of subrogation in favor of the City of Atlanta.

B. Workers' Compensation and Employer's Liability Insurance

Service Provider must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is or may be engaged in work under the Agreement:

Workers' Compensation	Statutory
Employer's Liability:	
Bodily Injury by Accident/Disease	\$1,000,000 each accident
Bodily Injury by Accident/Disease	\$1,000,000 each employee
Bodily Injury by Accident/Disease	\$1,000,000 policy limit

C. Commercial General Liability Insurance

Service Provider must procure and maintain Commercial General Liability Insurance on Form CG 00 00 01 (or equivalent) in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate**. The following indicated extensions of coverage must be provided:

- Contractual Liability
- Broad Form Property Damage
- Premises Operations
- Personal Injury
- Advertising Injury
- Medical Expense
- Fire Legal Liability
- Independent Contractor/Consultants/SubContractor/Consultants
- Products – Completed Operations

- Additional Insured Endorsement (primary & non-contributing in favor of the City of Atlanta)
- Waiver of Subrogation in favor of the City of Atlanta

D. Commercial Automobile Liability Insurance

Service Provider must procure and maintain Automobile Liability Insurance in an amount not less than **\$1,000,000** Bodily Injury and Property Damage combined single limit. The following indicated extensions of coverage must be provided:

- Owned, Non-owned & Hired Vehicles
- Waiver of Subrogation in favor of the City of Atlanta

If Service Provider does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Service Provider's personal automobile policy or the Commercial General Liability coverage required under this **Exhibit D**.

Additionally, in accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of the City of Atlanta, all vehicles requiring access to the restricted areas of the airport must be covered by an automobile liability policy in the minimum amount of **Ten Million Dollars (\$10,000,000)** combined single limit for personal injury and property damage. The \$10,000,000 limit of liability will also be imposed on any parties transporting workers, materials and/or equipment to the Airport site from parking lots or similar facilities.

E. Professional Liability /Errors & Omissions Insurance

Service Provider shall procure and maintain during the life of this contract Professional Liability/Errors & Omissions Insurance in an amount of **\$2,000,000** per occurrence and annual aggregate. The policy will fully address the Contractor/Consultant's professional services associated with the scope of work contained in this document. The policy will include at least a three year Extended Reporting Provision. As well as these extensions of coverage:

- Damages arising from a failure of computer security, or a wrongful release of private information
- Cost to notify consumers of a release of private information and to provide credit-monitoring or other remediation services in the event of a covered incident.

F. Valuable Papers Insurance

Service Provider shall procure and maintain during the life of this contract Valuable Papers and Records Coverage Insurance in an amount of **\$250,000** per occurrence and annual aggregate.

The policy will fully address the Service Provider's cost to reconstruct damaged or destroyed valuable papers and records associated with the scope of work contained in this agreement.

EXHIBIT D
INSURANCE & BONDING REQUIREMENTS
FC-8260: HOTEL, TRAVEL PLAZA AND MIXED USE DEVELOPMENT
(CONSTRUCTION)

A. Preamble

The following requirements apply to all work under the Agreement. Compliance is required by Service Provider. **To the extent permitted by applicable law, the City of Atlanta (“City”) reserves the right to adjust or waive any insurance or bonding requirements contained in this Exhibit D and applicable to the Agreement.** For all purposes hereunder, including but not limited to any Additional Insured Endorsements, the City shall include the City of Atlanta, its elected officials, officers, agents, and employees.

1. Evidence of Insurance and Bonding Required Before Work Begins

No work under the Agreement may be commenced until all insurance and bonding requirements contained in this Exhibit D, or required by applicable law, have been complied with and evidence of such compliance satisfactory to City as to form and content has been filed with City.

At the time Service Provider submits to City its executed Agreement, Service Provider must satisfy all insurance and bonding requirements required by this Exhibit D and applicable by law, and provide the required written documentation to City evidencing such compliance. In the event that Service Provider does not comply with such submittal requirements within the time period established by the solicitation documents applicable to the Agreement, City may, in addition to any other rights City may have under the solicitation documents applicable to the Agreement or under applicable law, make a claim against any proposal security provided by Service Provider.

If the Service Provider is an entity (e.g., corporation, limited liability company, etc.) or a partnership (e.g., general partnership, limited partnership, joint venture, etc.) then Service Provider shall tender insurance certificates and bonds in the name of Service Provider’s entity or partnership as the primary insured.

2. Project Number & Name

The project number (**FC-8260**) and name (**Hotel, Travel Plaza and Mixed Use Development**) must be referenced in the description section of the insurance certificate.

3. Minimum Financial Security Requirements

All companies providing insurance required by this Exhibit D must meet certain minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. Upon request, the Service Provider must submit the ratings for each company to the City.

For all agreements, regardless of size, companies providing insurance or bonds under the agreement must meet the following requirements:

- i) Best's Rating not less than A-;
- ii) Best's Financial Size Category not less than Class VII;
- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia; and
- iv) All performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to City, City will notify Service Provider in writing. Service Provider must promptly obtain a new policy or bond issued by an insurer acceptable to City and submit to City evidence of its compliance with these conditions.

Service Provider's failure to comply with all insurance and bonding requirements set forth in this Exhibit D and applicable to the Agreement will not relieve Service Provider from any liability under the Agreement. Service Provider's obligations to comply with all insurance and bonding requirements set forth in Exhibit D and applicable to the Agreement will not be construed to conflict with or limit Service Provider's indemnification obligations under the Agreement.

4. Insurance and Bonds Required for Duration of Contract

All insurance and bonds required by this Exhibit D must be maintained during the entire term of the Agreement, including any renewal or extension terms, and until all work has been completed to the satisfaction of City.

5. Notices of Cancellation & Renewal

Service Provider must, notify the City of Atlanta in writing at the address listed below by mail, hand-delivery or facsimile transmission, within two (2) business days of any notices received from any insurance carriers providing insurance coverage or surety providing bonds under this Agreement and Exhibit D (including any attachments thereto) that Service Provider receives concerning the proposed cancellation, or termination of coverage or security:

Enterprise Risk Management
68 Mitchell St., Suite 9100
Atlanta, GA 30303
Facsimile No. (404) 658-7450

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

Service Provider shall provide the City with evidence of required insurance and bonding prior to the commencement of this Agreement, and, thereafter, with a certificate and/or bonds evidencing renewals or changes thereto at least fifteen (15) days prior to the expiration of previously provided certificates and/or bonds.

6. Agent Acting as Authorized Representative

Each and every agent acting as Authorized Representative on behalf of a company affording coverage under this Agreement shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the Agent to bind coverage as required and to execute the Acord Certificates of Insurance as evidence of such coverage.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the Agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

7. Certificate Holder

The **City of Atlanta** must be named as certificate holder. All notices must be mailed to the attention of **Enterprise Risk Management** at **68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303**.

8. Additional Insured Endorsements – Form CG 20 26 07 04 or Equivalent

City shall be covered as an Additional Insured, as its interest may appear, under any and all insurance required pursuant to this Agreement, and such insurance shall be primary and non-contributory with respect to the Additional Insured. However, this requirement does not apply to Workers' Compensation or Professional Liability Insurance. Additional insured status extending to ongoing and completed operations per CG 20 26 07 04 or their carrier equivalent shall be provided. Additional insured status shall be maintained following project completion equivalent to the statute of repose in the State of Georgia.

NOTE: A copy of the Additional Insured Endorsement or its equivalent must be forwarded to the Risk Management Department as soon as practicable but in no event more than ten (10) days after the effective date of the Agreement.

9. Mandatory Sub-Contractor/Consultant Compliance

Service Provider must require and ensure that all of Service Provider's subcontractors operating under the Agreement at any level are sufficiently insured and bonded.

10. Self-Insured Retentions, Deductibles or Similar Obligations

Any self-insured retention, deductible or similar obligation will be the sole responsibility of the Service Provider.

11. Waiver of Subrogation in favor of the City of Atlanta

The certificates of Commercial General Liability Insurance and Commercial Automobile Liability Insurance tendered by the Service Provider must clearly indicate a waiver of subrogation in favor of the City of Atlanta.

B. Workers' Compensation and Employer's Liability Insurance

Service Provider must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is or may be engaged in work under the Agreement:

Workers' Compensation	Statutory
Employer's Liability:	
Bodily Injury by Accident/Disease	\$1,000,000 each accident
Bodily Injury by Accident/Disease	\$1,000,000 each employee
Bodily Injury by Accident/Disease	\$1,000,000 policy limit

C. Commercial General Liability Insurance

Service Provider must procure and maintain Commercial General Liability Insurance on Form CG 00 00 01 (or equivalent) in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate**. The following indicated extensions of coverage must be provided:

- Contractual Liability
- Broad Form Property Damage
- Premises Operations
- Personal Injury
- Advertising Injury
- Medical Expense
- Fire Legal Liability
- Independent Contractor/Consultants/SubContractor/Consultants
- Products – Completed Operations

- Additional Insured Endorsement (primary & non-contributing in favor of the City of Atlanta)
- Waiver of Subrogation in favor of the City of Atlanta

D. Commercial Automobile Liability Insurance

Service Provider must procure and maintain Automobile Liability Insurance in an amount not less than **\$1,000,000** Bodily Injury and Property Damage combined single limit. The following indicated extensions of coverage must be provided:

- Owned, Non-owned & Hired Vehicles
- Waiver of Subrogation in favor of the City of Atlanta

If Service Provider does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Service Provider's personal automobile policy or the Commercial General Liability coverage required under this **Exhibit D**.

Additionally, in accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of the City of Atlanta, all vehicles requiring access to the restricted areas of the airport must be covered by an automobile liability policy in the minimum amount of **Ten Million Dollars (\$10,000,000)** combined single limit for personal injury and property damage. The \$10,000,000 limit of liability will also be imposed on any parties transporting workers, materials and/or equipment to the Airport site from parking lots or similar facilities.

E. Pollution Liability

Service Provider shall procure and maintain Pollution Liability Insurance in an amount not less than **\$1,000,000** each occurrence/aggregate.

- Completed operations coverage shall remain in effect for no less than three (3) years after the end of the agreement.
- This coverage can also be satisfied with an endorsement to the General Liability policy.

F. Property Insurance

Service Provider shall procure and maintain Property Insurance covering all forms of risk on all Tenant Improvements and any other interests of Service Provider, if applicable, in or about the agreed Premises, including inventory, supplies, and other property of Service Provider located at said Premises, insuring against the perils of fire, lightning, extended coverage, perils vandalism, malicious mischief, glass breakage and sprinkler leakage, in an amount equal to the full replacement value of Tenant Improvements and any other interests of Service Provider in or about said Premises.

G. Performance and Payment Bonds

At, or prior to, Service Provider's execution of the Agreement, Service Provider must, at its own expense, deliver to the City a Performance and a Payment Bond each in an amount equal to one hundred percent (100%) of the construction cost naming the City as co-obligee and issued by a surety company or companies in such form as approved by the City's Attorney as attached hereto at **Exhibit D-1**. The bonds must be kept in full force and effect during the Term and any renewals, unless earlier released by City. In lieu of a Performance Bond, Service Provider may submit to the City an Irrevocable Letter of Credit in a form acceptable to City, in its sole discretion.

1. In addition, Service Provider must provide to City a fixed price contract or contracts for all work to be performed within the Premises, which contract(s) shall be insured by, and shall provide to the City, a Payment Bond in an amount equal to one hundred percent (100%) of the work specified in such contract(s) and acceptable to the City's Chief Financial Officer and in such form as approved by the City Attorney. The Payment Bond shall name the City as the Obligee, shall meet the other requirements of the Agreement, and shall remain in full force and effect until: (i) all Improvements are completely and fully paid for, (ii) certificates of occupancy have been issued for the Premises, (iii) final lien waivers have been obtained from all contractors and subcontractors; (iv) the City has approved the final construction of the Improvements; and (v) the applicable limitations period under Georgia law for the commencement of a suit against the Payment Bond has lapsed.
2. The bonds must be issued as security for the faithful performance of this Agreement, including guarantee provisions, its covenants, stipulations and agreements of the Agreement, the payment of all bills and obligations arising out of the performance of its obligations under the Agreement, which bills and obligations might or would in any manner become a claim against the City, and guaranteeing all services and work set forth in the Agreement against faulty materials or poor workmanship, or both, in accordance with any warranty provisions of the Agreement.
3. The surety company issuing the bonds must give the Aviation General Manager notice in writing by registered mail at least sixty (60) days prior to an anniversary date of the bonds of its intention not to renew or to terminate the bonds.
4. A Corporate Surety that is satisfactory to City, authorized to do business in the State of Georgia, and listed in the latest issue of U.S. Treasury Circular 570 must execute the bonds.
5. An agent of the Surety residing in the State of Georgia must execute the bonds. The date of the Bonds must be the same as the date of execution of the Agreement by City. The Surety must appoint an agent for service in Atlanta, Georgia, upon whom all notices

must be shown on each Bond. The person executing the Bonds on behalf of the Surety must file with the Bonds a general power of attorney unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds must be on forms provided by City. The Agreement will not be executed by City until after the approval of the Bonds by City's Attorney.

6. For additional information regarding Payment and Performance Bonds, please see **Exhibit D-1** attached hereto and incorporated herein by this reference.

EXHIBIT D-1
PERFORMANCE AND PAYMENT BONDS
(Construction)

1. At, or prior to, Service Provider's execution of the Agreement, Service Provider must, at its own expense, deliver to the City a Performance and a Payment Bond each in an amount equal to one hundred percent (100%) of the cost to fully construct the Improvements on the Premises (as such terms are defined in the Agreement) naming the City as co-obligee and issued by a surety company or companies in such form as approved by the City's Attorney as attached hereto at **Exhibit D-1**. The bonds must be kept in full force and effect, as stated therein, during the Term and any renewals, unless earlier released by the City. In lieu of a Performance Bond, Service Provider may submit to the City an Irrevocable Letter of Credit in a form acceptable to City, in its sole discretion.
2. The bonds must be issued as security for the faithful performance of this Agreement, including guarantee provisions, its covenants, stipulations and agreements of the Agreement, the payment of all subcontractors, bills and obligations arising out of the performance its obligations under the Agreement, which bills and obligations might or would in any manner become a claim against the City, and guaranteeing all performance, services and work set forth in the Agreement against faulty materials or poor workmanship, or both, in accordance with any warranty provisions of the Agreement.
3. The surety company issuing the bonds must give the City notice in writing by registered mail at least sixty (60) days prior to an anniversary date of the bonds of its intention not to renew or to terminate the bonds.
4. A Corporate Surety that is satisfactory to City, authorized to do business in the State of Georgia, and listed in the latest issue of U.S. Treasury Circular 570 must execute the bonds.
5. An agent of the Surety residing in the State of Georgia must execute the bonds. The date of the Bonds must be the same as the date of execution of the Agreement by City. The Surety must appoint an agent for service in Atlanta, Georgia upon whom all notices must be shown on each Bond. The person executing the Bonds on behalf of the Surety must file with the Bonds a general power of attorney unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds must be on forms provided by City. The Agreement will not be executed by City until after the approval of the Bonds by City's Attorney.

EXHIBIT D-1

ATTACHMENT 1

Performance Bond

INSTRUCTIONS

1. This form is required for use in connection with the Agreement identified on its face. There shall be no deviation from this form without approval by the City.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an office of the corporation involved, evidence of this authority must be furnished.
3. Corporation executing the bond as surety must be among those appearing on the U.S. Treasury Department's most current list of approved sureties and must be acting within the amounts and limitations set forth therein.
4. Corporate surety shall be duly authorized by the Commissioner of Insurance of the State of Georgia to transact surety business in the State of Georgia.
5. Do not date this bond. The City will date this bond the same date or later than the date of the Agreement.
6. The Surety shall attach a duly authorized power-of-attorney authorizing signature on its behalf of any attorney-in-fact.
7. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal."
8. The name of each person signing this bond shall be typed or printed in the space provided.

to the terms of the Agreement or the Work. Surety further agrees that it will provide City with at least 60 days' written notice by registered mail prior to any suspension, cancellation or termination of this bond; otherwise, this bond shall remain in full force and effect until the construction of any and all Improvements made to the Premises are complete as determined in the sole discretion of the City. This bond may be renewed on an annual basis provided the renewal covers the requisite Penal Sum as required above; and, in the event Surety declines to renew this bond, Surety agrees that it will provide City with at least 60 days' written notice by registered mail prior to the expiration date of bond.

To the extent applicable, it is agreed that this bond is executed pursuant to and in accordance with the provision of O.C.G.A. § 36-91-70, *et seq.* and is intended to be and shall be construed to be a bond in compliance with the requirements thereof, though not restricted thereto.

IN WITNESS WHEREOF, the Principal and the Surety have caused these presents to be duly signed and sealed this _____ day of _____, 20____.

PRINCIPAL: _____

President/Vice President (Sign)

President/Vice President (Type or Print)

Attested to by:

Secretary/Assistant Secretary (Seal)

SURETY: _____

By: _____
Attorney-in-Fact (Sign)

Attorney-in-Fact (Type or Print)

APPROVED AS TO FORM

Associate/Assistant City Attorney

APPROVED

City's Chief Financial Officer

EXHIBIT D-1

ATTACHMENT 2

Payment Bond

INSTRUCTIONS

1. This form is required for use in connection with the Agreement identified on its face. There shall be no deviation from this form without approval by the City.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an office of the corporation involved, evidence of this authority must be furnished.
3. Corporation executing the bond as surety must be among those appearing on the U.S. Treasury Department's most current list of approved sureties and must be acting within the amounts and limitations set forth therein.
4. Corporate surety shall be duly authorized by the Commissioner of Insurance of the State of Georgia to transact surety business in the State of Georgia.
5. Do not date this bond. The City will date this bond the same date or later than the date of the Agreement.
6. The Surety shall attach a duly authorized power-of-attorney authorizing signature on its behalf of any attorney-in-fact.
7. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal."
8. The name of each person signing this bond shall be typed or printed in the space provided.

