

EMERGENCY RIGHT OF WAY MAINTENANCE AGREEMENT EA-S 1210103

This Emergency Right of Way Maintenance Agreement, EA-S 1210103 (“**Agreement**”) between the City of Atlanta (“**City**”) and Russel Landscape, LLC (“**Service Provider**”) is entered into and effective as of 10/13/2020 (the “**Effective Date**”).

Contract Name: Emergency Right of Way Maintenance	Contract No. EA-S 1210103
Service Provider Name: Russel Landscape	City of Atlanta Using Agency: Department of Public Works
Address: 4300 Woodward Way Sugar Hill, Georgia 30518	Address: 55 Trinity Ave Atlanta, GA 30303
Phone: 404-520-7903	Phone: 404.330.6240
Email: john@russellandscape.com	Email: rbraswell@AtlantaGa.Gov
Authorized Representative: John Wetherald	Authorized Representative: Rita Braswell

WHEREAS, pursuant to City of Atlanta Code of Ordinances § 2-1192, the Chief Procurement Officer is authorized for the purchase of the right of way maintenance services from Service Provider on behalf of the City’s Public Works Department (“DPW”); and

WHEREAS, Service Provider has agreed to provide such services as outlined in this Agreement and more specifically within the statement of work attached hereto as **Exhibit A**.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

City General Services Agreement

1. Interpretation.

1.1. All capitalized terms used in this Agreement shall have the meanings ascribed to them in the Contract Documents and on **Exhibit B** attached hereto.

If there is a conflict between any of the Contract Documents, precedence shall be given in the following order:¹

1. Agreement
2. Exhibit A - General Scope of Services
3. Exhibit A.1 - Compensation
4. Exhibit A.2 - Task Orders
5. Exhibit B – Definitions
6. Exhibit C –Emergency Procurement Designation
7. Exhibit D - City Security Policies (*not applicable*)
8. Exhibit E - Dispute Resolution Procedures
9. Exhibit F – Additional Contract Documents (Business License, IIREA and Conflict of Interest Disclosure Form)
Appendix A - Office of Contract Compliance Requirements (*not applicable*)
Appendix B - Insurance and Bonding Requirements

2. Term.

2.1. Initial Term. The initial term of this Agreement will be until such time as the COVID-19 pandemic is abated. ("Term").

3. Authorization. This Agreement is authorized by the Emergency Procurement Designation attached as **Exhibit C**.

4. Services.

4.1. Description of Services. City desires to obtain from Service Provider the services described generally on **Exhibit A** attached, and if applicable, as may be further described on any and all work orders issued by the City pursuant to Section entitled "Task Orders" below (individually, a "Task Order" and, collectively, the "Task Orders") (the "Services").

4.2. Resources. Unless otherwise expressly provided in this Agreement, all equipment, software, Facilities and Service Provider Personnel required for the proper performance of Services shall be furnished by and be under the control of Service Provider. Service Provider shall be responsible, at its sole cost, for procuring and using such resources in proper and qualified, professional and high-quality working and performing order.

4.3. Quantity of Services. City makes no representations or warranties about the quantity of Services that will be requested or Charges that will be paid under this Agreement. Any quantity of Services or amount of Charges set forth in this Agreement are estimates only.

¹ For purposes of this provision, authorized changes to an item in the order of precedence pursuant to a Change Document take precedence over the particular item changed.

5. Funding.

- 5.1 The total amount of payments by City under this Agreement shall not exceed **One Million Dollars and Zero Cents (\$1,000,000.00)**. ("Maximum Payment Amount").
- 5.2 In addition, in the event Task Orders are applicable, each Task Order shall specify a maximum payment amount (the "Task Order Maximum Payment Amount") applicable to the Services to be performed under such Task Order.

6. Task Orders.

- 6.1. City, at its sole discretion, may unilaterally issue Task Orders for Services for which Charges are established in this Agreement and such Task Orders may be executed by City's Chief Procurement Officer, head of the affected Using Agency or other appropriate designee on behalf of City. Service Provider shall promptly proceed with the Services set forth in any such Task Order. No Task Order may be executed or issued under this Agreement subsequent to the expiration or termination of the Term.
- 6.2. Each Task Order will include the following: (a) a reference to this Agreement; (b) the Task Order Commencement Date and, if applicable, the period of time during which the Services will be provided; (c) a description of the Services to be provided; (d) the amounts payable and payment schedule for the Services; and (e) any additional provisions applicable to the Services. No Task Order will become effective until it has been executed by an authorized representative of Service Provider and City. If any services to be performed are not specifically included in a Task Order, but are reasonably necessary to accomplish the purpose of the Task Order, they will be deemed to be implied in the scope of the Services for that Task Order to the same extent as if specifically described in such Task Order.

7. Change Documents.

- 7.1. This section will govern changes to the Agreement, or any Task Order issued under the Agreement, whether such changes involve an increase in the Maximum Payment Amount or not. Changes in Services or other aspect of this Agreement shall be made by written document ("Change Document" or " Unilateral Change Document").² All changes shall be implemented pursuant to this subsection (the "Change Document Procedures") and any Applicable Law.
- 7.2. Potential Change Documents that may be issued concerning this Agreement or any Task Order issued under this Agreement include, but are not limited to:
- (a) Change Documents to the Agreement involving an increase to the Maximum Payment Amount executed between City and Service Provider which may or may not require legislative approval under Code Section 2-1292;
 - (b) Change Documents to the Agreement or any Task Order issued under the Agreement involving no increase to the Maximum Payment Amount, changes in the value of the Charges or changes in the terms or amounts of compensation under the Maximum Payment Amount or any Task Order Maximum Payment

² Change Documents may assume numerous multiple forms and titles depending on the nature of the change involved (e.g. Change Order, Unilateral Change Order, Amendment, Contract Modification, Renewal, etc.)