Payment Bond (Construction)

"City" City of Atlanta, Georgia
"Project" Hotel, Travel Plaza and Mixed Use Development
"FC No." 8260
"Principal" _____
Type of Organization ("X" one): _____ Individual
 _____ Partnership
 _____ Joint Venture
 _____ Corporation

"Surety:" (Name and Business Address) _____

duly authorized by the Commissioner of Insurance of
the State of Georgia to transact surety business in the
State of Georgia.

"Agreement:" Ground Lease Agreement between Principal and City, dated _____ day of _____, 20____,
regarding performance of Work relative to the Project, which Agreement is hereby referred to and
made a part hereof.

"Penal Sum:" _____

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety hereto, as named above, are held and firmly bound to the City in the above Penal Sum for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, jointly and severally. Principal and Surety agree that the Penal Sum shall be equal to or greater than one hundred percent (100%) of the total cost of construction of any and all Improvements made to the Premises.

WHEREAS, the Principal and the City entered into the Agreement identified above.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall promptly make payment to all claimants defined as any subcontractor or any other person supplying labor, materials, machinery or equipment in the construction of any and all Improvements made to the Premises, then this obligation shall be void, otherwise it shall remain in full force and effect.

And the Surety to this bond, for value received, agrees that no modification, change, extension of time, alteration or addition to the terms of the Agreement or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such modification, change, extension of time, alteration or addition to the terms of the Agreement or the Work. Surety further agrees that it will provide City with at least 60 days' written notice by registered mail prior to any suspension, cancellation or termination of this bond; otherwise, this bond shall remain in full force and effect until the construction of any and all Improvements made to the Premises are complete as determined in the sole discretion of the City. This bond may be renewed on an annual basis provided the renewal covers the requisite Penal Sum as required above; and, in the event Surety declines to renew this bond, Surety agrees that it will provide City with at least 60 days' written notice by registered mail prior to the expiration date of bond.

To the extent applicable, it is agreed that this bond is executed pursuant to and in accordance with the provision of O.C.G.A. § 36-91-90, *et seq.* and is intended to be and shall be construed to be a bond in compliance with the requirements thereof, though not restricted thereto.

IN WITNESS WHEREOF, the Principal and the Surety have caused these presents to be duly signed and sealed this _____ day of _____, 20____.

PRINCIPAL: _____

President/Vice President (Sign)

President/Vice President (Type or Print)

Attested to by:

Secretary/Assistant Secretary (Seal)

SURETY: _____

By: _____
Attorney-in-Fact (Sign)

Attorney-in-Fact (Type or Print)

APPROVED AS TO FORM

Associate/Assistant City Attorney

APPROVED

City's Chief Financial Officer

EXHIBIT D
INSURANCE & BONDING REQUIREMENTS
FC-8260: HOTEL, TRAVEL PLAZA AND MIXED USE DEVELOPMENT
(OPERATION & MAINTENANCE)

A. Preamble

The following requirements apply to all work under the Lease. Compliance is required by Service Provider. **To the extent permitted by applicable law, the City of Atlanta (“City”) reserves the right to adjust or waive any insurance or bonding requirements contained in this Exhibit D and applicable to the Lease.** For all purposes hereunder, including but not limited to any Additional Insured Endorsements, the City shall include the City of Atlanta, its elected officials, officers, agents, and employees.

1. Evidence of Insurance and Bonding Required Before Work Begins

No work under the Lease may be commenced until all insurance and bonding requirements contained in this Exhibit D, or required by applicable law, have been complied with and evidence of such compliance satisfactory to City as to form and content has been filed with City.

At the time Service Provider submits to City its executed Lease, Service Provider must satisfy all insurance and bonding requirements required by this Exhibit D and applicable by law, and provide the required written documentation to City evidencing such compliance. In the event that Service Provider does not comply with such submittal requirements within the time period established by the solicitation documents applicable to the Lease, City may, in addition to any other rights City may have under the solicitation documents applicable to the Lease or under applicable law, make a claim against any proposal security provided by Service Provider.

If the Service Provider is an entity (e.g., corporation, limited liability company, etc.) or a partnership (e.g., general partnership, limited partnership, joint venture, etc.) then Service Provider shall tender insurance certificates and bonds in the name of Service Provider’s entity or partnership as the primary insured.

2. Project Number & Name

The project number (**FC-8260**) and name (**Hotel, Travel Plaza and Mixed Use Development**) must be referenced in the description section of the insurance certificate.

3. Minimum Financial Security Requirements

All companies providing insurance required by this Exhibit D must meet certain minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. Upon request, the Service Provider must submit the ratings for each company to the City.

For all Leases, regardless of size, companies providing insurance or bonds under the Lease must meet the following requirements:

- i) Best's Rating not less than A-;
- ii) Best's Financial Size Category not less than Class VII;
- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia; and
- iv) All performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to City, City will notify Service Provider in writing. Service Provider must promptly obtain a new policy or bond issued by an insurer acceptable to City and submit to City evidence of its compliance with these conditions.

Service Provider's failure to comply with all insurance and bonding requirements set forth in this Exhibit D and applicable to the Lease will not relieve Service Provider from any liability under the Lease. Service Provider's obligations to comply with all insurance and bonding requirements set forth in Exhibit D and applicable to the Lease will not be construed to conflict with or limit Service Provider's indemnification obligations under the Lease.

4. Insurance and Bonds Required for Duration of Contract

All insurance and bonds required by this Exhibit D must be maintained during the entire term of the Lease, including any renewal or extension terms, and until all work has been completed to the satisfaction of City.

5. Notices of Cancellation & Renewal

Service Provider must, notify the City of Atlanta in writing at the address listed below by mail, hand-delivery or facsimile transmission, within two (2) business days of any notices received from any insurance carriers providing insurance coverage or surety providing bonds under this Lease and Exhibit D (including any attachments thereto) that Service Provider receives concerning the proposed cancellation, or termination of coverage or security:

Enterprise Risk Management
68 Mitchell St., Suite 9100
Atlanta, GA 30303
Facsimile No. (404) 658-7450

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

Service Provider shall provide the City with evidence of required insurance and bonding prior to the commencement of this Lease, and, thereafter, with a certificate and/or bonds evidencing renewals or changes thereto at least fifteen (15) days prior to the expiration of previously provided certificates and/or bonds.

6. Agent Acting as Authorized Representative

Each and every agent acting as Authorized Representative on behalf of a company affording coverage under this Lease shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the Agent to bind coverage as required and to execute the Acord Certificates of Insurance as evidence of such coverage.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the Agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

7. Certificate Holder

The **City of Atlanta** must be named as certificate holder. All notices must be mailed to the attention of **Enterprise Risk Management** at **68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303**.

8. Additional Insured Endorsements – Form CG 20 26 07 04 or Equivalent

City shall be covered as an Additional Insured, as its interest may appear, under any and all insurance required pursuant to this Lease, and such insurance shall be primary and non-contributory with respect to the Additional Insured. However, this requirement does not apply to Workers' Compensation or Professional Liability Insurance. Additional insured status extending to ongoing and completed operations per CG 20 26 07 04 or their carrier equivalent shall be provided. Additional insured status shall be maintained following project completion equivalent to the statute of repose in the State of Georgia.

NOTE: A copy of the Additional Insured Endorsement or its equivalent must be forwarded to the Risk Management Department as soon as practicable but in no event more than ten (10) days after the effective date of the Lease.

9. Mandatory Sub-Contractor/Consultant Compliance

Service Provider must require and ensure that all of Service Provider's subcontractors operating under the Lease at any level are sufficiently insured and bonded.

10. Self-Insured Retentions, Deductibles or Similar Obligations

Any self-insured retention, deductible or similar obligation will be the sole responsibility of the Service Provider.

11. Waiver of Subrogation in favor of the City of Atlanta

The certificates of Commercial General Liability Insurance and Commercial Automobile Liability Insurance tendered by the Service Provider must clearly indicate a waiver of subrogation in favor of the City of Atlanta.

B. Workers' Compensation and Employer's Liability Insurance

Service Provider must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is or may be engaged in work under the Lease:

Workers' Compensation	Statutory
Employer's Liability:	
Bodily Injury by Accident/Disease	\$1,000,000 each accident
Bodily Injury by Accident/Disease	\$1,000,000 each employee
Bodily Injury by Accident/Disease	\$1,000,000 policy limit

C. Commercial General Liability Insurance

Service Provider must procure and maintain Commercial General Liability Insurance on Form CG 00 00 01 (or equivalent) in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate**. The following indicated extensions of coverage must be provided:

- Contractual Liability
- Broad Form Property Damage
- Premises Operations
- Personal Injury
- Advertising Injury
- Medical Expense
- Fire Legal Liability

- Independent Contractor/Consultants/SubContractor/Consultants
- Products – Completed Operations
- Additional Insured Endorsement (primary& non-contributing in favor of the City of Atlanta)
- Waiver of Subrogation in favor of the City of Atlanta

D. Commercial Automobile Liability Insurance

Service Provider must procure and maintain Automobile Liability Insurance in an amount not less than **\$1,000,000** Bodily Injury and Property Damage combined single limit. The following indicated extensions of coverage must be provided:

- Owned, Non-owned & Hired Vehicles
- Waiver of Subrogation in favor of the City of Atlanta

If Service Provider does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Service Provider’s personal automobile policy or the Commercial General Liability coverage required under this **Exhibit D**.

Additionally, in accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of the City of Atlanta, all vehicles requiring access to the restricted areas of the airport must be covered by an automobile liability policy in the minimum amount of **Ten Million Dollars (\$10,000,000)** combined single limit for personal injury and property damage. The \$10,000,000 limit of liability will also be imposed on any parties transporting workers, materials and/or equipment to the Airport site from parking lots or similar facilities.

E. Crime Policy

The Service Provider shall procure and maintain a Crime policy covering all persons receiving or disbursing funds under this contract. The coverage shall be in an amount not less than **\$1,000,000** and shall be specifically endorsed to cover loss under this contract and shall name the City of Atlanta as Loss Payee.

F. Pollution Liability

Service Provider shall procure and maintain Pollution Liability Insurance in an amount not less than **\$1,000,000** each occurrence/aggregate.

- Completed operations coverage shall remain in effect for no less than three (3) years after the end of the lease.
- This coverage can also be satisfied with an endorsement to the General Liability policy.

H. Property Coverage

Service Provider shall procure and maintain all risk property coverage in an amount equal to replacement value for all equipment, furniture, fixtures, machinery and/ or personal property.

I. Performance and Payment Bonds

At, or prior to, Service Provider's execution of the Lease, Service Provider must, at its own expense, deliver to the City a Performance and a Payment Bond each in an amount of Five Million U.S. Dollars (\$5,000,000) naming the City as co-obligee and issued by a surety company or companies in such form as approved by the City's Attorney as attached hereto at **Exhibit D-1**. The bonds must be renewed annually at one hundred percent (100%). The bonds must be kept in full force and effect during the Term and any renewals. In lieu of a Performance Bond, Service Provider may submit to the City an Irrevocable Letter of Credit in a form acceptable to City, in its sole discretion.

1. In addition, Service Provider must provide to City a fixed price contract or contracts for any construction work to be performed within the Premises subsequent to the initial development during the Term of the Agreement, which contract(s) shall be insured by, and shall provide to the City, a Payment Bond in an amount equal to one hundred percent (100%) of the work specified in such contract(s) and acceptable to the City's Chief Financial Officer and in such form as approved by the City Attorney. The Payment Bond shall name the City as the Obligee, shall meet the other requirements of the Lease, and shall remain in full force and effect until: (i) all Improvements are completely and fully paid for, (ii) certificates of occupancy, if any, have been issued for the Premises, (iii) final lien waivers have been obtained from all contractors and subcontractors; (iv) the City has approved the final construction of the Improvements; and (v) the applicable limitations period under Georgia law for the commencement of a suit against the Payment Bond has lapsed.
2. The bonds must be issued as security for the faithful performance of this Lease, including, maintenance and guarantee provisions, its covenants, stipulations and Leases of the Lease, the payment of all bills and obligations arising out of the performance of its obligations under the Lease, which bills and obligations might or would in any manner become a claim against the City, and guaranteeing all services and work set forth in the Lease against faulty materials or poor workmanship, or both, in accordance with any warranty provisions of the Lease.
3. The surety company issuing the bonds must give the Aviation General Manager notice in writing by registered mail at least sixty (60) days prior to an anniversary date of the bonds of its intention not to renew or to terminate the bonds.

4. A Corporate Surety that is satisfactory to City, authorized to do business in the State of Georgia, and listed in the latest issue of U.S. Treasury Circular 570 must execute the bonds.
5. An agent of the Surety residing in the State of Georgia must execute the bonds. The date of the Bonds must be the same as the date of execution of the Lease by City. The Surety must appoint an agent for service in Atlanta, Georgia, upon whom all notices must be shown on each Bond. The person executing the Bonds on behalf of the Surety must file with the Bonds a general power of attorney unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds must be on forms provided by City. The Lease will not be executed by City until after the approval of the Bonds by City's Attorney.
6. For additional information regarding Payment and Performance Bonds, please see **Exhibit D-1** attached hereto and incorporated herein by this reference.

EXHIBIT D-1
PERFORMANCE AND PAYMENT BONDS
(Operation and Maintenance)

1. At, or prior to, Service Provider's execution of the Agreement, Service Provider must, at its own expense, deliver to the City a Performance and a Payment Bond each in an amount equal to Five Million U.S. Dollars (\$5,000,000) naming the City as co-obligee and issued by a surety company or companies in such form as approved by the City's Attorney as attached hereto at **Exhibit D-1**. The bonds must be renewed annually at one hundred percent (100%) of the then current year's design, construction, operation and maintenance services cost as specified in the Agreement. The bonds must be kept in full force and effect during the Term and any renewals. In lieu of a Performance Bond, Service Provider may submit to the City an Irrevocable Letter of Credit in a form acceptable to City, in its sole discretion.
2. The bonds must be issued as security for the faithful performance of this Agreement, including, maintenance and guarantee provisions, its covenants, stipulations and agreements of the Agreement, the payment of all bills and obligations arising out of the performance its obligations under the Agreement, which bills and obligations might or would in any manner become a claim against the City, and guaranteeing all services and work set forth in the Agreement against faulty materials or poor workmanship, or both, in accordance with any warranty provisions of the Agreement.
3. The surety company issuing the bonds must give the City notice in writing by registered mail at least sixty (60) days prior to an anniversary date of the bonds of its intention not to renew or to terminate the bonds.
4. A Corporate Surety that is satisfactory to City, authorized to do business in the State of Georgia, and listed in the latest issue of U.S. Treasury Circular 570 must execute the bonds.
5. An agent of the Surety residing in the State of Georgia must execute the bonds. The date of the Bonds must be the same as the date of execution of the Agreement by City. The Surety must appoint an agent for service in Atlanta, Georgia upon whom all notices must be shown on each Bond. The person executing the Bonds on behalf of the Surety must file with the Bonds a general power of attorney unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds must be on forms provided by City. The Agreement will not be executed by City until after the approval of the Bonds by City's Attorney.

EXHIBIT D-1

ATTACHMENT 1

Performance Bond

INSTRUCTIONS

1. This form is required for use in connection with the Agreement identified on its face. There shall be no deviation from this form without approval by the City.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an office of the corporation involved, evidence of this authority must be furnished.
3. Corporation executing the bond as surety must be among those appearing on the U.S. Treasury Department's most current list of approved sureties and must be acting within the amounts and limitations set forth therein.
4. Corporate surety shall be duly authorized by the Commissioner of Insurance of the State of Georgia to transact surety business in the State of Georgia.
5. Do not date this bond. The City will date this bond the same date or later than the date of the Agreement.
6. The Surety shall attach a duly authorized power-of-attorney authorizing signature on its behalf of any attorney-in-fact.
7. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal."
8. The name of each person signing this bond shall be typed or printed in the space provided.

Sum as required above; and, in the event Surety declines to renew this bond, Surety agrees that it will provide City with at least 60 days' written notice by registered mail prior to the expiration date of bond.

IN WITNESS WHEREOF, the Principal and the Surety have caused these presents to be duly signed and sealed this _____ day of _____, 20__.

PRINCIPAL: _____

President/Vice President (Sign)

President/Vice President (Type or Print)

Attested to by:

Secretary/Assistant Secretary (Seal)

SURETY: _____

By: _____
Attorney-in-Fact (Sign)

Attorney-in-Fact (Type or Print)

APPROVED AS TO FORM

Associate/Assistant City Attorney

APPROVED

City's Chief Financial Officer

EXHIBIT D-1

ATTACHMENT 2

Payment Bond

INSTRUCTIONS

1. This form is required for use in connection with the Agreement identified on its face. There shall be no deviation from this form without approval by the City.
2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an office of the corporation involved, evidence of this authority must be furnished.
3. Corporation executing the bond as surety must be among those appearing on the U.S. Treasury Department's most current list of approved sureties and must be acting within the amounts and limitations set forth therein.
4. Corporate surety shall be duly authorized by the Commissioner of Insurance of the State of Georgia to transact surety business in the State of Georgia.
5. Do not date this bond. The City will date this bond the same date or later than the date of the Agreement.
6. The Surety shall attach a duly authorized power-of-attorney authorizing signature on its behalf of any attorney-in-fact.
7. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal."
8. The name of each person signing this bond shall be typed or printed in the space provided.

IN WITNESS WHEREOF, the Principal and the Surety have caused these presents to be duly signed and sealed this _____ day of _____, 20____.