Amount executed between City and Service Provider pursuant to Code Section 2-1292(d); and

- (c) Unilateral Change Documents to the Agreement or any Task Order issued under the Agreement issued by City pursuant to Code Section 2-1292(d) involving no increase to the Maximum Payment Amount, changes in the value of the Charges or changes in the terms or amounts of compensation under the Maximum Payment Amount or any Task Order Maximum Payment Amount.

- 7.3. Change Documents that do not involve an increase in the Maximum Payment Amount will be executed pursuant to Code Section 2-1292(d) either bilaterally or unilaterally by the City.
- 7.4. City may propose a change in the Services or other aspects of this Agreement by delivering written notice to Service Provider describing the requested change ("Change Request"). Within ten (10) days of receipt of City's Change Request, Service Provider shall evaluate it and submit a written response ("Proposed Change Document"). A Change Request which involves the reduction of Services shall be effective upon written notice to Service Provider.
- 7.5. Service Provider may, without receiving any Change Request, on its own submit a Proposed Change Document describing its own proposed requested change to the Agreement or any Task Order issued under the Agreement.
- 7.6. Each Proposed Change Document shall include the applicable schedule for implementing the proposed change, any applicable changes to the Charges (either increased or decreased) and all other information applicable to the proposed change. Each Proposed Change Document shall constitute an offer by Service Provider and shall be irrevocable for a period of sixty (60) days. City shall review and may provide Service Provider with comments regarding a Proposed Change Document, and Service Provider shall respond to such comments, if any. A Proposed Change Document from Service Provider will become effective only when executed by an authorized representative of City.
 - 7.6.1. City may propose any changes to the Agreement, including, but not limited to, changes that it contends do not involve an increase to the Maximum Payment Amount, and Service Provider shall, in good faith, evaluate such proposed Change Request. If City and Service Provider are able to reach agreement on such Change Request, each will execute a Change Document concerning such Change Request pursuant to Code Section 2-1292(d). Nothing in this Agreement shall, in the event of disagreement between City and Service Provider concerning a proposed Change Request, or otherwise, prohibit City from issuing a Unilateral Change Document to Service Provider, pursuant to Code Section 2-1292(d), and City and Service Provider agree to resolve their dispute pursuant to the Dispute Resolution Procedures set forth in **Exhibit E**. During the pendency of such dispute, Service Provider shall continue to perform the Services, as changed by such Unilateral Change Document.
- 7.7. Suspension of Services. City may, by written notice to Service Provider, suspend at any time the performance of any or all of the Services to be performed under this Agreement. Upon receipt of a suspension notice, Service Provider must, unless the notice requires otherwise, (a) immediately discontinue suspended Services on the date and to the extent specified in the notice; (b) place no further orders or subcontracts for materials, services or facilities with respect to suspended Services, other than to the extent required in the notice; and (c) take any other reasonable steps to minimize costs associated with the suspension.

8. Service Provider's Obligations.

- 8.1. Service Provider Personnel. Service Provider shall be responsible, at its own cost, for all recruiting, hiring, training, educating and orienting of all Service Provider Personnel, all of whom shall be fully qualified and shall be authorized under Applicable Law to perform the Services.
- 8.2. Service Provider Authorized Representative. Service Provider designates the Service Provider Authorized Representative named on page I of this Agreement ("Service Provider Authorized Representative") and, such Person shall: (a) be a project executive and employee within Service Provider's organization, with the information, authority and resources available to properly coordinate Service Provider's responsibilities under this Agreement; (b) serve as primary interface and the single-point of communication for the provision of Services by Service Provider; (c) have day-to-day responsibility and authority to address issues relating to the Services; and (d) devote adequate time and efforts to managing and coordinating the Services.
- 8.3. Qualifications. Upon City's reasonable request, Service Provider will make available to City all relevant records of the education, training, experience, qualifications, work history and performance of Service Provider Personnel.
- 8.4. Subcontracting. Unless specifically authorized in this Agreement or an applicable Task Order, Service Provider will not enter into any agreement with or delegate any Services to any Third Party without the prior written approval of City, which City may withhold in its sole discretion. In the event Service Provider is approved to subcontract any of the Services, Service Provider shall: (i) remain responsible for the performance of Services by the Key Subcontractor; (ii) remain City's sole point of contact for the Services; and (iii) be solely responsible for the payment of any Key Subcontractor.
- 8.5. Removal or Substitution of Service Provider Personnel. Service Provider shall not transfer, reassign or replace any Service Provider Key Personnel or Key Subcontractor without prior written approval from City, except in the case of: (i) retirement, voluntary resignation, involuntary termination for cause in Service Provider's sole discretion, illness, disability or death of such Service Provider Personnel during the Term of this Agreement; or (ii) such Service Provider Personnel has engaged in willful misconduct or has committed a material breach of this Agreement, in which case removal shall be effectuated by Service Provider immediately after Service Provider becomes aware of such misconduct or breach. Notwithstanding anything herein to the contrary, within seven (7) days after Service Provider's receipt of notice from City that the continued assignment of any Service Provider Personnel under this Agreement is not in the best interests of City, Service Provider shall immediately remove such Service Provider Personnel.
- 8.6. Replacement of Service Provider Personnel. Following any removal of Service Provider Personnel, Service Provider will within fifteen (15) days identify in writing to the City, a suitable replacement for immediate assignment under this Agreement. Service Provider shall assume all costs associated with the replacement of any Service Provider Personnel.
- 8.7. Service Provider Key Personnel and Key Subcontractor.
 - 8.7.1 The following Persons are identified by Service Provider as Service Provider Key Personnel under this Agreement:
 - (a) John Wetherald;
- 8.8 Conflicts of Interest. Service Provider shall immediately notify City in writing, specifically disclosing any and all potential or actual conflicts of interests, which arise or may arise during

the execution of its work in the fulfillment of the requirements of the Agreement. City shall make a written determination as to whether a conflict of interest actually exists and the actions to be taken to resolve the conflict of interest.

- 8.9 Commercial Activities. Neither Service Provider nor any Service Provider Personnel shall establish any commercial activity, issue concessions, or permits of any kind to Third Parties for establishing any activities on City property.

9. City's Authorized Representative.

- 9.1 Designation and Authority. City designates the City Authorized Representative named on page 1 of this Agreement (the "City Authorized Representative") who shall (a) serve as primary interface and the single-point of communication for the provision of Services; (b) have day-to-day responsibility to address issues relating to this Agreement; and (c) to the extent provided under the Code, have the authority to execute any additional documents or changes on behalf of City.
- 9.2 City's Right to Review and Reject. Any Work Product, Service or other document or item to be submitted or prepared by Service Provider hereunder shall be subject to the review of the City Authorized Representative. The City Authorized Representative may disapprove, if in the City Authorized Representative's sole opinion the Work Product, Service, document or item is not in accordance with the requirements of this Agreement or sound professional service principles, or is impractical, uneconomical or unsuited in any way for the purposes for which the Work Product, Service, document or item is intended. If any of the said items or any portion thereof are so disapproved, Service Provider shall revise the items until they meet the approval of the City Authorized Representative. However, Service Provider shall not be compensated under any provision of this Agreement for repeated performance of such disapproved items.

10. Payment Procedures.

- 10.1 General. City will not be obligated to pay Service Provider any amount in addition to the Charges set forth in an applicable Task Order for Service Provider's provision of the Service/ Service Provider Personnel hourly rates, reimbursable expenses and other compensable items under this Agreement and issued Task Orders as set forth on Exhibit A.1 Compensation.
- 10.2 Invoices. Service Provider shall prepare and submit to City invoices for payment of all Charges in accordance with the applicable Task Order. Each invoice shall be in such detail and in such format as City may reasonably require. To the extent not set forth in a Task Order, Service Provider shall invoice City monthly for Services rendered.
- 10.3 Taxes. The Charges are inclusive of all taxes, levies, duties and assessments ("Taxes") of every nature due in connection with Service Provider's performance of the Services. Service Provider is responsible for payment of such Taxes to the appropriate governmental authority. If Service Provider is refunded any Tax payments made relating to the Services, Service Provider shall remit the amount of such refund to City within forty-five (45) days of receipt of the refund.
- 10.4 Maximum Amount. City shall not be obligated to pay any amount in excess of the Maximum Payment Amount for all Services under all Task Orders, nor shall City be obligated to pay any amount in excess of a Task Order Maximum Payment Amount.
- 10.5 Payment. Unless otherwise specified in Exhibit A or Exhibit A.1 as applicable, City shall endeavor to pay all undisputed Charges within thirty (30) days of the date of the receipt by City of a properly rendered and delivered invoice. Notwithstanding the foregoing, unless otherwise

provided in the Task Order, all undisputed Charges on an invoice properly rendered and delivered shall be payable within forty-five (45) days of the date of receipt by City.

- 10.6 Disputed Charges. If City in good faith disputes any portion of an invoice, City may withhold such disputed amount and notify Service Provider in writing of the basis for any dispute within thirty (30) days of the later of: (a) receipt of the invoice; or (b) discovery of the basis for any such dispute. City and Service Provider agree to use all reasonable commercial efforts to resolve any disputed amount in any invoice within thirty (30) days of the date City notifies Service Provider of the disputed amount.
- 10.7 No Acceptance of Nonconforming Work. No payment of any invoice or any partial or entire use of the Services by City constitutes acceptance of any Services.
- 10.8 Payment of Other Persons. Prior to the issuance of final payment from City, Service Provider shall certify to City in writing, in a form satisfactory to City, that all Key Subcontractor, materialmen, suppliers and similar firms or persons engaged by Service Provider in connection with this Agreement have been paid in full or will be paid in full utilizing the monies constituting final payment to Service Provider.

11. Service Provider Representations and Warranties. As of the Effective Date and continuing throughout the Term and any subsequent Task Order performance period, Service Provider warrants to City that:

- 11.1 Authority. Service Provider is duly incorporated or formed, validly existing and is in good standing under the laws of the state in which it is incorporated or formed, and is in good standing in each other jurisdiction where the failure to be in good standing would have a material adverse effect on its business or its ability to perform its obligations under this Agreement. Service Provider has all necessary power and authority to enter into and perform its obligations under this Agreement, and the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions on its part. No action, suit or proceeding in which Service Provider is a party that may restrain or question this Agreement, or the provision of Services by Service Provider is pending or threatened.
- 11.2 Validity of Agreement. This Agreement has been duly and validly executed and delivered by Service Provider and constitutes the valid and binding obligation of Service Provider, enforceable in accordance with its terms.
- 11.3 Professional Standards. The Services will be performed in a professional and workmanlike manner in accordance with the standards imposed by Applicable Law and the practices and professional standards used in well managed operations performing services similar to the Services.
- 11.4 Conformity. The development, creation, delivery, provision, implementation, testing, maintenance and support of all Services shall conform in all material respects to the description of such Services in the Contract Documents, including the relevant Task Order.
- 11.5 Materials and Equipment. Any equipment or materials provided by Service Provider shall be new, of clear title, not subject to any lien or encumbrance, of the most suitable grade of their respective kinds for their intended uses, shall be free of any defect in design or workmanship and shall be of merchantable quality and fit for the purposes for which they are intended.

11.6 Intellectual Property Rights. None of the processes or procedures utilized by Service Provider to fulfill its obligations hereunder, nor any of the materials and methodologies used by Service Provider in fulfilling its obligations hereunder, nor any of the Services or Work Product shall infringe any Third Party's Intellectual Property Rights or privacy, publicity or other rights.

11.7 Contingent Fees Prohibited. Service Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working for Service Provider, to solicit or secure this Agreement; and that Service Provider has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for Service Provider, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this 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 Agreement without liability, and, at its discretion, to deduct from the Agreement, or otherwise recover the full amount of, such fee, commission, percentage, gift or consideration.