PRINCIPAL: _____

President/Vice President (Sign)

President/Vice President (Type or Print)

Attested to by:

Secretary/Assistant Secretary (Seal)

SURETY: _____

By: _____
Attorney-in-Fact (Sign)

Attorney-in-Fact (Type or Print)

APPROVED AS TO FORM

Associate/Assistant City Attorney

APPROVED

City's Chief Financial Officer

EXHIBIT E

PROGRAM REQUIREMENTS

1. General Program Narrative.

1.01 **Full Service Hotel:** To include 250-300 high end guest rooms at a quality level commensurate with 4-Diamond or better hotel developed within the Hotel Development Tract. The facility should include meeting space, full service restaurant, upscale lobby bar and grille, concierge services, laundry and dry cleaning services. Other amenities may include a swimming pool, spa, business center, fitness center, and sundry shop. The Hotel Development Tract will have on-site parking for hotel operation only. The development must comply with all applicable Airport policies and should also include green space and landscaping. The Hotel development should include dedicated parking for hotel patrons and hotel employees only. Design and operation standards should comply with the Airport's sustainability policies. (See Attachment A to this Exhibit for site graphics)

1.01.1 The ingress and egress for automobiles and pedestrians alike will be major features for the hotel. The automobile traffic for the hotel should include ease of driving and minimize disruption to normal traffic flows. Many patrons will walk to the hotel. The pedestrian connection from the Domestic Terminal to the hotel should consider comfort and ambiance related to proximity of the hotel property as key design factors. The overall guest experience starts on the outside of the hotel.

1.01.2 A 4-Diamond hotel rating by the American Automobile Association ("AAA") contains a number of subjective factors which may result in a hotel receiving the rating at a certain point in time and not receiving the rating at other points in time, but agree on the following principles regarding the quality of the hotel and its operation: if a 4-Diamond rating is not given by the AAA to the hotel for any reason, the Lessee shall continue to operate the hotel at a standard of quality that is equal to or better than the standards required by the major hotel brands in the United States (currently, Hilton, Westin, Sheraton, and Marriott) for their AAA 4-Diamond rated full service hotels, and shall continue to apply to the AAA for a renewed AAA 4-Diamond rating.

1.02 **Mixed-Use Development:** To include a minimum of 30,000 square feet of Class A office space within the thirteen (13) acre Mixed-Use Development Tract which may include, but is not limited to, additional Class A office space, hotel development, retail, commercial or residential development. The Mixed Use Development Tract will have on-site parking for its operation only. The development must comply with all applicable Airport policies and should also include green space and landscaping. Amenities should be planned and sized for complex tenants only. Green areas and walking trails are recommended. (See Attachment A to this Exhibit for site graphics)

EXHIBIT E

PROGRAM REQUIREMENTS

- 1.03 **Travel Plaza:** The Travel Plaza must be a first-class, professionally managed facility to include a fueling station, e.g. gasoline or quick-fill CNG, which is approved for automobile use. If gasoline is proposed, it must be stored in and dispensed from underground tanks. The facility must include a convenience store, separate restroom facilities, food and beverage offerings (open from 5 am to 9 pm at a minimum) and seating area. The Travel Plaza Development Tract will have on-site parking for its operation only. (See Attachment A to this Exhibit for site graphics)
 - 1.04 Additional facilities and services that complement the development may be proposed. The development must comply with all applicable Airport policies and should also include green space and landscaping.
 - 1.05 To comply with Fire Marshal requirements a minimum 20 foot wide ingress/egress lane through the travel plaza site must be provided. The ingress/egress lane must provide connectivity to the relocated Domestic CV and Taxi Hold Lot which will be located north of the Travel Plaza Tract.
2. The development and operation of all facilities under the Lease Agreement will be in a first-class manner. All facilities and equipment will be maintained in a safe, clean, orderly and inviting condition at all times. The Lessee will provide prompt, courteous and efficient service adequate to meet the reasonable customer demands to ensure polite conduct on the part of employees. Any merchandise sold shall be of a high quality.
 3. Following the initial approval of items to be sold or services to be offered within the Development, no other product, merchandise or service shall be sold or offered by Lessee without the prior written consent of the Aviation General Manager. In the event any question or dispute arises as to the sale of any specific item or category of items on the demised premises, Lessee may submit a request to the Aviation General Manager requesting that the matter be reviewed. The Aviation General Manager shall give a decision in writing and such determination is the final authority in the matter. The Lessee shall abide by and conform to the decision of the Aviation General Manager.
4. **Site Requirements.**
 - 4.01 Access.
 - 4.01.1 During construction, access will be limited to minimize impacts to the traveling public and require a site access program to be submitted to and approved by the Department of Aviation (DOA) prior to the start of construction. The site access program must address traffic control, logistics and deliveries including addressing high volume periods such as holidays, employee parking and transportation, etc.
 - 4.01.2 All exterior design shall be reviewed and approved by the DOA.

EXHIBIT E

PROGRAM REQUIREMENTS

- 4.01.3 Any and all off-site improvements required for the facilities constructed on the Development Tracts shall be Lessee's responsibility.
- 4.02 Restrictions.
- 4.02.1 Lessee shall coordinate and gain DOA approval of all utility easements required for the facilities. Lessee shall provide engineering support to DOA as necessary to support execution of any and all required easements, encroachments, or access documents.
- 4.02.2 Lessee shall reserve a specified subsurface volume that must remain available to DOA for future development of the APM. (See Attachment B to this Exhibit for additional schematic information).
- 4.02.3 Any parking included in the Development shall not compete with Airport parking and shall be used only for Development's use, for hotel patrons, invitees and employees working within the Development.
- 4.02.4 Utilities. (See Attachment B to this Exhibit for existing utilities provided as an informational item).
- 4.02.5 Lessee is responsible for all design and construction of infrastructure needed to support the facilities. Lessee, through the design and review process, must demonstrate that existing capabilities are not compromised or must make necessary improvements to support the Development facilities at Lessee's sole expense. This includes, but is not limited to: storm water requirements and outfall; sanitary sewer services; electrical services and natural gas services.

5. Design Requirements.

5.01 Building Shell Requirements.

- 5.01.1 Height Limitations – The hotel height shall be compatible with operation of Federal Aviation Administration (FAA) on-airport equipment. The City has submitted a Form 7460-1 to the FAA to obtain initial determination of likely acceptable facility height. Lessee shall submit an additional Form 7460-1 to the FAA to confirm final approved facility height during the design phase of the Development.
- 5.01.2 Building Shell Characteristics – Lessee, during the design phase, shall demonstrate to the FAA through FAA-approved ocular study that materials used on the exterior of any facility constructed on the Development Tract shall not subject pilots or air traffic controllers to glint or glare.

EXHIBIT E

PROGRAM REQUIREMENTS

ATTACHMENT A
SITE GRAPHICS

[Preliminary Draft for Discussion Purposes Only]



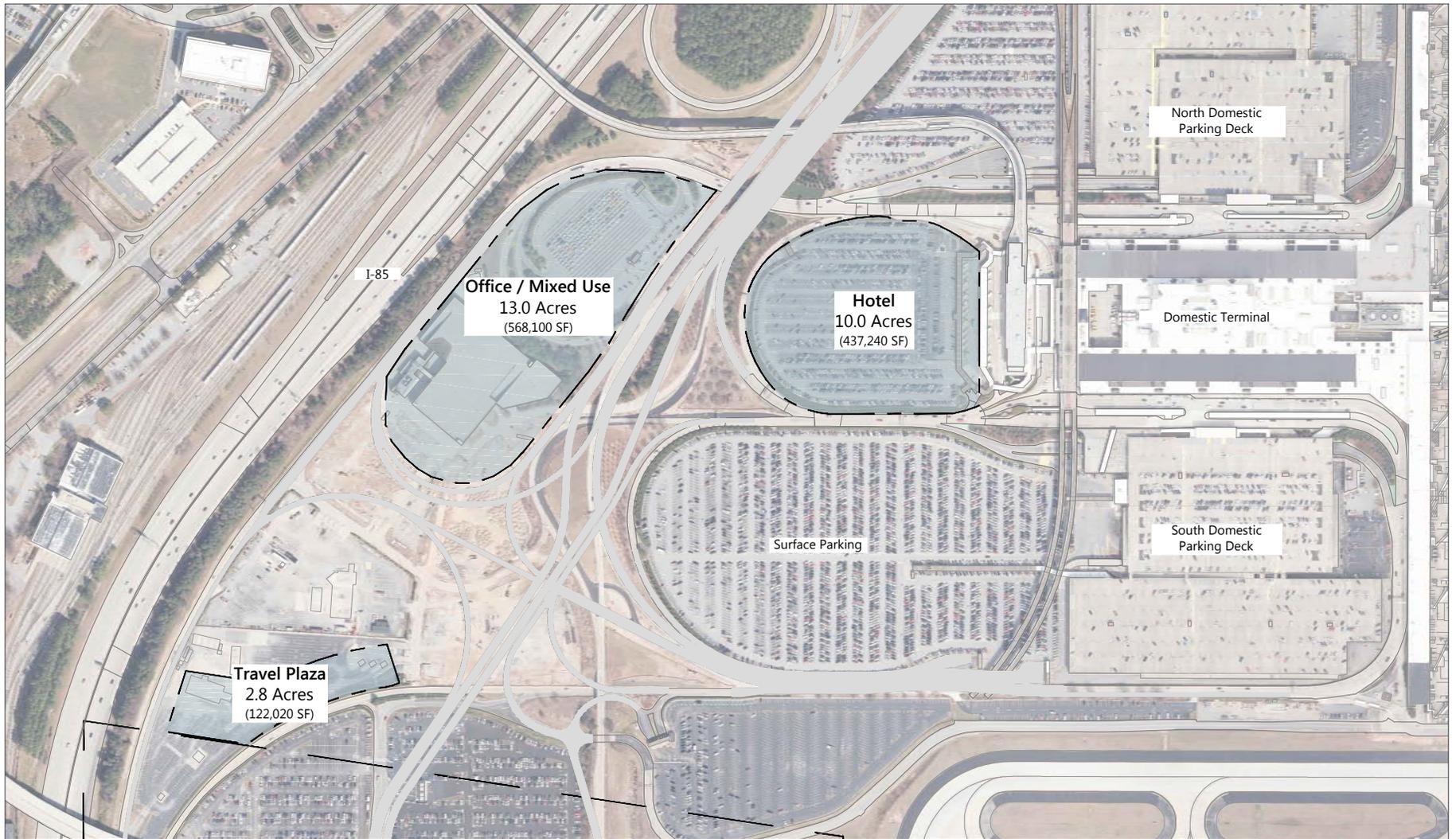
SOURCE: City of Atlanta, Department of Aviation (Base Map), April 2013; Ricondo & Associates, Inc., April 2015.
PREPARED BY: Ricondo & Associates, Inc., April 2015.

EXHIBIT E1



Existing Terminal Area

[Preliminary Draft for Discussion Purposes Only]



SOURCE: City of Atlanta, Department of Aviation (Base Map), April 2013; Ricondo & Associates, Inc., April 2015.
PREPARED BY: Ricondo & Associates, Inc., April 2015.

EXHIBIT E2



Site Map - Overall

[Preliminary Draft for Discussion Purposes Only]



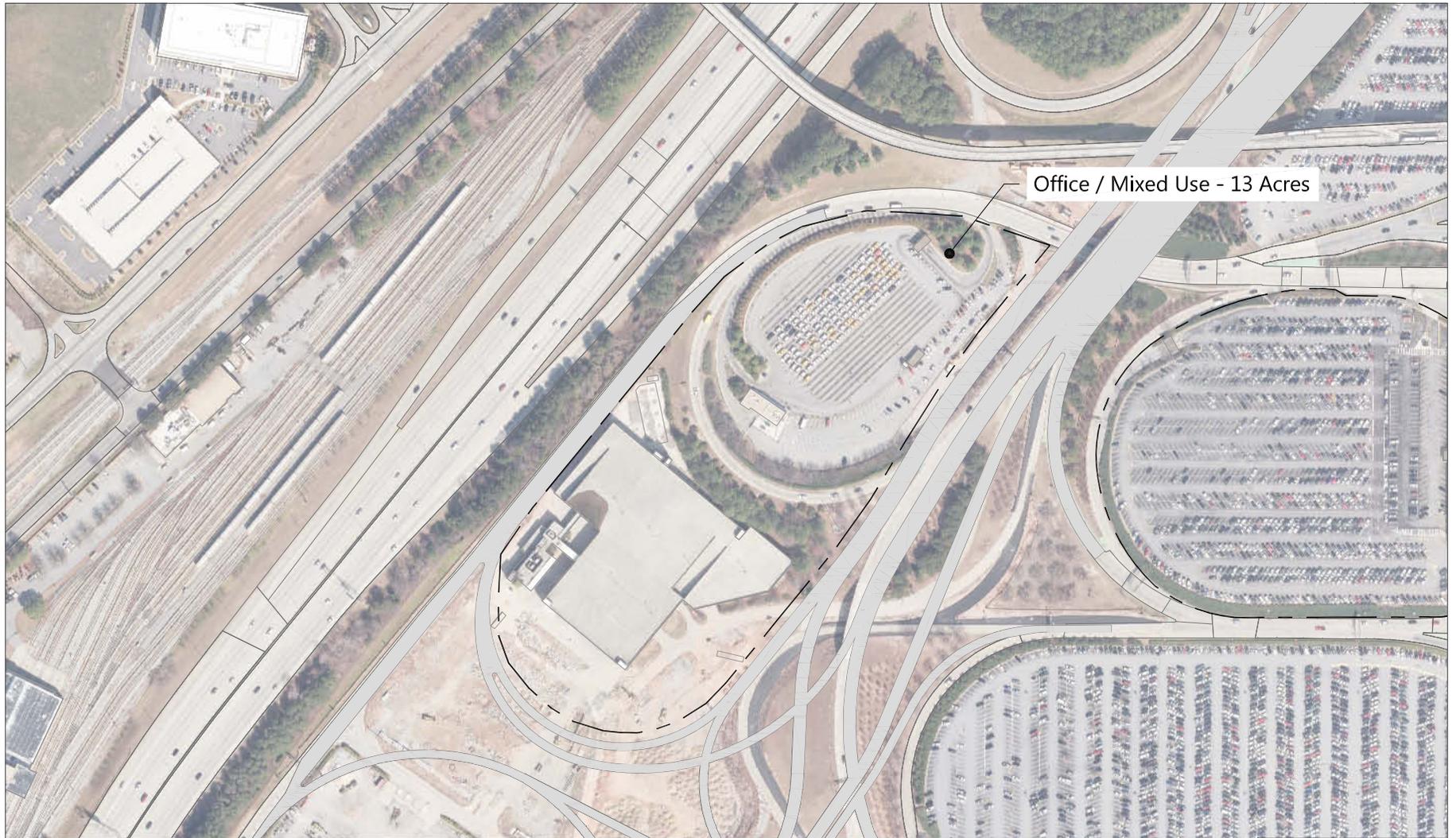
SOURCE: City of Atlanta, Department of Aviation (Base Map), April 2013; Ricondo & Associates, Inc., April 2015.
PREPARED BY: Ricondo & Associates, Inc., April 2015.

EXHIBIT E3



Site Map - Hotel

[Preliminary Draft for Discussion Purposes Only]



SOURCE: City of Atlanta, Department of Aviation (Base Map), April 2013; Ricondo & Associates, Inc., April 2015.
PREPARED BY: Ricondo & Associates, Inc., April 2015.

EXHIBIT E4



Site Map - Office/Mixed Use



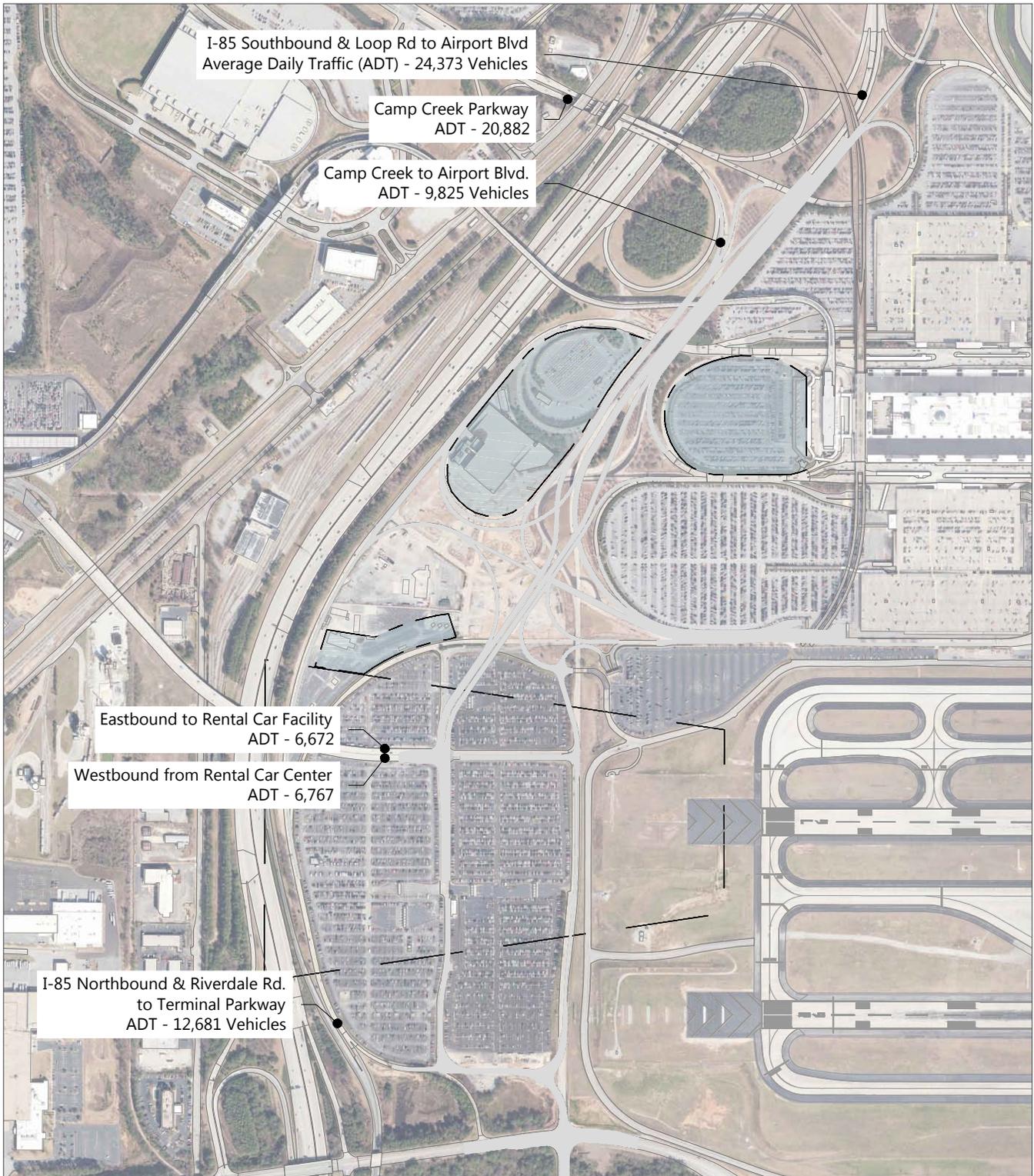
SOURCE: City of Atlanta, Department of Aviation (Base Map), April 2013; Ricondo & Associates, Inc., April 2015.
PREPARED BY: Ricondo & Associates, Inc., April 2015.