12. Compliance with Laws.

12.1 General. Service Provider and its Key Subcontractor will perform the Services in compliance with all Applicable Laws

12.2 City's Socio-Economic Programs. Service Provider shall comply with any and all applicable City socio-economic programs, including, but not limited to, City's EBO and EEO Programs, and requirements set forth in the Code in the performance of the Services.

12.3 Consents, Licenses and Permits. Service Provider will be responsible for, and the Charges shall include the cost of obtaining, maintaining and complying with, and paying all fees and taxes associated with, all applicable licenses, authorizations, consents, approvals and permits required of Service Provider in performing Services and complying with this Agreement.

13. Data Security.

13.1 To the extent that Service Provider accesses or processes any data received from or on behalf of City in the course of provision of the obligations under this Agreement, Service Provider shall at all times:

- (a) act only on the instructions of City;
- (b) not transfer the data to another party without City's prior written consent;
- (c) have in place appropriate technical and organizational security measures against unauthorized or unlawful processing, loss, destruction, damage of such data;
- (d) immediately notify City upon any breach, potential breach, or unauthorized access to data;
- (e) immediately notify City of any requests for information, complaints, or other communications received from any governmental agency regarding data; and
- (f) upon City's request, facilitate City's interaction with governmental agencies.

14. Confidential Information.

- 14.1 General. Each Party agrees to preserve as strictly confidential all Confidential Information of the other Party for two (2) years following the expiration of termination of this Agreement; provided, however, that each Party's obligations for the other Party's Confidential Information that constitutes trade secrets pursuant to Applicable Laws will continue for so long as such Confidential Information continues to constitute a trade secret under Applicable Law. Any Confidential Information that may be deemed Sensitive Security Information by the Department of Homeland Security or any other similar Confidential Information related to security will be considered trade secrets. Upon request by City, Service Provider will return any trade secrets to City. Each Party agrees to hold the Confidential Information of the other in trust and confidence and will not disclose it to any Person, or use it (directly or indirectly) for its own benefit or the benefit of any other Person other than in the performance of its obligations under this Agreement.
- 14.2 Disclosure of Confidential Information or Information Other Party Deems to be Confidential Information. Each Party will be entitled to disclose any Confidential Information if compelled to do so pursuant to: (i) a subpoena; (ii) judicial or administrative order; or (iii) any other requirement imposed upon it by Applicable Law. Prior to making such a disclosure, to the extent allowed pursuant to Applicable Law, each Party shall provide the other with thirty six (36) hours prior notice by facsimile of its intent to disclosure, describing the content of the information to be disclosed and providing a copy of the pleading, instrument, document, communication or other written item compelling disclosure with the name, address, phone number and facsimile number of the Person requesting disclosure. Should the non-disclosing Party contest the disclosure, it must: a) seek a protective order preventing such disclosure; or b) intervene in such action compelling disclosure, as appropriate. This Section shall be applicable to information that one Party deems to be Confidential Information, but the other Party does not.

15. Work Product.

- 15.1 Except as otherwise expressly provided in this Agreement, all reports, information, data, specifications, computer programs, technical reports, operating manuals and similar work or other documents, all deliverables, and other work product prepared or authored by Service Provider or any of its Service Providers exclusively for the City under this Agreement, and all intellectual property rights associated with the foregoing items (collectively, the "Work Product") shall be and remain the sole and exclusive property of the City. Any of Service Provider's or its Service Providers' works of authorship comprised within the Work Product (whether created alone or in concert with City or Third Party) shall be deemed to be "works made for hire" and made in the course of services rendered and, whether pursuant to the provisions of Section 101 of the U.S. Copyright Act or other Applicable Law, such Work Product shall belong exclusively to City. Service Provider and its Service Providers grant the City a non-exclusive, perpetual, worldwide, fully paid up, royalty-free license to all Work Product not exclusively developed for City under this Agreement.
- 15.2 If any of the Work Product is determined not to be a work made for hire, Service Provider assigns to City, worldwide and in perpetuity, all rights, including proprietary rights, copyrights, and related rights, and all extensions and renewals of those rights, in the Work Product. If Service Provider has any rights to the Work Product that cannot be assigned to City, Service Provider unconditionally and irrevocably waives the enforcement of such rights

and irrevocably grants to City during the term of such rights an exclusive, irrevocable, perpetual, transferable, worldwide, fully paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make, have made, create derivative works of, distribute, publicly perform and publicly display by all means, now known or later developed, such rights.

15.3 City shall have the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name or for its own benefit, all patents, copyrights, applications and registrations, renewals and continuations and all other appropriate protection.

15.4 To the extent exclusive title or complete and exclusive ownership rights in any Work Product created by Service Provider Personnel may not originally vest in City by operation of Applicable Law, Service Provider shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to City all rights, title and interest in the Work Product.

15.5 Without any additional cost to City, Service Provider Personnel shall promptly give City all reasonable assistance and execute all documents City may reasonably request to enable City to perfect, preserve, enforce, register and record its rights in all Work Product. Service Provider irrevocably designates City as Service Provider's agent and attorney-in-fact to execute, deliver and file, if necessary, any documents necessary to give effect to the provisions of this Section and to take all actions necessary, in Service Provider's name, with the same force and effect as if performed by Service Provider.

16. Audit and Inspection Right.

16.1 Service Provider shall maintain complete and accurate books, records and accounts to support and document performance under this Agreement by Service Provider, Service Provider Personnel, Service Provider's Key Subcontractor and any sub-subcontractor ("Service Provider Records"). Service Provider shall keep, at no additional cost to City, in a reasonably accessible location, all such Service Provider Records for a period of seven (7) years after expiration of this Agreement or as required by law, if longer. The Service Provider Records may be inspected, audited and copied by City or City Representatives during normal business hours and at such reasonable times as City and Service Provider may determine. If any audit or inspection of Charges or Service Provider's performance, including the performance of any Service Provider Personnel, Service Provider's Key Subcontractor and any sub-subcontractor, reveal that City has overpaid any amounts to Service Provider, Service Provider shall promptly refund such overpayment and Service Provider shall also pay to City interest on the overpayment amount at the rate of one and one-half percent (1.5%) per month (or such maximum rate permissible by Applicable Law, if lower) from the date the overpayment was made until the date the overpayment is refunded to City by Service Provider.

17. Indemnification by Service Provider.

17.1 General Indemnity. Service Provider shall indemnify and hold City, its agencies and its and their respective officers, directors, employees, advisors, and agents, successors and permitted assigns, 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:

- (a) Service Provider's or Service Provider Personnel's performance, non-performance or breach of this Agreement;
- (b) compensation or benefits of any kind, by or on behalf of Service Provider Key Personnel, or any Key Subcontractor, claiming an employment or other relationship with Service Provider or such Key Subcontractor (or claiming that this Agreement creates an inherent, statutory or implied employment relationship with City or arising in any other manner out of this Agreement or the provision of Services by such Service Provider Key Personnel or Key Subcontractor);
- (c) any actual, alleged, threatened or potential violation of any Applicable Laws by Service Provider or Service Provider Personnel, to the extent such claim is based on the act or omission of Service Provider or Service Provider Personnel, excluding acts or omissions by or at the direction of City;
- (d) death of or injury to any individual caused, in whole or in part, by the tortious conduct of Service Provider or any Person acting for, in the name of, at the direction or supervision of or on behalf of Service Provider; and
- (e) damage to, or loss or destruction of, any real or tangible personal property caused, in whole or in part, by the tortious conduct of Service Provider or any Person acting for, in the name of, at the direction or supervision of or on behalf of Service Provider.

17.2. Intellectual Property Indemnification by Service Provider. Service Provider shall indemnify and hold City Indemnitees harmless from and against 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 any of the processes, procedures, Work Product, materials and methodologies used by Service Provider (or any Service Provider Personnel), or City's use thereof (or access or other rights thereto) in connection with the Services, or any of the Services themselves, infringes or misappropriates the Intellectual Property Rights of a Third Party. If any processes, procedures, Work Product, materials, methodologies or Services provided by Service Provider hereunder is held to constitute, or in Service Provider's reasonable judgment is likely to constitute, an infringement or misappropriation, Service Provider will in addition to its indemnity obligations, at its expense and option, and after consultation with City regarding City's preference in such event, either: (A) procure the right for City Indemnitees to continue using such processes, procedures, Work Product, materials, methodologies or Services; (B) replace such processes, procedures, Work Product, materials, methodologies or Services with a non-infringing equivalent, provided that such replacement does not result in a degradation of the functionality, performance or quality of the Services; (C) modify such processes, procedures, Work Product, materials, methodologies or Services, or have such processes, procedures, Work Product, materials, methodologies or Services modified, to make them non-infringing, provided that such modification does not result in a degradation of the functionality, performance or quality of the processes, procedures, Work Product, materials, methodologies or Services; or (D) create a feasible workaround that would not have any adverse impact on City.

18. Limitation of Liability.

18.1. General. THE MAXIMUM AGGREGATE LIABILITY OF CITY HEREUNDER IS LIMITED TO THE TOTAL OF ALL CHARGES ACTUALLY PAID DURING THE CURRENT YEAR UNDER THE AGREEMENT. EXCEPT FOR CONTRACTOR'S INDEMNITY OBLIGATIONS SET FORTH IN THE SECTION ENTITLED "INDEMNIFICATION BY CONTRACTOR" AND WILLFUL MISCONDUCT OR GROSS

NEGLIGENCE BY CONTRACTOR, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES (OR ANY COMPARABLE CATEGORY OR FORM OF SUCH DAMAGES, HOWSOEVER CHARACTERIZED IN ANY JURISDICTION), ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, AND EVEN IF FORESEEABLE OR IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18.2. Exceptions to Limitations. The limitations set forth in the immediate **subsection** shall not apply to: (a) personal injury, wrongful death or tangible property damage; (b) any claim for infringement of intellectual property; (c) any breach of the **Section entitled "Confidential Information"**; or (d) any claim involving a violation of any Applicable Law concerning homeland security, terrorist activity or security sensitive information, regardless of the manner in which such damages are characterized.

19. Insurance and Bonding Requirements. Service Provider shall comply with the insurance and bonding requirements set forth on Appendix B.

20. Force Majeure. Neither Party will be liable for default or delay in the performance of its obligations under this Agreement to the extent such default or delay is caused by a Force Majeure Event. Upon the occurrence of a Force Majeure Event, the non-performing Party will be excused from performance or observance of affected obligations for as long as: (a) the Force Majeure Event continues; and (b) the Party continues to attempt to recommence performance or observance to the extent commercially reasonable without delay. If any Force Majeure Event continues for thirty (30) consecutive days, City may, at its option during such continuation, terminate this Agreement, in whole or in part, without penalty or further obligation or liability of City.

21. Termination.

21.1. Termination by City for Cause. City may at its option, by giving written notice to Service Provider, terminate this Agreement or any Task Order:

- (a) for a material breach of the Contract Documents by Service Provider that is not cured by Service Provider within seven (7) days of the date on which City provides written notice of such breach;
- (b) immediately for a material breach of the Contract Documents by Service Provider that is not reasonably curable within seven (7) days;
- (c) immediately upon written notice for numerous breaches of the Contract Documents by Service Provider that collectively constitute a material breach or reasonable grounds for insecurity concerning Service Provider's performance; or
- (d) immediately for engaging in behavior that is dishonest, fraudulent or constitutes a conflict of interest with Service Provider's obligations under this Agreement or is in violation of any City Ethics Ordinances.