EXHIBIT E5

Site Map - Travel Plaza



[Preliminary Draft for Discussion Purposes Only]

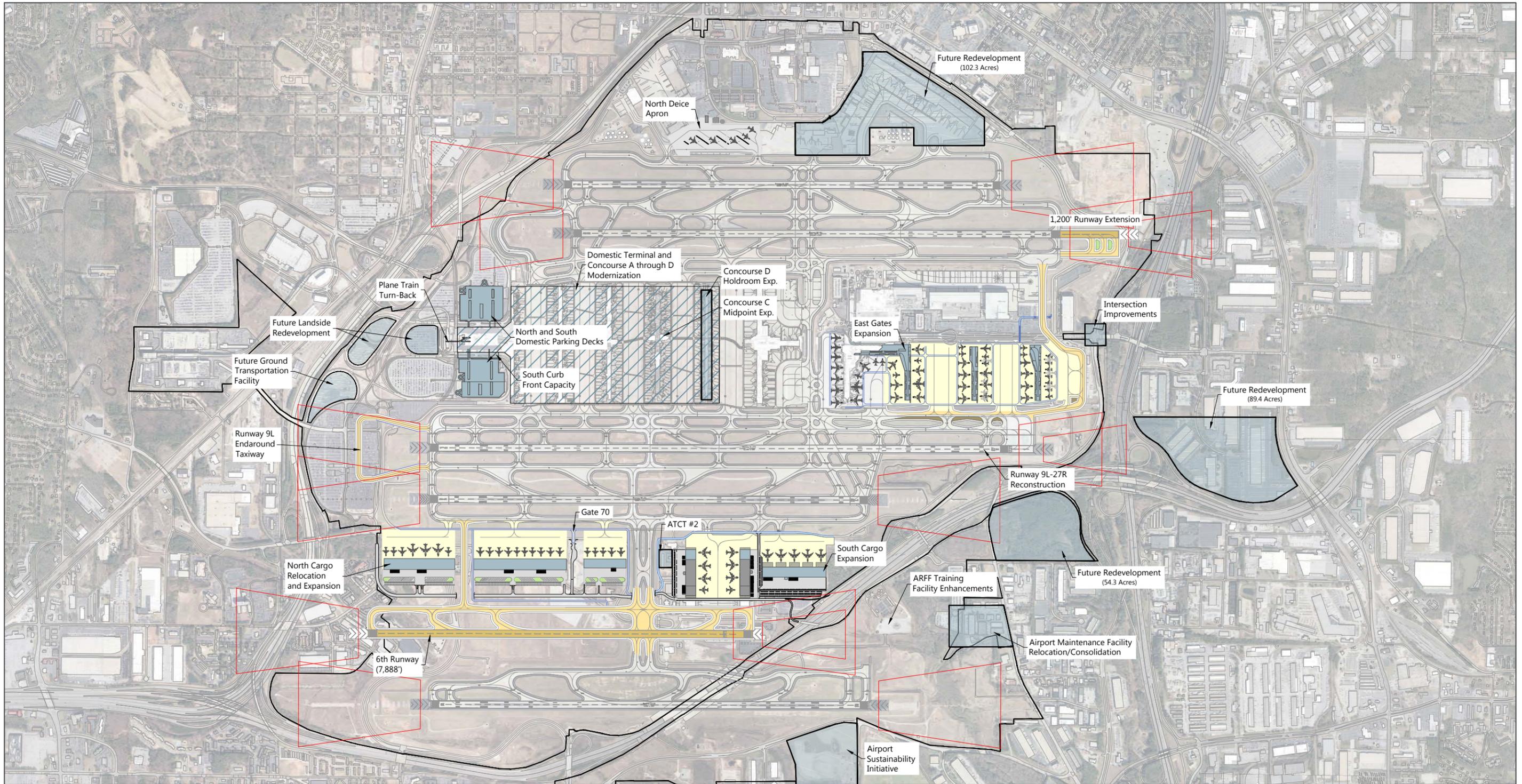


SOURCE: City of Atlanta, Department of Aviation (Base Map), April 2013; Ricondo & Associates, Inc., April 2015.
PREPARED BY: Ricondo & Associates, Inc., April 2015.

EXHIBIT E6



Traffic Counts at Major Entry Points



SOURCE: City of Atlanta, DOA, April 2012 (basemap); City of Atlanta, DOA, April 2013 (aerial photography); Ricondo & Associates, Inc., September 2013.
 PREPARED BY: Ricondo & Associates, Inc., September, 18 2014.

EXHIBIT E7



Master Plan
 Draft Recommended Plan



SOURCE: City of Atlanta, DOA, April 2012 & October 2013 (basemap & aerial photography); Ricondo & Associates, Inc., June 2015.
PREPARED BY: Ricondo & Associates, Inc., June 2015.

EXHIBIT E8



Future Development Land Parcel Availability

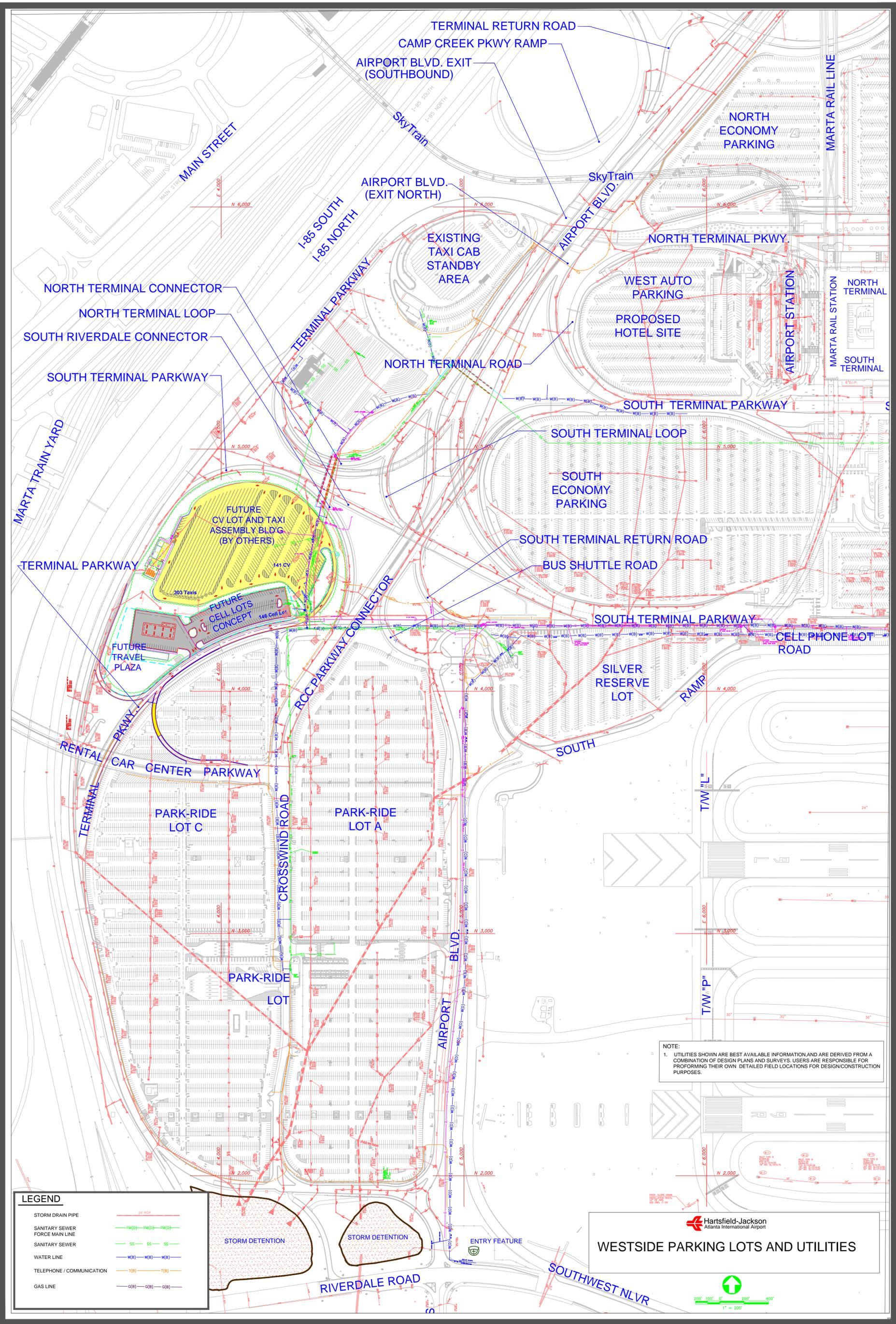
EXHIBIT E

PROGRAM REQUIREMENTS

ATTACHMENT B

EXISTING UTILITIES – Site utilities in native language will be provided to the qualified proponents (other interested parties may obtain a copy of the native language files by contacting the Department of Procurement at 404-330-6204); and

RESERVED SUBSURFACE VOLUME



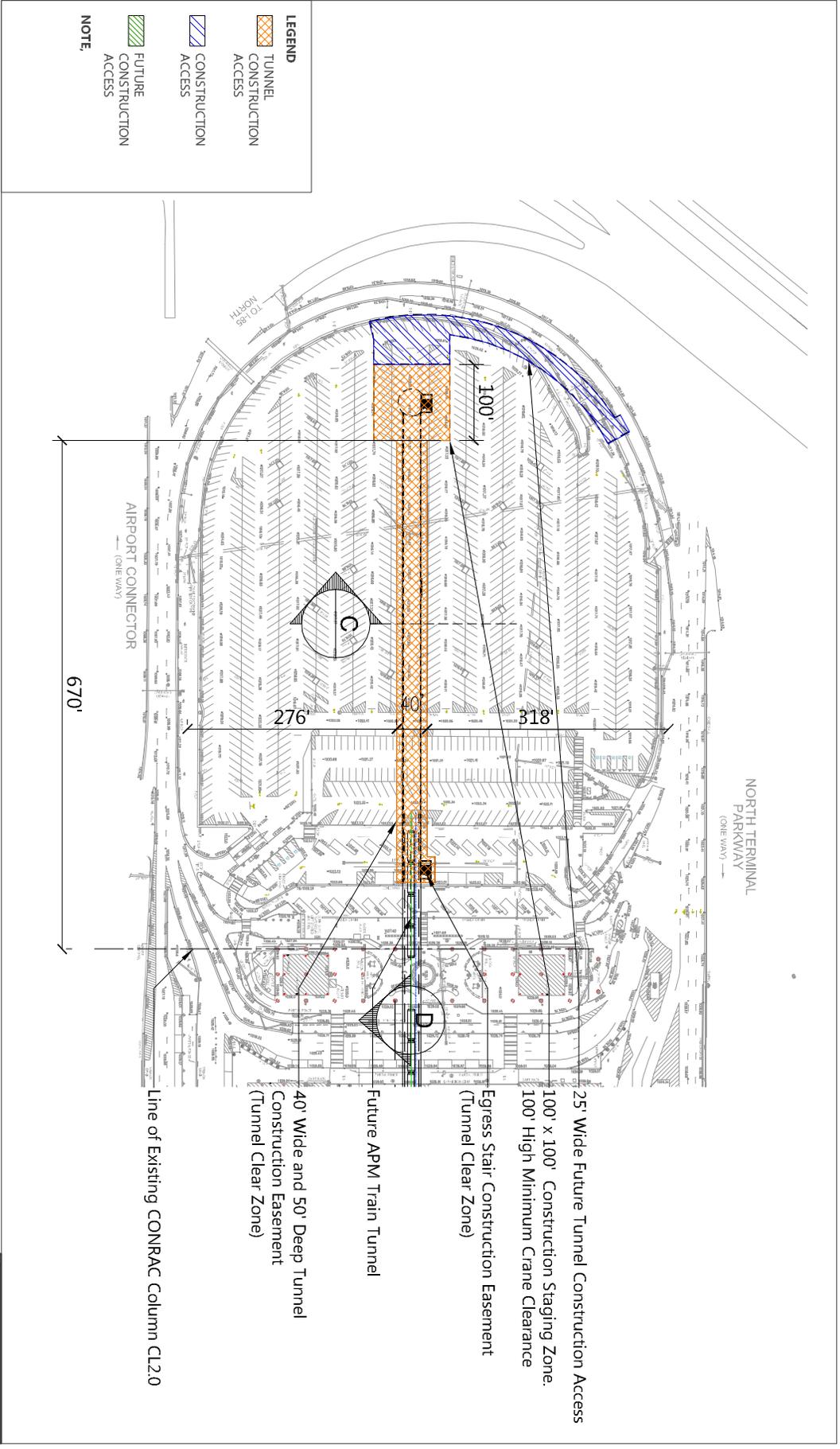
LEGEND

STORM DRAIN PIPE	— 34" RCP —
SANITARY SEWER FORCE MAIN LINE	— FM(12") — FM(18") — FM(24") —
SANITARY SEWER	— SS — SS — SS —
WATER LINE	— W(8") — W(10") — W(12") —
TELEPHONE / COMMUNICATION	— T(6") — T(8") —
GAS LINE	— G(8") — G(10") — G(12") —

NOTE:
 1. UTILITIES SHOWN ARE BEST AVAILABLE INFORMATION AND ARE DERIVED FROM A COMBINATION OF DESIGN PLANS AND SURVEYS. USERS ARE RESPONSIBLE FOR PERFORMING THEIR OWN DETAILED FIELD LOCATIONS FOR DESIGN/CONSTRUCTION PURPOSES.


WESTSIDE PARKING LOTS AND UTILITIES





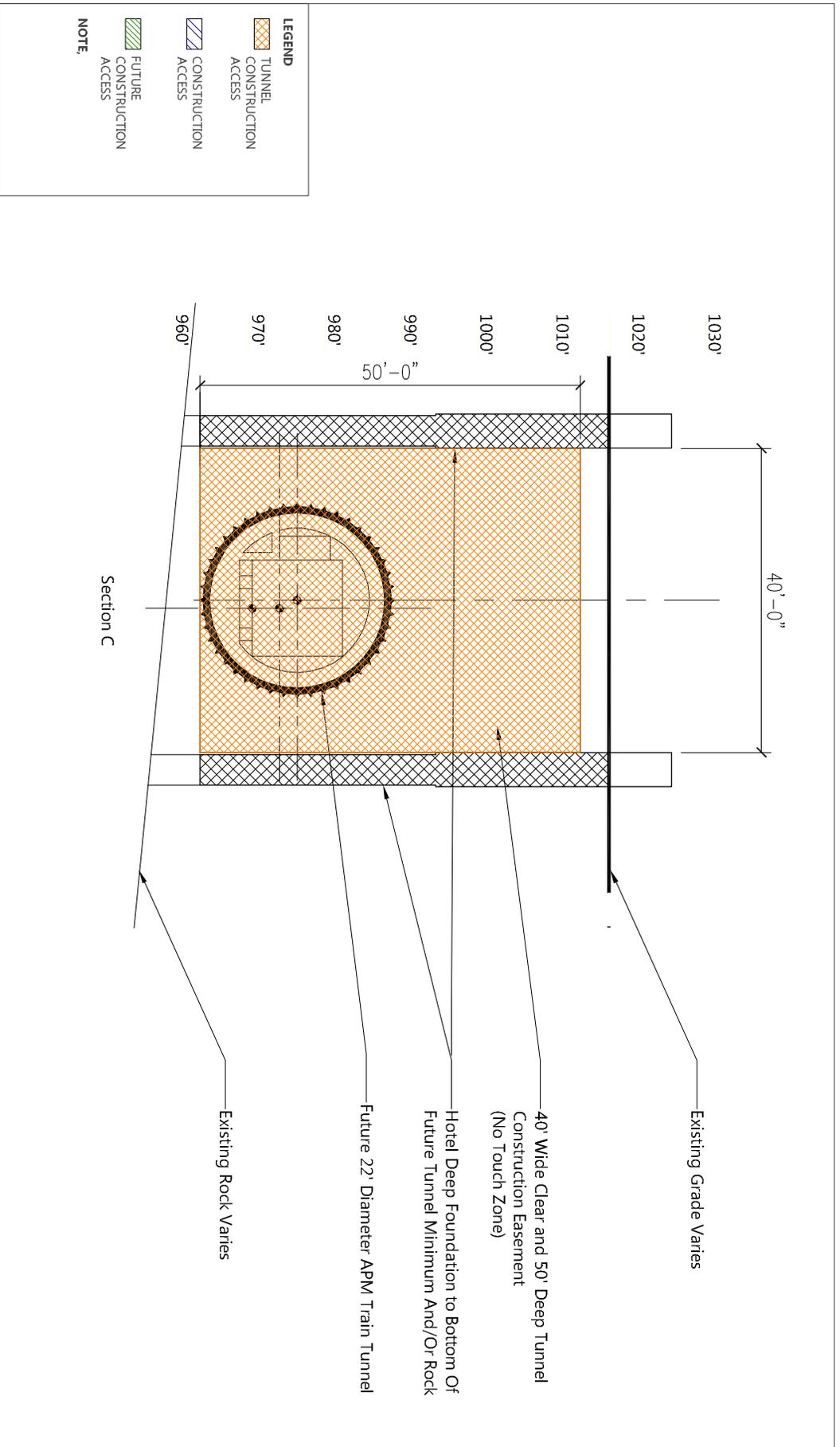
SOURCES: TCE Architects, LLC., December 2014; Heery International, Inc, December 2014.
 PREPARED BY: Ricordo & Associates, Inc., December 2014; TCE Architects, LLC, December 2014.

EXHIBIT 1



Tunnel Clear Zone

Drawing: T:\1181-Hana Train Turnback\CADD\Sheet\EXHIBIT-A-2014-01-3.dwg, Layout: EXHIBIT-1, Dec 02, 2014, 11:55am



SOURCES: TCE Architects, LLC, December 2014; Heery International, Inc, December 2014.
 PREPARED BY: Ricordo & Associates, Inc., December 2014; TCE Architects, LLC, December 2014.

EXHIBIT 2

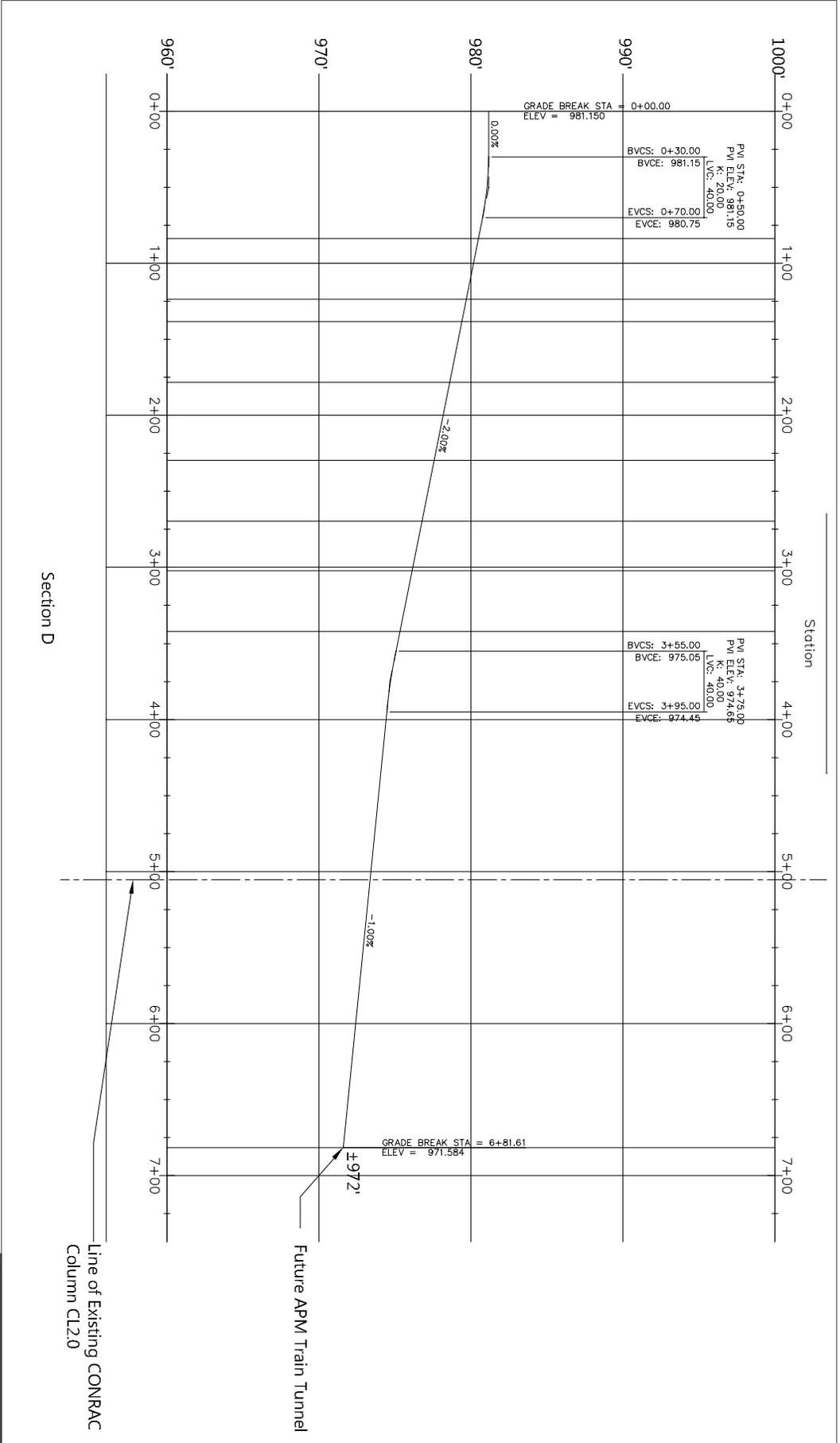


NORTH



Tunnel Clear Zone

Drawing: T:\1181-Atlanta Train Turnback\CADD\Systems\EXHIBIT 2\1181-01-3.dwg, Layout: EXHIBIT 2, Dec 02, 2014, 11:54am



SOURCES: TCE Architects, LLC, December 2014; Heery International, Inc, December 2014.
 PREPARED BY: Ricordo & Associates, Inc., December 2014; TCE Architects, LLC, December 2014.



0 100 ft.

Tunnel Clear Zone

EXHIBIT 3

Drawing: T:\1181-Atlanta Train Turnback\CADD\sheet\EXHIBIT 3-2014-10-16.dwg, Layout: EXHIBIT 3, Dec 02, 2014, 1:08am

Plane Train Turnback Validation

EXHIBIT F

OPERATIONS AND MAINTENANCE REQUIREMENTS

GENERAL OVERVIEW OF REQUIRED SERVICES TO SUPPORT THE DEVELOPMENT

The Lessee will be responsible for the overall operation and maintenance of all parts of the Program Development for the entirety of the Ground Lease term. The operation and maintenance will be provided, except as noted herein, for all facilities, equipment and services in support of the Development.

1.0 The work of the Lessee shall include, but not necessarily be limited to, the operation and maintenance, as herein defined of physical building systems, mechanical systems, electrical systems, plumbing systems, roof draining systems, fire protection/alarm systems, CCTV/security systems, specialty systems, miscellaneous equipment, composting and recycling infrastructure and general maintenance. The contractor shall furnish and supply all labor, supervision, administration, customer service, engineers, tools, materials, and equipment necessary, proper, or desirable for the efficient operation and maintenance of the Development.

2.0 GENERAL PROFESSIONAL SERVICES

- 2.1.** Hire, train, retain, and develop seasoned on-site personnel to operate and maintain all parts of the Program Development;
- 2.2.** Maintain books and records for the operation and maintenance of all parts of the Program Development. All costs of operating and maintaining the each portion of the Development shall be borne by the Lessee;
- 2.3.** Maintain current certificates of insurance on vendors, subcontractors and members;
- 2.4.** Provide monthly financial reports consisting of, but not limited to:
 - 2.4.1.** quarterly, unaudited statements, certified by Lessee's principal financial accounting officer, covering the operations of the Development and such other financial matters as the City may reasonably request;
 - 2.4.2.** General Ledger including Year to date revenue report by individual component of the Development;
 - 2.4.3.** Monthly/Year-to-Date Utility Metrics;
- 2.5.** Prepare specifications and administer the bidding process for contract and other maintenance related services;

2.6. Undertake, supervise, and process payments for all operational activities of the Serviced Facilities including but not limited to:

- 2.6.1. Janitorial;
- 2.6.2. Landscaping;
- 2.6.3. Paving repairs;
- 2.6.4. Mechanical, Electrical, and Plumbing (MEP systems);
- 2.6.5. Preventive and Corrective Maintenance Programs;
- 2.6.6. Window washing;
- 2.6.7. Electrical, gas, and water;
- 2.6.8. Building envelope repairs; and
- 2.6.9. Any other maintenance and or repair activity to ensure quality operation of the Development.

3.0 GENERAL FACILITIES MAINTENANCE SERVICES

3.1. Maintain, initiate, coordinate and supervise all ordinary and extraordinary preventative maintenance, general maintenance, and repair services for the Serviced Facilities in accordance with the manufactures or industry maintenance standards including but not limited to:

- 3.1.1. Interior and exterior lighting;
- 3.1.2. Electrical systems;
- 3.1.3. Plumbing systems;
- 3.1.4. HVAC and other mechanical systems;
- 3.1.5. Elevator and escalator maintenance;
- 3.1.6. General repair including painting, upkeep of all interior and exterior signage;
- 3.1.7. Fire protection and safety equipment;
- 3.1.8. Interior and exterior landscaping;
- 3.1.9. Utility service (electricity, gas, water);
- 3.1.10. Janitorial services;
- 3.1.11. Waste and debris management;
- 3.1.12. Maintain common area parking lots, sidewalks and roadways; and
- 3.1.13. Recycling infrastructure.

4.0 **Warranties**

- 4.1. Maintain, track, file, enforce and administer all claims and periods under Manufacturers', Subcontractors', or Vendors' warranties or guaranties.

EXHIBIT F

OPERATIONS AND MAINTENANCE REQUIREMENTS

GENERAL SPECIFICATIONS AND PROVISIONS

- 1.0 Service Levels: Best-in-Practice Service - Best in Practice Intent.** The Lessee shall provide level of services, equipment reporting and documentation, inspections, general and preventive maintenance programs in a proactive, professional, and accurate manner. Communication and correspondence shall be timely and efficient.
- 2.0 Security Provisions**
- 2.1. In addition to the applicable portions of the Security requirements contained in **Exhibit G** of the Ground Lease Agreement the Lessee shall:
- 2.1.1 The Lessee shall provide assistance and cooperation for all authorized inspections, internal reviews, and audits conducted by the City and other agencies that involve matters related to facilities and services in this Contract.
- 2.1.2 Lessee shall ensure that the Authorized Representative is provided means of access to the facility at all times excluding Lessee secure office space.
- 3.0 Lessee's On-site Security Procedures**
- 3.1. The Lessee's employees and employees of Subcontractors must be aware of any security areas which are to be serviced and special arrangements associated with them.
- 4.0 Safety Provisions**
- 4.1. The Lessee shall be responsible for safety and protection of the Lessee's employees, tenants, and the Development customers.
- 4.2. The Lessee shall be responsible for initiating, maintaining and supervising all safety precautions required in connection with their work. Lessee shall provide the Authorized Representative a copy of the Operation and Maintenance safety plan as a courtesy and not for the City's comment or approval.

- 4.3. The Lessee shall report promptly in writing to the Authorized Representative accidents in connection with the performance of the work which results in death, any injury requiring medical treatment other than first aid administered at the jobsite, or property damage, giving full details and statements of witnesses.
- 4.4. The Lessee shall be required to display appropriate signage to alert the public of unsafe conditions. The use of temporary signs at ATL is a necessary practice. First, and foremost, the Lessee shall use accurate and concise warning signs. Secondly, it is the ATL policy to notify the public, through the use of signs, whenever any of our facilities such as, but not limited to, restrooms, stairwells, restoration areas, equipment, escalators, and elevators are not in service. These signs will be used to direct the public to the nearest equivalent that is in service. The unexpected need for crowd control or other deviation from a normal route shall be provided through the use of temporary signs. The Lessee shall be required to coordinate sign policy changes on an as needed basis.
- 4.5. The Lessee shall be solely and completely responsible for initiation, maintaining, and supervision of safety precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to employees on the work site and other persons including, but not limited to general public who may be affected.

5.0 Protection for the Public and Property

- 5.1. The Lessee shall take all necessary precautions to prevent injury to the public, building occupants, or damage to the property of others.
- 5.2. The storage, positioning, or use of equipment, tools, scraps, trash, and furniture in a manner likely to present a hazard to the public or building occupants by its accidental shifting, ignition, or other hazardous qualities is prohibited.
- 5.3. No corridor, aisle, stairway, door, or exit shall be obstructed or used in such a manner as to encroach upon routes of ingress or egress utilized by the public or building occupants, or to present unsafe or unhealthy conditions to the public or building occupants.
- 5.4. Work shall not be performed in any area occupied by the public unless adequate steps are taken for the protection of the public or employees.

- 5.5. At all times, the work area shall be fenced, barricaded, or otherwise blocked off from the public or building occupants to prevent unauthorized entry into the work area .
- 5.6. When the nature of the work prevents isolation of the work area and the public or building occupants may be in or pass through, under, or over the work area, alternate precautions such as the posting of signs, the use of signal persons, and the erection of barricades or similar protection around particularly hazardous operations shall be used.
- 5.7. When work is to be performed over a public thoroughfare such as a sidewalk, lobby, or corridor, the thoroughfare shall be closed, if possible, or other precautions taken such as the installation of screens or barricades.
- 5.8. Barricades shall be removed upon completion of the work, in accordance with local ordinances.

6.0 Lessee Vehicles

- 6.1. Lessee shall provide all motor vehicles, trucks, and other motor driven equipment necessary to perform the work in this Contract and assume all liability for their operation and use. Lessee vehicles for use on ATL property shall be registered and insured, shall be kept in good repair, and shall be of a type appropriate to pertinent operations and services.
- 6.2. ATL has assumed a leadership role in achieving a reduction in air emissions. ATL has established a phased approach toward achieving the goal of a 100% clean vehicle fleet. It is the Airport's intention to mandate the use of clean vehicles for Work to be performed under this Contract.
- 6.3. The purchase cost of the vehicles will be responsibility of the Lessee. The Lessee must ensure the vehicle is maintained in excellent working condition.
- 6.4. Lessee Vehicle Identification: Lessee vehicles shall be uniform in identification markings, to readily distinguish them from common traveling public, tenants, and delivery vehicles. The Lessee vehicles shall have a visible logo on each side of the vehicle that includes the Lessee's company name and service provided. The Lessee shall be responsible for subcontractors and special service Lessees hired to perform or provide services on ATL property.

EXHIBIT F

OPERATIONS AND MAINTENANCE REQUIREMENTS

PROFESSIONAL SERVICES

1.0 Work Management

The City requires the most efficient and effective organization in the industry to manage and maintain the Serviced Facilities. It is the responsibility of the Lessee to provide professional services that reflects the mission statements of ATL.

2.0 Communication

2.1. The Lessee shall maintain effective lines of communication with all elements of the ATL, the Development tenants and the traveling public to ensure flexible, effective support. The Lessee shall:

2.1.1. Proactively participate in defining issues, devising solutions to problems and developing future plans.

2.1.2. The Lessee shall maintain a Contact List of names, emergency telephone numbers and cellular telephone numbers. This list shall be submitted to the City prior to Contract start date and resubmitted as necessary during the Contract period.

3.0 Coordination

3.1. The Lessee in the course of performing their services will be required to interface with other Lessees, ATL personnel, and facilities groups at ATL to ensure continuity of service and proper coordination of maintenance activities. The Lessee is responsible to coordinate all activities with all affected parties, including, but not limited to, general maintenance efforts, repairs, equipment shut-down, emergency responses and facility operation functions.

4.0 Performance

4.1. The Lessee shall perform all of its obligations and functions under this Contract in accordance with and in adherence to the highest industry standards. The Lessee shall coordinate its activities with the needs and requirements of the City. All services, staff, equipment, and systems shall be maintained in an efficient and economical manner.

- 4.2. The City reserves the right to refuse and/or return, without penalty to the City, any service, product, and/or items provided by the Lessee which is of poor or unsatisfactory quality or contains defective workmanship or material or fails to meet the standards specified herein.
- 4.3. The Lessee's employees shall respond immediately to all emergency conditions at the work site in such a manner as to reduce or eliminate any and all injury, loss of life and damage of property. To that end, the Lessee's employees shall exercise prudent judgment with regard to the operation and maintenance of the work site during emergency conditions and shall make timely notifications to the Authorized Representative and operating personnel to expedite the resolution of such conditions. The Lessee shall immediately comply with any directive issued by the Authorized Representative to resolve the emergency.
- 4.4. The Lessee shall maintain, repair, and keep in good operating condition all systems of the Development. Maintenance shall ensure efficiency, reliability, and minimal unscheduled interruption of service of the equipment. Operating policies and procedures shall incorporate provisions and guidelines set forth in the manufacturer's maintenance and operating instructions and/or submittal data. The Lessee shall plan and control scheduling of all preventive and corrective maintenance tasks, as per the systems or manufacturers specifications.
- 4.5. The Lessee's maintenance scheduling procedure shall include the requirements to accomplish the task, (e.g. special lubricants, tools, parts, materials, etc.). It shall also include a quality assurance and quality control program to ensure that the scheduled preventive maintenance tasks are, in fact, properly completed and completed on schedule.
- 4.6. The Lessee shall maintain at the site current maintenance and repair procedures and complete parts lists, manuals, as-built drawings, maintenance and operations manuals, warranties, and any other documentation needed to attain the safe, efficient, and continued operation of all systems and equipment.
- 4.7. The Lessee shall maintain at the site an inventory of tools, equipment, lubricants, operating supplies, custodial supplies and spare parts. The inventory shall be updated based upon operating experience. The Lessee will not permit tools, equipment, supplies or materials maintained or purchased for the accomplishment of the work to be used by any other person, agency, office or Lessee.