21.2. Re-procurement Costs. In addition to all other rights and remedies City may have, if this Agreement is terminated by City pursuant to the above **subsection** entitled "**Termination by City for Cause**", Service Provider will be liable for all costs in excess of the Charges for all terminated Services reasonably and necessarily incurred by City in the completion of the Services, 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"**.

- 21.3. Termination by City for Insolvency. City may terminate this Agreement immediately by delivering written notice of such termination to Service Provider if Service Provider: (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.
- 21.4. Termination by City for Convenience. At any time during the Term of this Agreement or any issued Task Order, City may terminate this Agreement or the Task Order for convenience upon fourteen (14) days written notice of such termination. Upon a termination for convenience, Service Provider waives any claims for damages, including loss of anticipated profits. As Service Provider's sole remedy and City's sole liability, City will pay Charges for the Services properly performed prior to the notice of termination, plus all reasonable costs for Services performed after the termination, as specified in such notice, and reasonable administrative costs of settling and paying claims arising out of the termination of Services under purchase orders or subcontracts except to the extent any products under such purchase orders or subcontracts can be used by Service Provider in its business within the thirty (30) days following termination. If requested, Service Provider shall substantiate such costs with proof satisfactory to City.
- 21.5. Termination for Lack of Appropriations. If, during any year of this Agreement, legislation establishing an Maximum Payment Amount for the following year is not enacted, this Agreement will terminate in its entirety on the last day of the Term for which an Maximum Payment Amount has been legislatively authorized; provided, however, that Task Orders funded out of a previously legislatively authorized Maximum Payment Amount may continue beyond such termination date.
- 21.6. Effect of Termination. Unless otherwise provided herein, termination of this 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 Agreement, at law or in equity. Upon termination of this Agreement, Service Provider 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 Service Provider 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.

22. Dispute Resolution

- 22.1 All disputes under the Contract Documents or concerning Services shall be resolved under this Section and **Exhibit E**. Both Parties shall continue performing under this Agreement while the Parties are seeking to resolve any such dispute unless, during that time, this Agreement or any

Task Order in dispute is terminated or expires. A dispute over payment will not be deemed to preclude performance by Service Provider.

- 22.2. Applicable Law. The Contract Documents shall be governed by and construed in accordance with the substantive laws of the State of Georgia without regard to its choice of law principles.
- 22.3. Jurisdiction and Venue. The Parties hereby submit and consent to the exclusive jurisdiction of the state courts of Fulton County, Georgia or in the United States District Court for the Northern District of Georgia and irrevocably agree that all actions or proceedings relating to this Agreement will be litigated in such courts, and each of the Parties waives any objection which it may have based on improper venue or forum non conveniens to the conduct of any such action or proceeding in such court.
- 22.4. Equitable Remedies. The Parties agree that, notwithstanding the provisions of this Section, due to the unique nature of either Party's Confidential Information, there may not be an adequate remedy at law for a breach of the **Section titled "Confidential Information"**, which breach may result in irreparable harm to the non-disclosing Party. Accordingly, in such instance, the non-breaching Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law.

23. Ethics in Contracting

- 23.1. Prohibition against Contracting with Predatory or High Cost Lenders. By execution of this Agreement, Service Provider, or its authorized agent, certifies, under penalty of perjury, that this Agreement is made by a person or business entity that is neither a predatory lender nor a high cost lender, nor is Service Provider an Affiliate of a predatory lender or a high cost lender, as defined by City Code of Ordinances §58-102. The undersigned Service Provider, or authorized agent, further certifies that he/she is an agent duly authorized to sign this certification on behalf of the Service Provider.
- 23.2. Fraud and Misrepresentation. Any written or oral information provided by Service Provider, directly or indirectly related to the performance of the services required by this Agreement, constitutes material representations upon which the City relies for the requirements of the Agreement and compliance with local, state and federal laws, rules and regulations. Service Provider 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. Service Provider 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 Agreement, whether or not such information actually constitutes fraud and/or misrepresentations, by contacting the Integrity Line 1-800-884-0911. Service Provider agrees to place signage provided by the City regarding the Integrity Line at the location to which Service Provider employees report to perform the services required by this Agreement. Service Provider acknowledges and agrees that a finding of fraud or other impropriety on the part of Service Provider or any Service Provider Personnel may result in suspension or debarment of Service Provider; and the City may pursue any other actions or remedies that the City may deem appropriate. Service Provider agrees to include this clause in its subcontracts and take appropriate measures to ensure compliance with this provision.
- 23.3. Labor Trafficking Prohibitions.

- 23.3.1. Pursuant to O.C.G.A. §16-5-46, Service Provider agrees that Service Provider, its employees, directors, officers, owners, subcontractors, vendors, suppliers, agents and affiliates shall not engage in Human Trafficking including, but not limited to: (a) using forced labor, (b) engaging in misleading or fraudulent recruitment practices, (c) charging recruitment fees, (d) destroying, concealing, confiscating, or otherwise denying employee access to the employee's identification documents, (f) failing to provide an employment agreement (if required) in an employee's native tongue and prior to the employee's departure from his/her place of origin. Service Provider agrees to cooperate fully with and provide reasonable access to any agency or governmental authority conducting investigations into actual or alleged violations of this section, self-report activities that are inconsistent with or otherwise violate the provisions of this section or any other applicable law or regulation.
- 23.3.2. Service Provider agrees that Service Provider, its subcontractors, vendors and suppliers shall create and post a formal compliance plan at (a) at any and all locations at which Service Provider engages in business and/or locations at which Service Provider may have employees on site and/or (b) on any website owned by or maintained for the benefit of Service Provider. Service Provider agrees to maintain a formal compliance plan including, as appropriate an employee awareness program about United States and State of Georgia anti-trafficking policy and preventative procedures. Each contractor and subcontractor must formally certify it has a compliance plan in place, due diligence was conducted, the absence of misconduct, and that, if misconduct was observed, that appropriate remediation and referral actions were taken.
- 23.3.3. Any violation of the provisions contained herein, in whole or in part, may result in (a) suspension of this Agreement and/or any other existing agreements with Service Provider and/or any current or future payments or compensation required pursuant to this Agreement, (b) termination of this Contract or any existing, pending or future agreements with Service Provider, (c) debarment, as defined under 48 C.F.R. 9.406-2, City of Atlanta Code of Ordinances Section 2-1623 and/or (d) any other claims, actions, remedies, judgments, fees or costs as allowed in accordance with any Applicable law, now or hereafter in effect.
- 23.4. Illegal Immigration Reform and Enforcement Act. For the entire Term of this Agreement, Service Provider must comply with the Illegal Immigration Reform and Enforcement Act of 2011 ("Act") (O.C.G.A. §13-10-90 *et seq.*), as it may be amended from time to time, including but not limited to, obtaining affidavits from Contractor's subcontractors and sub-subcontractors demonstrating their participation in the E-Verify Program for the duration of their contract with Service Provider. Service Provider shall further include the obligation to obtain affidavits demonstrating E-Verify participation in its subcontracts with all of Contractor's subcontractors and sub-subcontractors that perform all or part of the services in this Agreement. For additional information on the E-Verify program or to enroll in the program, go to <https://e-verify.uscis.gov/enroll>.
- 23.5. Gratuities and Kickbacks. In accordance with the City Code of Ordinances, §2-1484, as may be amended, it shall be unethical for any person to offer, give or agree to give any employee or former employee or 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 there for. Additionally, it shall be 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.

23.6. City Equal Employment Opportunity (EEO) Provision. Service Provider shall comply with City Code of Ordinances §§2-1200 and 2-1414 as follows during the performance of the Agreement:

- 23.6.1 Service Provider 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. Service Provider 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.
- 23.6.2 Service Provider shall, in all solicitations or advertisements for employees, placed by or on behalf of Service Provider, 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.
- 23.6.3 Service Provider shall send to each labor union or representative of workers with which Service Provider may have a collective bargaining Agreement or other contract or understanding a notice advising the labor union or workers' representative of Service Provider's commitments under the equal employment opportunity program of the City and under the City Code of Ordinances and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Service Provider shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.
- 23.6.4 Service Provider shall furnish all information and reports required by the contract compliance officer pursuant to the City Code of Ordinances, and shall permit access to the books, records, and accounts of Service Provider during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.
- 23.6.5 Service Provider shall take such action with respect to any subcontractor Provider as the city may direct as a means of enforcing the provisions of the EEO provisions herein, including penalties and sanctions for noncompliance; provided, however, that in the event Service Provider 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, Service Provider or the city may request the United States to enter into such litigation to protect the interests of the United States.

- 23.6.6 Service Provider and its subcontractor Providers, 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 Service Provider and its subcontractor Providers.
- 23.6.7 Service Provider shall include these EEO provisions in every subcontract or purchase order so that such provisions will be binding upon each subcontractor Provider or vendor.
- 23.6.8 A finding, as hereinafter provided, that a refusal by Service Provider or subcontractor Provider 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:
 - 23.6.8.1 Withholding from Service Provider in violation all future payments under the involved contract until it is determined that Service Provider or subcontractor Provider is in compliance with the provisions of the contract;
 - 23.6.8.2 Refusal of all future bids for any contract with the City of Atlanta or any of its departments or divisions until such time as Service Provider or subcontractor Provider 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;
 - 23.6.8.3 Cancellation of the public contract; or
 - 23.6.8.4 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 Service Providers, subcontractor Providers or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.

24. **Federal Required Clauses.**

- A. **Federal Equal Employment Opportunity (EEO) Provision.** During the performance of the Agreement and in addition to compliance with the City Equal Employment Opportunity (EEO) Provision of this Agreement, Service Provider agrees to comply with Executive Order No. 11246, as amended and as supplemented by U.S. Department of Labor regulations (41 CFR, Part 60-1, et seq.), which require that the Service Provider not discriminate based on race, creed, color, religion, national origin, sex, or age in the performance of this Agreement. Service Provider must include the provisions of this paragraph in every contract, subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor. Service Provider further agrees not to discriminate in educational programs and activities

relating to this Agreement based on race, color, religion, gender, national origin, age or disability.

B. Clean Air Act.

- (1) The Service Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Service Provider agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency (EPA) Regional Office.
- (3) The Service Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

C. Federal Water Pollution Control Act.

- (1) The Service Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Service Provider agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the FEMA, and the appropriate EPA Regional Office.
- (3) The Service Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

D. Procurement of Recovered Materials.

- (1) In the performance of the Agreement, the Service Provider shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - (i) competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - (ii) in accordance with the Agreement performance requirements; or
 - (iii) at a reasonable price.
- (2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site:
<https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

E. Access to Records. The following access to records requirements applies to the Agreement:

- (1) The Service Provider agrees to provide the City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books,

documents, papers, and records of the Service Provider which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Service Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Service Provider agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

F. Department of Homeland Security (DHS) Seal, Logo, and Flags. The Service Provider shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

G. No Obligation by Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Service Provider, or any other party pertaining to any matter resulting from the Agreement.

H. Program Fraud and False or Fraudulent Statements or Related Acts. The Service Provider acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Service Provider's actions pertaining to this Agreement.

25. General.

25.1. **Notices.** Any notices under this Agreement shall be in writing and sent to the respective Party at the address on page 1 of this Agreement, or, if applicable, to the City's Department of Procurement at 55 Trinity Avenue, Suite 1900, Atlanta, Georgia, 30303, and shall be deemed delivered: (a) when delivered by hand or courier or by overnight delivery with signature receipt required; (b) when sent by confirmed facsimile with a copy sent by another means specified in this Section; or (c) three (3) days after the date of mailing by United States certified mail, return receipt requested, postage prepaid. Any Party may change its address for communications by notice in accordance with this Section.