- 4.8. The Lessee shall provide general maintenance of the Development to include painting, wall and floor repair, pest control, revolving doors, automatic doors, roll-up doors, doors and hardware, roof repairs, skylight/smoke vents, toilet accessories, loading dock equipment, folding partitions, and minor repairs.
- 4.9. The intent of the Agreement is to place with the Lessee the full and complete responsibility for performing the operation and maintenance functions of the Development. Expressly included within the Lessee's responsibility are all labor costs for any and all operation and maintenance of the facilities.
- 4.10. Maintenance personnel shall be on site, as necessary, for the satisfactory performance of the work, as well as for all scheduled maintenance.
- 4.11. The Lessee shall furnish to the Authorized Representative manufacturer's published product catalogs, including any produced in CD-ROM or diskette format, for each manufacturer and shall continue to furnish updates throughout the term of the Contract, as revised and updated versions are published by the manufacturer(s):
- 4.12. Hazardous Materials: The Lessee shall use products, cleaners, and materials that are not considered hazardous and that will not damage exposed surfaces.
- 4.13. Dispose of waste materials lawfully. Containerize hazardous and unsanitary waste materials separately from other waste. Mark containers appropriately and dispose of legally, according to regulations. All work, including contact with and handling of hazardous materials and wastes, the disturbance of dismantling of structures or equipment containing hazardous materials and/or the disposal of ordinary and hazardous materials and wastes shall comply with applicable Federal requirements including 29 CFR 1910/1926, 40 CFR 260-265, 40 CFR 61, 49 CFR 171-179, and applicable state and municipal safety and environmental requirements. Submit and maintain copies of permits, certificates, and manifests that indicate hazardous waste has been disposed of in compliance with the regulations. Where there is a conflict between applicable regulations, the most stringent shall apply.

5.0 Quality Control

- 5.1. The Lessee shall establish, implement and maintain a proactive quality control program that reflects and incorporates quality control processes for all technical staff and quality management practices for all supervisory staff.
- 5.2. The Lessee shall maintain production and quality control records for review by the Authorized Representative.

- 5.3. If any of the services do not conform to Contract requirements, the Authorized Representative may require the Lessee to perform the services again in conformity with Contract requirements. If the service or task cannot be corrected, the City will be notified. A plan for future performance to meet requirements shall be submitted in writing with a detailed plan of action to ensure the issue will not recur.

6.0 Lessee Personnel

- 6.1. The Lessee shall provide competent personnel at all times during the performance of this Contract to contend with any such situations including emergency, disaster, act of God, and other such occurrences that should require immediate and long-term attention.. All employees of the Lessee shall have the ability to understand, take direction, speak, read and communicate in fundamental English. The City reserves the right to spot check employees of the Lessee to enforce this requirement at anytime during the course of this Contract.

7.0 Contract Staff

- 7.1. The Lessee's principals shall be responsible for the development and implementation of long-range plans, day-to-day operation of the facilities, and institution of programs including equipment operation, preventive maintenance, energy conservation, energy management, budgeting and manpower utilization. The City can reasonably demand removal and replacement of any employee of the Lessee's staff.
- 7.2. The Lessee's management personnel shall meet the following standards:
 - 7.2.1.1. To be familiar with all contract requirements and to ensure that they are properly performed.
 - 7.2.1.2. To be responsible for the performance of a qualified and reliable staff for all scopes and services.
 - 7.2.1.3. To evaluate all equipment and systems.
 - 7.2.1.4. To maintain an effective energy conservation program.
 - 7.2.1.5. To carry out policies and procedures concerned with safety and work methods.

- 7.2.1.6. To ensure that the on-site staff conforms to all applicable laws, ordinances, codes, and regulations.
 - 7.2.1.7. To establish a program for the acquisition, storage and serviceability of all operating materials, tools and equipment.
 - 7.2.1.8. To be responsible for maintaining a high quality of service when subcontracting work which cannot be performed by on-site personnel.
 - 7.2.1.9. To ensure that work responsibilities are allocated properly among staff by developing and implementing manpower schedules, work methods and procedures designed to obtain efficient operations.
 - 7.2.1.10. To be responsible for the establishment of performance standards for each phase of work and for adherence to standard policies and quality levels.
 - 7.2.1.11. To regularly and systematically analyze the performance effectiveness of the scope of services to initiate corrective action when necessary.
- 7.3. The Lessee shall maintain their workforce in a technically competent manner and to the level of industry “best in practice” requirement. They will be well trained in their respective activities, and maintain the appropriate efficiency and customer services attitude to meet the service demands at ATL.
 - 7.4. The Lessee shall comply with all state and federal regulations concerning maximum work hours, environmental conditions and other employee considerations.
 - 7.5. The Lessee and all its personnel shall maintain a good attitude and behavior. All Lessee personnel must exhibit high character, cooperative spirit, and congenial attitudes at all times they are on the ATL premises.
 - 7.6. The Lessee shall be responsible for maintaining satisfactory standards of employee competency, conduct, courtesy, appearance, honesty, and integrity, and shall be responsible for taking such disciplinary action with respect to any employee, as may be necessary including removal from the site.
 - 7.7. At the Authorized Representative’s request, the Lessee shall immediately remove from the premises or dismiss any employee found unfit to perform duties due to one or more of the following reasons:

- 7.7.1. Neglect of duty.
- 7.7.2. Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by words or actions, or fighting.
- 7.7.3. Theft, vandalism, immoral conduct or any other criminal action. selling, consuming, possessing, or being under the influence of intoxicants, alcohol, or illegal substances that produce similar effects while on duty.
- 7.7.4. In possession of any type of weapon on ATL property.
- 7.7.5. In possession, either internally or externally, of any illegal drug(s) or substances.
- 7.7.6. Organizing or participating in any form of illegal gambling.

HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT

FC-8260, Hotel, Travel Plaza and Mixed Use Development

EXHIBIT "G", AIRPORT SECURITY PLAN REQUIREMENTS (SIDA)

The CONTRACTOR is required to provide a Site Specific Security Plan. This Plan is part of the Contract Documents. The CONTRACTOR must, at all times, comply with all aspects of the approved Plan as well as ensure that all employees and subcontractors comply with the provisions of the Plan. This Plan is a "living document" and will be updated as needed. This Site specific security plan must be developed in accordance with the guidelines in Appendix 1 of this document.

The Site Specific Security Plan must be submitted in writing to the Engineer and approved prior to commencing Work at the Jobsite.

Costs for performing all Work necessary to provide a secure site must be incidental to the prices for other items of Work, and not priced separately.

1. **Airport Security Requirements.** The CONTRACTOR shall at all times conduct all operations under this Contract in a manner to avoid the risk of loss, theft, or damage by vandalism, sabotage or any other means to any equipment, materials, work or other property at the Jobsite. The CONTRACTOR shall continuously inspect all equipment, materials and work to discover and determine any conditions which might involve such risks and shall be solely responsible for discovery, determination and correction of any such conditions.

The CONTRACTOR shall comply with the Transportation Security Administration (TSA) and the City's security requirements for the Airport. Contractor shall cooperate with the TSA and the City on all security matters and shall promptly comply with any Project security arrangements established by City. Such compliance with these security requirements shall not relieve the CONTRACTOR of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner the CONTRACTOR's obligation with respect to all applicable state, federal and local laws and regulations and its duty to undertake reasonable action to establish and maintain secure conditions at the Jobsite.

2. **Preventing Unauthorized Access.** The Airport has been secured to prevent unauthorized access to the Air Operations Area (AOA), the secured area, the sterile area and other controlled areas of the Airport. The CONTRACTOR shall cooperate to the fullest extent with the TSA and DOA to maintain the integrity of the security system. The CONTRACTOR shall control its operations and the operations of its subcontractors and all suppliers so as to provide for the free and unobstructed movement of aircraft, aircraft operations personnel

and equipment in the AOA, the secured area, the sterile area and other controlled areas of the Airport as defined herein.

3. **Transportation Security Administration/Responsibility of the CONTRACTOR.** In order to comply with the TSA and DOA security requirements, the CONTRACTOR shall be responsible for informing itself as to current, ongoing, and changing requirements, and for remaining in compliance with those requirements throughout this Contract. The security requirements are as follows and from time to time may change as required by the TSA and/or DOA.
4. **Security Identification Display Area (SIDA).** The Security Identification Display Area (SIDA) is defined in the Airport Security Program as any area that requires individuals to continuously display Airport issued or Airport approved identification badges. Personnel associated with construction contracts in the AOA, secured area, and/or sterile area of the Airport shall display SIDA badges at all times. The TSA and the DOA require all personnel to display SIDA badges in areas controlled for security purposes at all times.
 - 4.1 **FBI/CHRC Checks.** To obtain a SIDA badge, each individual must successfully undergo a Federal Bureau of Investigation (FBI) fingerprint based Criminal History Records Check (CHRC) which must reveal no convictions of disqualifying crimes within the last ten years as defined in Transportation Security Regulation, TSR Part 1542.209. Each individual must also attend a security awareness course conducted by the DOA Security Division. Each employee must present two forms of Identification prior to the badging process. At least one form of identification must have been issued by a government authority and at least one must contain a photograph. The CONTRACTOR shall be responsible for all fees associated with obtaining a SIDA badge, (i.e. badge and fingerprint fees as determined by DOA). The current cost for the CHRC is \$50.00 per individual and is required every two years. The current cost for badge is \$60.00 per individual and badges expire within one year of issuance or earlier dependent on project duration. The cost of a lost badge is \$60.00. The cost of each non-return is \$200.00. The CONTRACTOR/Escorting Requirements are specified in subsection below.
- 5 **Displaying Badges.** Employees and those of all subcontractors must display a DOA issued badge showing the CONTRACTOR's name and an employee number. All personnel shall be required to wear this badge at all times while within the secured areas of the Airport.
- 6 **Badging Records and Process.** The CONTRACTOR shall maintain an up-to-date record of all badge holders showing name, address, sex, height, weight, color of eyes and badge number. The CONTRACTOR will be required to furnish this information to the DOA upon request.
 - 6.1 The Badging process may begin upon the CONTRACTOR's receipt of a formal Notice to Proceed (NTP) from the City and may take up to fourteen (14) calendar days to complete. Access to secured areas shall be denied until such time as the CONTRACTOR has completed the badging process.

- 6.2 If applicable, an Administrative NTP may be presented to the DOA Security Division by the CONTRACTOR in order to initiate the badging process for the CONTRACTOR's employees.
- 6.3 The CONTRACTOR shall appoint one of its employees as an Authorizing Agent and submit his or her name, on the CONTRACTOR's letterhead, to the DOA Security Division. The submittal letter shall indicate the Project Name, Contract Number, Point of Contact, Telephone and Fax number, list of subcontractors including subcontractors' Authorizing Agent nature of the work to be performed by the CONTRACTOR, and each subcontractor, location and duration, time frame(s), and justification for vehicle access, if required. A copy of the CONTRACTOR's Insurance Certificate shall accompany the letter. Once badged, the CONTRACTOR's Authorizing Agent shall be responsible for the badging process of his/her company employees.
- 6.4 Each Subcontractor identified in the CONTRACTOR's letter shall appoint one of its employees as an Authorizing Agent and submit his or her name through the CONTRACTOR, to the DOA Security Division. A copy of the Subcontractor's Insurance certificate shall accompany the letter. Once badged, the Subcontractor's Authorizing Agent shall be responsible for the badging process of his/her company employees.
- 6.5 Processing time for badging, at the badging office after completion of the CHRC, will last approximately one (1) hour. Processing time for Authorizing Agents will last an additional hour for briefing by the DOA Security Division. Authorizing agent briefing sessions will be conducted only on Wednesdays at 2:00pm in the DOA Security office.
- 6.6 Each person applying for badging shall complete and submit all forms required by the DOA Security Division. All required forms will be provided to the authorizing agent at the time of the briefing at the DOA Security office.
- 6.7 Each person applying for a badge shall also submit to fingerprinting upon the submittal of said forms. Fingerprints will be utilized for a ten (10) year Federal Bureau of Investigation (FBI) based criminal history records check for each individual employee.
- 6.8 Pursuant to TSR § 1542.209 certain Felony convictions within the most recent ten (10) year period, may cause disqualification. A list of disqualifying Felony convictions is available in the offices of the DOA Security Division and in the TSR Regulations.
- 6.9 The Authorizing Agent will be notified when the results of the fingerprint checks are completed. Upon notification and approval, the CONTRACTOR's and subcontractor's approved employees may return to the DOA Security Office, during posted hours, for photographing and badging. This process may take up to sixty (60) minutes.
- 6.10 Badges issued to the CONTRACTOR and subcontractor employees and agents shall expire upon the happening of one (1) of the following events, whichever occurs first:

- 6.10.1 Completion of Contract or subcontract, unless extended by the City;
 - 6.10.2 Expiration of Insurance coverage, as indicated on the CONTRACTOR's Insurance certificate; or
 - 6.10.3 Employee's driver's license expiration date;
 - 6.10.4 One (1) year from the issuance of the badge.
- 6.11 The CONTRACTOR and its subcontractor shall be responsible for making arrangements, ahead of time, to extend badges, when necessary. A letter, directed to the DOA Assistant General Manager, Facilities, and the DOA Security Manager, explaining the reason(s) for the badge extension on the CONTRACTOR's letterhead will be required. Extension requests must be approved in writing by the DOA prior to extension of the badges.
- 6.12 The CONTRACTOR's questions concerning Airport Security shall be directed to (404) 530-6667.
- 7 **Drivers.** All drivers operating vehicles within the AOA must obtain, in addition to the DOA Security badge, a DOA Ramp Certification. Ramp Certification will be evidenced by a "D" sticker placed on the face of the badge by the DOA Security department.
- 7.1 **Ramp Certification.** City will require Airport Driver Safety Training and Ramp Certification for all personnel required to operate a motor vehicle in the AOA. This can be obtained by completing an Airport Driver Safety Training Course administered by the Airport Security Division. These drivers shall only operate vehicle on the approved NLVR's & Aprons, excluding the Aircraft Movement Area.
 - 7.2 Except where noted, all vehicles operating within the AOA shall carry a minimum liability insurance coverage amount of TEN MILLION DOLLARS (\$10,000,000.00).
 - 7.3 The CONTRACTOR shall mark all vehicles and construction equipment, including those of subcontractors, in a manner as required by the Department of Aviation and consistent with Transportation Security Regulations (TSR).
 - 7.4 All vehicles operating within the AOA must display permanent signage, legible and visible from a sight distance of five hundred (500) feet on both sides of the vehicle. MAGNETIC SIGNS ARE PROHIBITED FROM USE IN THE AOA.
- 8 **Protocols for the CONTRACTOR Escorting.** The CONTRACTOR must incorporate escorting protocol with Security Plan submitted for approval by the Security Manager. The Security Manager must approve any exceptions. The CONTRACTOR must attach a map of work area(s) and routes to access the work area(s) to project security plan submitted to the Aviation Security Division for approval. The CONTRACTOR may contact DOA Security Manager at (404) 530-6667 during normal operating hours. These requirements cover security escorting of unbadged personnel through airport security gates. The requirements for escorting onto the Aircraft Movement Area (AMA) and for crossing-guards on the airfield are included in the Technical Specifications.

- 8.1 All escorted vehicles and personnel must remain under the direction of authorized escorting personnel at all times.
- 8.2 The CONTRACTOR and escorted personnel shall have no Terminal or Concourse access.
- 8.3 Escorting is limited to an Airport SIDA badged prime CONTRACTOR or an Airport SIDA badged escorting subcontractor approved by the Security and Operations Managers to perform escorting duties. The individuals involved in escorting shall perform no other services other than escorting while in service. No other subcontractors will be allowed to escort any vehicle(s).
- 8.4 Escorting person(s) must have a SIDA badge.
- 8.5 Escorting personnel must request escort at least 24 hours in advance of conducting the escort. The name and birthdate of the escorted personnel must be provided on the escort request form.
- 8.6 Designated badged prime CONTRACTOR employees approved or badged escorting subcontractor must escort prime CONTRACTOR employees and subcontractors' employees to all work sites. Once at the work site, badged employees, prime or subcontractors', may supervise unbaged employees, not to exceed five (5) employees per one (1) SIDA badged employee.
- 8.7 All personnel (badged or escorted) must have an employee photo ID displayed on the outermost garment, waist high or above. The employee badge must contain the employee's name, The CONTRACTOR's name and project number or name. All escorted personnel must remain under the control of person(s) with an Atlanta SIDA badge at all times while in the SIDA.
- 8.8 Maximum vehicular escort—one (1) prime CONTRACTOR vehicle or approved badged escorting subcontractor is permitted to escort two (2) subcontractor vehicles.
- 8.9 All vehicles requiring escort must access and egress the AOA through Pre-approved gates. Vehicles requiring escort shall not be permitted access or egress through any other entry or exit point within the AOA for any reason whatsoever.
- 8.10 All escorted vehicles must obtain a permit, valid for up to eight (8) hours, at Gate 59. The obtaining of a permit, however, shall not relieve a vehicle from the requirement of being escorted as set forth herein.
- 8.11 In the event an escorted vehicle requires a time limit extension, the vehicle, and its original operator, must return to Gate 59 to obtain a time limit extension to complete

work in the AOA secure or sterile area. Time limit extension shall not exceed an additional eight (8) hour period under any circumstances.

9 **Construction Contracts Within Sterile Area (Inside Terminal, Concourses)**

9.1 Highest level of Security required.

9.2 All employees of prime CONTRACTOR and subcontractor, must be badged to work in the sterile area.

9.3 If escorting of unbadged the CONTRACTORS and or subcontractors is required, an approved sponsor agency (DOA, AATC, IAC, HACM, HCM, etc.) must perform escort full time.

9.4 For any work requiring access to the sterile area (beyond the Passenger Screening Checkpoint area and on Concourses), a tool inventory must be conducted daily by the prime CONTRACTOR or designated representative. A copy of this inventory should be provided to the construction manager or project manager for verification. In general, tools will not be allowed to pass through the checkpoint area.

10 **Restricted AOA Access.** The CONTRACTOR shall allow passage into the AOA or secured area through its access point to persons, vehicles, and equipment displaying identification of the DOA or provide an escort for each person or vehicle not displaying proper identification. Escort vehicles must be insured as specified per Exhibit D, Insurance and Bonding Capacity. Escorted vehicles need not carry the aforementioned coverage but must carry the minimum amounts of insurance required by Georgia Law. However, Insurance coverage of escort vehicles must provide coverage as specified by Exhibit D for vehicles being escorted.

11 **Visual Aids.** In the event of the possibility of contact with the AOA or secured area, the CONTRACTOR shall establish a system of visual aids for marking and delineating the limits of required clearances adjacent to active runways, taxiways, and NAVAIDS during both day and night time work, subject to City's approval prior to the start of any work under this Contract. The approved system of marking and delineating shall be installed, maintained and protected at all times.

12 **Tools and Materials.** The CONTRACTOR shall create and maintain an inventory of all tools and materials utilized within the SIDA, terminal building, Federal Inspection Service (FIS), and AOA.

12.1 All tools and materials shall be stored and maintained in a secured manner to prevent unauthorized use, within pre-designated areas within the secured areas of the airport. Storage designations shall be obtained by the CONTRACTOR and/or subcontractor, prior to mobilization, by contacting the DOA Properties Division at (404) 209-2945. Change requests for storage designation may be approved only through the DOA Properties Division with notification and concurrence from the DOA Security Division.

Failure to comply with this requirement may result in the termination of the CONTRACTOR's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.

12.2 All tools and materials must be secured to prevent unauthorized use at all times within the secured areas of the Airport and/or the AOA. Failure to comply with this requirement may result in the termination of the CONTRACTOR's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.

12.3 Any and all job-specific or unusual tools and/or materials shall be presented to the security authority at point of entry gate when accessing and/or egressing the SIDA and/or AOA. Failure to comply with this requirement may result in the termination of the CONTRACTOR's or subcontractor's contract and disqualification from working on construction contracts within secured areas of the Airport.

12.4 All vehicles shall remain subject to search while within the secured areas of the Airport and/or the AOA at all times. Vehicles may also be searched prior to entry to the secured areas of the Airport. The possession of weapons and other prohibited items may result in criminal or civil charges in accordance with applicable laws.

13 **Terminal/Curbside.** A maximum of two (2) CONTRACTOR vehicles or two (2) subcontractor vehicles may be permitted in a work area at any given time, subject to the approval of the Atlanta Police Department, and the Landside Operations Division. In the event one (1) CONTRACTOR vehicle is present, then no more than one (1) subcontractor vehicle may be present at the same time, and vice versa.

13.1 Debris removal may be allowed from curbside with special permission by the DOA Landside Operations Department.

13.2 When parked at curbside, at least one (1) badged employee must remain with the vehicle at all times. Vehicles must be removed as expeditiously as possible in all cases.

13.3 Areas surrounding vehicles accessing curbsides must be kept clean at all times.

13.4 For purposes of obtaining Terminal or Curbside access, the APD Airport Section shall be contacted by dialing (404) 530-6630 24 hours in advance of the desired access time.

14 **Staging Areas.** The CONTRACTOR's Construction staging area shall be identified on the plans.

15 **Federal Inspection Service Areas.** For any or all work conducted within Federal Inspection Service (FIS) areas, Contractor shall submit FIS Authorization requests to the **U.S. Customs Service (404) 765-2300**. The request shall detail the names of employees, description and

area of work, work schedule, and any other relevant information to the DOA Security Department.

15.1 The CONTRACTOR shall be responsible for obtaining the appropriate approvals and special SIDA badge FIS access decals from the appropriate Federal authorities. Special SIDA badge FIS access decals will not be required in if one (1) or more U.S. Customs Agent(s) are present at the work site at all times.

16 **Security Checkpoints.** The CONTRACTOR and subcontractors shall maintain awareness among all employees, and at all times, that all Security Checkpoints are now under Federal jurisdiction rather than privately contracted Security agents. In general, contractors will not be allowed to carry tools and construction materials through the passenger security screening points.

16.1 Questions regarding Federal Security Checkpoints shall be directed to (404) 763-7437 or (404) 530-2150.

Appendix 1 to Exhibit G

Components of a CONTRACTOR SIDA Site Specific Security Plan

General Notes

1. In general, the security plan needs to explain who, what, when, where and how:
 - a. Who is performing the work or requiring access.
 - b. What work is being performed and what security requirements are being observed.
 - c. When the work is scheduled to commence and when it is scheduled to end.
 - d. Where the work is being performed
 - e. How the CONTRACTOR plans to maintain compliance with the airport security program (to include site access, controlling tool inventory, identifying workers/employees, how escorting will be performed, how the contractor will access the worksite, etc.
2. The document is not considered Sensitive Security Information (SSI), however once a security plan is completed and populated with the necessary information, that plan is to be considered SSI and handled observing all SSI non-disclosure rules.
 - a. The submitted security plan is to be handled as SSI until that designation has been removed by Airport Security or Transportation Security Administration (TSA) or airport security.
3. The Security Plan requires 45-60 calendar days for review by the ENGINEER, Airport Security, and TSA as required.

Note: The review time could be a minimum of 20 days; however, for the purpose of the schedule the CONTRACTOR should anticipate the 60 day possibility.
4. The Security Plan must be approved prior to any construction work taking place. This is an Airport Security and federal regulation requirement with no exceptions.
5. If original dates submitted on the approved security plan change (time extension), an updated security plan will have to be submitted to the ENGINEER, Airport Security, and TSA (as appropriate for the project) for review and approval.

Plan Outline

1. Introduction

- a. Project Name
- b. Project WBS Number
- c. Contractor
- d. Contract Number
- e. Location of Work Site
- f. Project Duration (Start/End Dates)
- g. Purpose of Security Plan
- h. Scope of Project

2. Project Access Points

How the CONTRACTOR will access the project worksite and how this access point will be protected (if required).

3. Haul Routes

How the CONTRACTOR will bring the material and equipment to the site. The route will be as identified on the Plans and the contractor will also need to include a map of the haul route within this section.

4. CONTRACTOR Staging Areas

Speak to where the CONTRACTOR will stage the equipment for this project. The staging area will be as identified on the Plans or as directed by the ENGINEER and/or Construction Manager.

5. Gate Security

- a. If the CONTRACTOR is to use a construction gate (69, 54 or 26) other than the normal gate 59, this needs to be mentioned in this section.
- b. Also mention if the regular guard staffing firm will be used to staff the respective gate.

6. Fencing/Barricades

Identify if additional fencing will be needed, altered, removed, etc. for this project. Provide drawing, sketch, marked up document(s) showing the as-is condition and proposed alteration.

7. Vehicles

Identification methods to be used to identify the CONTRACTOR vehicles.

8. Identification

- a. Explain how personnel on this project will be identified
- b. Explain if the CONTRACTOR will need to secure ATL SIDA badges and how they will be obtained.
- c. Explain if customs seals will be needed and how they will be obtained.

9. Escorting

- a. Who is allowed to conduct escorts under this project
- b. Primary escorting gate.
- c. Specifically state that “no escorting will be allowed beyond 3 days. All those requiring escorting beyond 3 days will be required to apply for and obtain an ATL SIDA badge”.
- d. Pre-approval of escorting activity for each occurrence
- e. Pre-approval of escorting personnel and/or companies by DOA Security.
- f. Appropriate escorting ratio for vehicles (1:2)
- g. Appropriate escorting ratio for personnel (1:5).
- h. Specifically state that “contractors who have begun the badging process are no longer eligible for escorting”.

10. Department of Aviation Procedures

Speak to any other specific DOA Security Rules that will be observed (can be pertinent/specific contract language or other).

11. Security Communication

Project Points of Contact – PM, CM, Safety Representative, Emergency, DOA Security etc.

12. References

Any reference documents that should be referred to (typically a contract number or something to that affect).

Exhibit H - Reserved

EXHIBIT I

MILESTONES AND LIQUIDATED DAMAGES

1. The parties hereby agree that the damages which City will sustain as a result of Lessee’s failure to meet Ground Lease Milestones are difficult or impossible to determine with certainty and, therefore, have in good faith estimated as fair compensation, the Liquidated Damages as set forth below. If Lessee fails to deliver the equipment or materials or perform the services within the times specified in this Lease Agreement for the established Milestones & Beneficial Occupancy, or any extensions granted in writing, the Lessee shall pay to City as fixed, agreed and Liquidated Damages for each calendar day or minute of delay the sum(s) specified below, which amounts shall be independently calculated as follows:

NO.	CONTRACT MILESTONES	LIQUIDATED DAMAGES
1.	Failure to achieve Beneficial Occupancy of the Hotel within two (2) years of the Commencement Date of the Ground Lease Agreement.	One Thousand Dollars and Zero Cents (\$1,000.00) per calendar day.
2.	Failure to complete construction of any other agreed upon facilities that may be required to develop at least seven (7) acres of land on the Hotel Development Tract within five (5) years from the Commencement Date.	Ground Lease Default
3.	Failure to commence development on the Hotel Residual Land within five (5) years of the Commencement Date and complete such development within seven (7) years of the Commencement Date.	Ground Lease Default
4.	Failure to achieve Beneficial Occupancy of the Travel Plaza within two (2) years from the Commencement Date of the Ground Lease Agreement.	One Thousand Dollars and Zero Cents (\$1,000.00) per calendar day.
5.	Failure to complete construction of any other agreed upon facilities that may be required to develop at least two (2) acres of land on the Travel Plaza Development Tract within five (5)	Ground Lease Default

	years from the Commencement Date.	
6.	Failure to commence development on the Travel Plaza Residual Land within five (5) years of the Commencement Date and complete such development within seven (7) years of the Commencement Date.	Ground Lease Default
7.	Failure to achieve Beneficial Occupancy of the minimum 30,000 sq. ft. Class A office space within two (2) years from the Commencement Date of the Ground Lease Agreement.	One Thousand Dollars and Zero Cents (\$1,000.00) per calendar day.
8.	Failure to commence construction of any other agreed upon facilities that may be required to develop at least eight (8) acres of land on the Mixed-Use Development Tract within five (5) years from the Commencement Date.	Ground Lease Default
9.	Failure to commence development on the Mixed-Use Residual Land within five (5) years of the Commencement Date and complete such development within seven (7) years of the Commencement Date.	Ground Lease Default

2. **Application of Liquidated Damages not a Change.** The application of Liquidated Damages shall not effect a change in the Beneficial Occupancy or relieve Lessee of its obligation to improve its progress to achieve, or to mitigate the failure to achieve, the Beneficial Occupancy Date or stated area reopening.
3. **Payment of Liquidated Damages.** Payments of Liquidated Damages shall become due immediately upon failure to achieve the stated milestone.
4. **No Restriction of Rights and Remedies.** Nothing in this clause shall operate to restrict any other rights and remedies available to City at law or under this Lease Agreement.

Appendix A – Office of Contract
Compliance Requirements



CITY OF ATLANTA

Kasim Reed
Mayor

SUITE 1700
55 TRINITY AVENUE, SW
ATLANTA, GA 30303
(404) 330-6010 Fax: (404) 658-7359
Internet Home Page: www.atlantaga.gov

OFFICE OF CONTRACT COMPLIANCE
Larry Scott
Director
lscott@atlantaga.gov

June 4, 2015

RE: Project No.: FC- 8260 – Hotel, Travel Plaza, and Mixed Use Development

Dear Prospective City of Atlanta Bidder:

This packet is substantially different from all previous packets. The Office of Contract Compliance's **Disadvantaged Business Enterprises (DBE)** information is an integral part of every Federally Funded City of Atlanta bid or proposal. Your efforts to assist the City of Atlanta in mitigating the present effects of past discrimination against disadvantaged business enterprises are essential. Please read all of the information very carefully. Pay close attention to the contract goals for this project and the DBE program reminders listed on page DBE 5.

Many businesses that appear in our register as certified M/FBEs or SBEs are not currently certified as **Disadvantaged Business Enterprises**. Certification of DBE firms is being handled by a different agency. Please see page DBE 2 for details of certification of DBEs. Thank you for your extra attention to the DBE program.

If you have any questions about the information included in this section of the solicitation please contact the City of Atlanta Office of Contract Compliance at (404) 330-6010.

The City of Atlanta looks forward to the opportunity to do business with your company.

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Kasim Reed
Mayor

OFFICE OF CONTRACT COMPLIANCE

Larry Scotts

Director

lscott@atlantaga.gov

CITY OF ATLANTA

DISADVANTAGED BUSINESS ENTERPRISE

POLICY STATEMENT

It is the policy of the City of Atlanta to ensure that DBEs, as defined in 49 CFR Parts 23 and 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the City of Atlanta's policy:

1. To ensure non-discrimination in the award and administration of DOT assisted Opportunities;
2. To create a level playing field on which DBEs can compete fairly for DOT Assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Parts 23 and 26 eligibility standards are permitted to participate as DBE;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

IMPLEMENTATION OF DBE POLICY CONTRACT GOALS

The City of Atlanta establishes contract goals only on those contracts that have subcontracting and/or joint venture possibilities. The size of the contract goal is adopted on a project by project basis, impacted by the circumstances of each such contract (e.g. type and location of work, availability of DBEs to perform the particular type of work), in relation to the City's annual DBE goal.

The City of Atlanta expresses its contract goals as a percentage of the total amount of each particular DOT-assisted contract.

Each solicitation for which a contract goal has been established requires the bidders/offerors to submit the following information as part of their bid or offer:

1. The names, addresses and phone numbers of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm's participation;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation is submitted to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and,
6. If the contract goal is not met, evidence of good faith efforts to meet the goal.

The City of Atlanta has designated the Office of Contract Compliance as its DBE Liaison Office. The address of OCC is 55 Trinity Avenue, Ste. 1700, Atlanta, Georgia 30303. The phone number is (404) 330-6010.

Each contracting opportunity at the airport is individually evaluated and the individual contract goal is adjusted as appropriate in relation to the City's Annual DBE goal. The City of Atlanta will express its contract goal as a percentage of the total amount of each individual DOT-assisted contract.

GOOD FAITH EFFORTS

The City of Atlanta treats bidder/offers' compliance with good faith effort requirements as a matter of responsiveness. Compliance of bidders with the DBE requirements, including good faith efforts, will be evaluated according to the standards of 49 CFR Parts 23 and 26.

DEMONSTRATION OF GOOD FAITH EFFORTS

The obligation of the bidder/offeror is to make good faith efforts to meet the goal. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting its good faith efforts. Examples of good faith efforts are found at 49 CFR Parts 23 and 26 Appendix A and are attached to this document.

OCC is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. In determining whether a bidder/offeror is responsive to the DBE goals, OCC will consider whether the information submitted by that bidder/offeror is complete, accurate and adequately documents the bidder's/offeror's good faith efforts. Bidders who are informed that they have not met the "good faith efforts" requirements are entitled to administrative reconsideration of that determination, per 49 CFR 26.53(d).

**DISADVANTAGED BUSINESS ENTERPRISE
CONTRACT GOALS**

PROJECT # FC- 8260 – Hotel, Travel Plaza, and Mixed Use Development

The above referenced contracting opportunity will have participation requirements in two phases:

- 1) Construction**
- 2) Revenue Generating Operations.**

The Disadvantaged Business Enterprise (DBE) contract participation goal for the **Construction** scope associated with this project is:

29.00%

OCC will count DBE participation in the form of a self-performing certified DBE a prime contractor, self-performing DBE certified joint venture partner (Joint ventures are not mandated on this contracting opportunity), or certified DBE sub-contractor arrangement. The above referenced goal will be measured against **total contract value inclusive of any change orders and/or miscellaneous modifications** that may occur throughout the life of the project.

The Airport Concessions Disadvantaged Business Enterprise (ACDBE) contract participation goal for the Revenue Generating Operations **scope** associated with this project will be measured in three area and is as follows:

- Hotel Operation Revenue (36% exclusive of room charge revenue)**
- Mixed Use Development Revenue (36% exclusive of office lease revenue)**
- Travel Plaza Revenue (36% exclusive of gasoline sales revenue)**

OCC will count ACDBE participation in the form of a self-performing certified ACDBE prime operator, self-performing DBE certified joint venture partner (Joint ventures are not mandated on this contracting opportunity), or certified ACDBE sub-contractor arrangement. The above referenced goal will be measured against **total revenue generated in the above referenced areas and must include any additional revenue created by change orders and/or miscellaneous modifications** that may occur throughout the life of the project.

MONITORING OF DBE POLICY

Upon execution of a contract with the City of Atlanta, the successful bidder's Subcontractor Project Plan will become a part of the contract between the bidder and the City of Atlanta. The Subcontractor Project Plan will be monitored by the City of Atlanta's Office of Contract Compliance for adherence with the plan. The successful bidder will be required to provide specific DBE information on a monthly basis that demonstrates the use of subcontractors and suppliers as indicated on the Subcontractor Project Plan. The failure of the successful bidder to provide the specific DBE information by the specified date each month shall be sufficient cause for the City to withhold approval of the successful bidder's invoices for progress payments, increase the amount of the successful bidder's retainage, require joint check issuance, or evoke any other penalties as set forth in the City of Atlanta Code of Ordinances, Sections 2-1452 and 2-1456.

The City of Atlanta will require prime contractors to maintain records, documents, and receipts of gross revenue attributed to DBEs for three years following the performance of the contract. Those records must be made available for inspection upon request by any authorized representative of the City of Atlanta or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The City of Atlanta will keep a running tally of actual gross receipts attributed to the DBE firms from the time of the contract award.

The City of Atlanta's Office of Contract Compliance, or its designee, will perform interim audits of gross receipts and contract payments to DBEs if applicable. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

DBE PROGRAM REMINDERS

1. DBE Plan. All proposals must contain a DBE Participation plan in accordance with the goals set forth above. The DBE plan must identify each DBE's name, address, and contact name, work description, and contract amount.
2. Subcontractor and Supplier Participation. On projects with subcontractor and supplier opportunities, disadvantaged business enterprise participation may only be met through certified businesses that meet the standards of 49 CFR Parts 23 and 26, Subparts D and E. Each prime contractor must meet the requirements of the DBE program.
3. Failure to Meet DBE Goals. Any bidder unable to meet the DBE goals must document the good faith efforts it made to meet the goals. Documentation must follow the requirements of the DBE plan pursuant to 49 CFR Parts 23 and 26 etc. If the City determines that good faith efforts were not made, the bidder is entitled to administrative reconsideration under 49 CFR 26.53.
4. Certification. As of March 1, 2004, the City no longer does DBE Certification. DBE Certifications are now handled by the GA Department of Transportation (GA DOT). The contact number for GA DOT is (404) 656-5267
5. Reporting. The successful bidder must submit monthly DBE participation reports to OCC, in a form prescribed by the Office of Contract Compliance.
6. DBE Concession Program. The DBE Concession Program is governed by the provisions of "49 CFR Parts 23 and 26".
7. Contract Assurance. The Concessionaire shall not discriminate on the basis of race, color, national origin, sex, religion, or sexual orientation in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Atlanta deems appropriate. Anti-discrimination provisions based upon religion and sexual orientation are not included by or enforceable through 49 CFR Parts 23 and 26 but are enforceable through the City of Atlanta regulations.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

PROJECT # FC- 8260 – Hotel, Travel Plaza, and Mixed Use Development

IMPLEMENTATION OF EEO POLICY

The City effectuates its EEO policy by adopting racial and gender workforce goals for every contractor performing work for the City of Atlanta on federally funded projects. These goals are derived from the work force demographics set forth by the United States Department of Labor Federal Office of Contract Compliance. These goals are not included in or enforceable through 49 CFR Part 26.

A FIRM 'S WORK FORCE CONSISTING OF LESS THAN TWENTY-FIVE (25) EMPLOYEES IS EXEMPT FROM THE FOLLOWING EEO REQUIREMENTS

The Office of Federal Contract Compliance Programs (OFCCP) is the office of the United States Department of Labor that has responsibility for administration and enforcement of the Equal Employment Opportunity requirements under the contract compliance program which is authorized by Executive Order 11246 as amended, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans Readjustment Act of 1974. The programs mentioned above prohibit Federal contractors and sub-contractors from employment discrimination based on Race, Sex, National Origin, Religion, Sexual Orientation, and against persons with Disabilities or Vietnam Era Veterans, and requires such contractors to take affirmative action to ensure equal employment opportunity.

BUSINESS DEVELOPMENT PROGRAMS

Though the DBE program primarily focuses on DBE participation at the subcontractor level, it is also important to provide DBEs with experience, training and skill development at the prime contractor level. The City of Atlanta encourages joint ventures between a prime contractor and an DBE, or a mentor protégé agreement between a prime contractor and a DBE whenever feasible on applicable contracts. The general description of the joint venture and mentor-protégé agreements is found on **Attachment 1 and Attachment 2** hereto and in the Atlanta Code of Ordinances.

CITY OF ATLANTA CONTRACT COMPLIANCE CERTIFICATE

The undersigned has prepared and submitted all the documents attached hereto. The documents have been prepared with a full understanding of the City's goals and objectives with respect to increased opportunity in the proposed work to be undertaken in performance of this project. It is the company's intent to achieve the airport Concessions Disadvantaged Business Enterprise goals, the Equal Employment Opportunity goals, and the First Source Jobs Employment goals.

All information and representations contained herein and submitted with this bid or proposal are true and correct.

Witness

Signature
Company Authorized Representative

Date: _____

Company Name: _____

FC Number: _____

Project Name: _____

SUBCONTRACTOR CONTACT FORM

List all subcontractors or suppliers (Both DBE and Non-DBE Certified) that were contacted regarding this project.

Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Type of Work Solicited for	Business Ownership (see code below)	Certification No. and Expiration Date	Results of Contact

**EQUAL BUSINESS OPPORTUNITY SUBCONTRACTOR PROJECT PLAN
SUBCONTRACTOR/SUPPLIER UTILIZATION**

List all Majority and Airport Concessions Disadvantaged Business Enterprises (DBE) subcontractors/suppliers, including lower tiers, to be used on this project.

Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	City of Atlanta Business License? (yes or no)	NIAC Code	Type of Work to be Performed	Ethnicity of DBE Ownership (see code below)	DBE Certification No. and Expiration Date	Dollar (\$) Value of Work and Scope of Work	Percentage (%) of Total Bid Amount

Total DBE% _____

Code: AABE - African American Business Enterprise, HABE - Hispanic American Business Enterprise, FBE - Female Business Enterprise, APABE - Asian (Pacific Islander) American Business Enterprise (**Note... EBO certification does not qualify for DBE projects)

Proponent's Co. Name: _____ Project Name: _____ FC#: _____

Proponent's Contact Number: _____ Signature: _____ Date: _____

**EQUAL BUSINESS OPPORTUNITY SUBCONTRACTOR PROJECT PLAN
SUBCONTRACTOR/SUPPLIER UTILIZATION**

List all Majority and Airport Concessions Disadvantaged Business Enterprises (DBE) subcontractors/suppliers, including lower tiers, to be used on this project.

Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	City of Atlanta Business License? (yes or no)	NIAC Code	Type of Work to be Performed	Ethnicity of DBE Ownership (see code below)	DBE Certification No. and Expiration Date	Dollar (\$) Value of Work and Scope of Work	Percentage (%) of Total Bid Amount

Total DBE% _____

Code: AABE - African American Business Enterprise, HABE - Hispanic American Business Enterprise, FBE - Female Business Enterprise, APABE - Asian (Pacific Islander) American Business Enterprise (***)Note... EBO certification does not qualify for DBE projects

Proponent's Co. Name: _____ Project Name: _____ FC#: _____

Proponent's Contact Number: _____ Signature: _____ Date: _____

**EQUAL BUSINESS OPPORTUNITY SUBCONTRACTOR PROJECT PLAN
SUBCONTRACTOR/SUPPLIER UTILIZATION**

List all Majority and Airport Concessions Disadvantaged Business Enterprises (DBE) subcontractors/suppliers, including lower tiers, to be used on this project.

Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	City of Atlanta Business License? (yes or no)	NIAC Code	Type of Work to be Performed	Ethnicity of DBE Ownership (see code below)	DBE Certification No. and Expiration Date	Dollar (\$) Value of Work and Scope of Work	Percentage (%) of Total Bid Amount

Total DBE% _____

Code: AABE - African American Business Enterprise, HABE - Hispanic American Business Enterprise, FBE - Female Business Enterprise, APABE - Asian (Pacific Islander) American Business Enterprise (**Note... EBO certification does not qualify for DBE projects)

Proponent's Co. Name: _____ Project Name: _____ FC#: _____

Proponent's Contact Number: _____ Signature: _____ Date: _____

**EQUAL BUSINESS OPPORTUNITY SUBCONTRACTOR PROJECT PLAN
SUBCONTRACTOR/SUPPLIER UTILIZATION**

List all Majority and Airport Concessions Disadvantaged Business Enterprises (DBE) subcontractors/suppliers, including lower tiers, to be used on this project.

Name of Sub-contractor/ Supplier	Contact Name, Address and Phone Number	City of Atlanta Business License? (yes or no)	NIAC Code	Type of Work to be Performed	Ethnicity of DBE Ownership (see code below)	DBE Certification No. and Expiration Date	Dollar (\$) Value of Work and Scope of Work	Percentage (%) of Total Bid Amount

Total DBE% _____

Code: AABE - African American Business Enterprise, HABE - Hispanic American Business Enterprise, FBE - Female Business Enterprise, APABE - Asian (Pacific Islander) American Business Enterprise (**Note... EBO certification does not qualify for DBE projects)

Proponent's Co. Name: _____ Project Name: _____ FC#: _____
 Proponent's Contact Number: _____ Signature: _____ Date: _____

FIRST SOURCE JOBS PROGRAM POLICY STATEMENT

It is the policy of the City of Atlanta to provide job opportunities to the residents of the City of Atlanta whenever possible. Every contract with the City of Atlanta creates a potential pool of new employment opportunities. The prime contractor is expected to work with the First Source Jobs Program to fill at least 50% of all new entry-level jobs, which arise from this project, with residents of the City of Atlanta. For more specific information about the First Source Jobs Program contact Michael Sterling of the Atlanta Workforce Development Agency at (404) 546-3000. This City of Atlanta program is not included in or enforceable through 49 CFR Parts 23 and 26.

Michael Sterling
City of Atlanta
Atlanta Workforce Development Agency
Executive Director
(404) 546-3000 (O)

FIRST SOURCE JOBS INFORMATION FORM

Company Name: _____

FC Number: _____

Project Name: _____

The following entry-level positions will become available as a result of the above referenced contract with the City of Atlanta:

- 1.
- 2.
- 3.
- 4.
- 5.

Include a job description and all required qualifications for each position listed above.

Identify a company representative and contact phone number who will be responsible for coordinating with the First Source Jobs Program.

Company Representative: _____

Phone: _____

THIS AGREEMENT REGARDING THE USE OF THE FIRST SOURCE JOBS PROGRAM BY CONTRACTORS WITH THE CITY OF ATLANTA TO FILL ENTRY LEVEL JOBS is made and entered into by _____

This _____ day of _____, 201__.

The City of Atlanta requires the immediate beneficiary or primary contractor for every eligible project to enter into a First Source Jobs employment agreement. The contractor agrees to the following terms and conditions:

- The first source for finding employees to fill all entry level jobs Created by the eligible project will be the First Source Program.
- The contractor will make every effort to fill 50% of the entry level jobs created by this eligible project with applicants from the First Source Program.
- The contractor shall make good faith effort to reach the goal of this employment agreement.
- Details as to the number and description of each entry level job must be provided with the bid.
- The contractor shall comply with the spirit of the First Source Jobs Policy beyond the duration of this agreement and continue to make good faith attempts to hire employees of similar backgrounds to those participating in the First Source Program.
- The contractor as a condition of transfer, assignment or otherwise shall require the transferee to agree in writing to the terms of the employment Agreement.

Upon a determination that a beneficiary or contractor has failed to comply with the terms of this Agreement, the City may impose the following penalties based on the severity of the non-compliance:

- The City of Atlanta may withhold payment from the contractor.
- The City of Atlanta may withhold 10 percent of all future payments on the contract until the contractor is in compliance
- The City of Atlanta may refuse all future bids on city projects or applications for financials assistance in any form from the City until the contractor demonstrated that the First Source requirements have been met, or cancellation of the eligible project.
- The City of Atlanta may cancel the eligible project.

All terms stated herein can be found in the City of Atlanta Code of Ordinances Sections 5-8002 through 5-8005.

The undersigned hereby agrees to the terms and conditions set forth in this agreement.

Contractor

FORM 5

ATTACHMENT 1

“Components of a Joint Venture Agreement with DBE Participation as Counted under 49 CFR 26.55 (b)”

For credit forward toward the contract goal under Part 26, a joint venture agreement with a certified disadvantaged business enterprise should include at a minimum:

- The initial capital investment of each venture partner.
- The proportional allocation of profits and losses to each venture partner.
- The sharing of the right to control the ownership and management of the joint venture.
- A description of the distinct and clearly defined portion of the work to be performed by the DBE.
- The method of and responsibility for accounting.
- The methods by which disputes are resolved.
- All other pertinent factors of the joint venture.

ATTACHMENT 2

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM MENTOR PROTÉGÉ INITIATIVES

The mentor-protégé program is an initiative, in accordance with Appendix D to 49 CFR Part 26, to encourage and develop certified Disadvantaged Business Enterprises in contracting with city government in areas that Disadvantaged Business Enterprises have historically been underrepresented due to various discriminatory barriers. This program, implemented on projects with a projected value of 5 million dollars or more, will enable prime contractors of all ethnic and gender categories to provide technical, administrative, and other assistance to smaller, developing businesses. Companies must successfully complete the Disadvantaged Business Enterprise certification process in order to participate as a protégé in this program. Additionally, participation as a certified Disadvantaged Business Enterprise protégé team member will not preclude the inclusion of the same certified Disadvantaged Business Enterprise team member as a self-performing subcontractor in the DBE plan. The subcontracting by the certified Disadvantaged Business Enterprise protégé team member will be applied toward the satisfaction of the DBE goals in accordance with 49 CFR 26, Subpart C, 26.55.

Examples of good faith efforts are found in 49 CFR Parts 23 and 26, Appendix A that is attached to this package.

“Components of a Mentor-Protégé Agreement with DBE Participation as Counted under 49 CFR 26.55”

The Mentor-Protégé agreement between a prime contractor and the DBE protégé will provide an excellent development opportunity for the disadvantaged business enterprise protégé. Under the guidance of the mentor, the protégé will gain valuable knowledge and experience that will ultimately enhance the capabilities of the protégé. Additionally, the protégé has the opportunity to gain this knowledge and experience without exposing itself to the normal business risks that are associated with projects of this size.

As part of the City’s Part 26 DBE program and subject to 49 CFR 26.35 and Appendix D, a mentor may meet up to half of the contract goal for this contract by using a DBE protégé as a self-performing subcontractor through a formal mentor-protégé program. The successful prime for this project remains obligated to meet the entire contract goal for this project, including whatever portion of the goal that cannot be met by the protégé. Only independent DBE forms already certified by the City at this time (see “Certification”, page DBE 2) may participate as protégés.

The mentor may not (1) enter into a mentor-protégé agreement as a substitute for compliance with the DBE program, (2) use such an agreement to circumvent the obligations of the DBE program, (3) create a new firm to serve as a protégé (4) require a potential protégé to pay the mentor for the privilege of participating in the agreement, or (5) bar the protégé from performing work on this contract.

To meet the requirements of Part 26, the mentor-protégé team must present a written development plan and formal agreement between the parties to the City of Atlanta prior to executing the final contract.

The agreement should include, but is not limited to the following information:

- The type of collaboration, training and assistance to be provided. The areas of assistance encouraged include, but are not limited to, bonding and insurance support, management and scheduling support.
- The specific rights and responsibilities of the Mentor and the Protégé.
- Names or titles of the individuals from the Mentor responsible for working directly with the Protégé in the areas identified above.
- Names or titles of the individuals from the Protégé responsible for working directly with the Mentor in the areas listed above.
- The term of the agreement.
- A system to monitor and evaluate the effectiveness of the Mentor Protégé agreement.
- A plan detailing how the Mentor plans to include the Protégé on non-governmental projects, governmental projects, and DOT-assisted projects during the term of the agreement.
- Protégé shall not subcontract any of their work to the mentor firm or to other contractors without the approval of the OCC. Subcontracted work will not be counted toward DBE goals except as specified by Part 26.
- Mentor and Protégé representatives may not bid or otherwise participate independently on a contract in which the Mentor Protégé team is bidding or participating as a team.
- Work self-performed by the protégé may be used to fulfill up to one half of the DBE contract goal on this project.
- DBE credit will not be awarded to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé.
- Staff members from the Office of Contract Compliance will be available to review draft mentor-protégé agreements for compliance with this section.

Additional Resources Proponents May Contact in an Effort to Identify DBE Participants

Fulton County Government
**Department of Purchasing &
Contract Compliance**
Rholanda Stanberry, CPPB
Contract Compliance Administrator
130 Peachtree Street
Suite 1167
Atlanta, GA 30303
Phone: 404-612-6304 /404 335-9415
E-mail: rholanda.stanberry@fultoncountyga.gov

**Metropolitan Atlanta Rapid Transit Authority
(MARTA)**
Ms. Pamela T. Smith
Office of Diversity and Equal Opportunity
2424 Piedmont Road, NE
Atlanta, GA 30324
EEO/DBE Analyst
404-848-4646 (p)
E-Mail: ptsmith@itsmarta.com

Cobb County
Sharon Jones
Department of Transportation
463 Commerce Park Drive, Suite 112
Marietta, GA 30060-2737
Phone: 770-528-1600
Fax: 770-528-4360
Email: sharon.jones@cobbcounty.org

Dekalb County
Felton Williams
Contract Compliance Officer
1300 Commerce Drive
Room 202
Decatur, GA 30030
Phone: 404-371-6312
Email: tgphilli@co.dekalb.ga.us

U.S. Small Business Administration
Dinora Gonzalez
Economic Development Specialist
233 Peachtree Street, NE
Suite 1900
Atlanta, GA 30303
Phone: 404-331-0100 ext. 410
Email: dinora.gonzalez-cook@sba.com

Georgia Department of Transportation
Equal Opportunity Office
Ms. Yolanda L. Colzie
One Georgia Center
600 West Peachtree Street, 7th Floor
Atlanta, Georgia 30308
Office: 404-631-1972
Fax: 404-631-1943
E-mail: ycolzie@dot.ga.gov

Georgia Department of Economic Development
Entrepreneur Small Business
Mary Ellen McClanahan
75 Fifth Street, NW
Atlanta, Georgia 30308
Phone: 404-962-4820
Email: memclanahan@georgia.org

MBDA-Business Center- Atlanta
Donna Ennis
Project Director
75 5th Street, NW
Suite 300
Atlanta, GA 30308
Phone: 404-894-2096
Email: donna.ennis@innovate.gatech.edu

Gwinnett County
Bryant Davis
Purchasing Director
75 Langley Drive
Lawrenceville, GA 30045
Phone: 770-822-8725
Fax: 770-822-8735 or 770-822-8728
Email: greende@co.gwinnett.ga.us

Atlanta Board of Education
Randall Sellars, Director of Procurement Services
130 Trinity Avenue
Atlanta, Georgia 30303
Phone: 404-802-1568
Atlanta, GA 30334
Email: rasellers@atlanta.k12.ga.us

(THIS PAGE SHALL BE SUBMITTED FOR EACH ACDBE FIRM)

**LETTER OF INTENT
Airport Concessions Disadvantage Business Enterprise**

Proponent Name: _____
Address: _____
City: _____ State: _____ Zip: _____

ACDBE Firm: ACDBE Firm: _____
Address: _____
City: _____ State: _____ Zip: _____

ACDBE Contact Person: Name: _____ Phone: () _____

Expiration Date of ACDBE Certification: _____

ACDBE is performing as: Prime Concessionaire Sub concessionaire Joint Venture

Work item(s) to be performed by ACDBE	Description of Work Item	Quantity	Total

The proponent is committed to utilizing the above-named ACDBE firm for the work described above. The estimated participation is as follows:

ACDBE contract amount: \$ _____ Percent of total contract: _____%

AFFIRMATION:

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: _____
(Print name) (Title)

(signature) (date)

* In the event the proponent does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

Appendix B – Illegal Immigration Reform and
Enforcement Act Forms