25.2. **Waiver.** Any waiver by the Parties or failure to enforce their rights under this Agreement shall be deemed applicable only to the specific matter and shall not be deemed a waiver or failure to enforce any other rights under this Agreement, and this Agreement shall continue in full force and effect as though such previous waiver or failure to enforce any rights had not occurred. No supplement, modification, amendment or waiver of this Agreement will be binding on City unless executed in writing by the City Authorized Representative.

25.3. **Assignment.** Neither this Agreement, nor any rights or obligations under it, are assignable in any manner without the prior written consent of the other Party and any attempt to do so without such written consent shall be void ab initio.

25.4. **Publicity.** Service Provider shall not make any public announcement, communication to the media, take any photographs or release any information concerning City, the Services or this Agreement without the prior written consent of City.

25.5. **Severability.** In the event that any provision of this Agreement is declared invalid, unenforceable or unlawful, such provision shall be deemed omitted and shall not affect the validity of other provisions of this Agreement.

- 25.6. Non-Exclusivity. This Agreement is not exclusive. During the Term of this Agreement, the City reserves the right to select other Service Providers, Service Providers and suppliers to provide goods and services similar to goods and services provided by Service Provider or otherwise described in, provided for or anticipated in this Agreement.
- 25.7. Further Assurances. Each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary to give effect to this Agreement.
- 25.8. No Drafting Presumption. No presumption of any Applicable Law relating to the interpretation of contracts against the drafter shall apply to this Agreement.
- 25.9. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement or which must survive in order to give effect to its meaning, shall survive the expiration or termination of this Agreement.
- 25.10. Independent Service Provider. Service Provider is an independent Service Provider of City and nothing in this Agreement shall be deemed to constitute Service Provider and City as partners, joint venturers, or principal and agent, or be construed as requiring or permitting the sharing of profits or losses. Neither Party has the authority to represent or bind or create any legal obligations for or on behalf of the other Party.
- 25.11 Third Party Beneficiaries. This Agreement is not intended, expressly or implicitly, to confer on any other Person any rights, benefits, remedies, obligations or liabilities.
- 25.12 Cumulative Remedies. Except as otherwise provided herein, all rights and remedies under this Agreement are cumulative and are in addition to and not in lieu of any other remedies available under Applicable Law, in equity or otherwise.
- 25.13 Entire Agreement. The Contract Documents contain the entire Agreement of the Parties relating to their subject matter and supersede all previous communications, representations or agreements, oral or written, between the Parties with respect to such subject matter. This Agreement may only be amended or modified by a writing executed by each Party's authorized representative and each such writing shall be deemed to incorporate the Contract Documents, except to the extent that City is authorized under Applicable Law to issue Unilateral Change Documents. SERVICE PROVIDER MAY NOT UNILATERALLY AMEND OR MODIFY THIS AGREEMENT BY INCLUDING ADDITIONAL TERMS IN ITS INVOICES, OR OTHER BUSINESS FORMS, INCLUDING ANY SHRINK-WRAP, BROWSE-WRAP, CLICK-THROUGH, ACCEPTABLE USE POLICIES OR END USER LICENSE AGREEMENTS, IF ANY ("ADDITIONAL TERMS"), PROVIDED WITH THE PROVISION OF THE SERVICES, EVEN IF USE OF SUCH SERVICES REQUIRES AN AFFIRMATIVE "ACCEPTANCE" OF THOSE ADDITIONAL TERMS BEFORE ACCESS IS PERMITTED. ALL SUCH ADDITIONAL TERMS SHALL BE DEEMED FOR SERVICE PROVIDER'S INTERNAL ADMINISTRATIVE PURPOSES ONLY, ARE OBJECTED TO BY CITY AND OF NO FORCE OR EFFECT.
- 25.14 Specified Excuses for Delay or Nonperformance. Service Provider shall not be entitled to payment or compensation of any kind from the City for indirect, impact, or delay damages, including but not limited to costs of delay, disruption, interference, ripple effect, unforeseen site conditions, loss of anticipated profits, impact or hindrance from any cause whatsoever (collectively "Delay Damages"), whether such delay, disruption, interference, ripple effect, unforeseen site conditions, impact or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Service Provider expressly waives and releases any Claim for Delay

Damages and agrees that Service Provider's sole and exclusive remedy for any delay shall be an extension of time to perform the services agreed to in this Agreement.

- 25.15 Originality and Title to Concepts, Materials, and Goods Produced. If applicable, Service Provider represents and warrants that all the concepts, materials, goods and services produced, or provided to the City pursuant to the terms of the Agreement shall be wholly original with the Service Provider or that the Service Provider has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Service Provider represents and warrants that the concepts, materials, goods and services and the City's use of same and the exercise by the City of the rights granted by the Agreement shall not infringe upon any other work, other than material provided by the Agreement to the Service Provider to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Service Provider represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and services contemplated by the Agreement.
- 25.16 Counterpart Signatures. This Agreement may be signed in two or more counterparts by original, facsimile signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 25.17 Electronic Signatures. Pursuant to O.C.G.A. §10-12-7, the Agreement and its Contract Documents may be executed and delivered by the City by electronic transmission. For purposes of this Agreement, any page signed and transmitted electronically shall be treated as an original document, and the electronic signature of any party thereon, for purposes hereof, shall be considered as an original signature and the document transmitted electronically shall be considered to have the same binding effect as an original signature on an original document.

[Signatures on the following page.]

The Parties hereto by authorized representatives have executed this Agreement as of the Effective Date.

City of Atlanta



Mayor



Municipal Clerk (Seal)

Russell Landscape, LLC

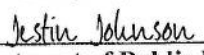


By: _____

Name: William Russell

Title: CEO

Approved:

DocuSigned by:

Department of Public Works

DocuSigned by:

Chief Procurement Officer

Approved as to form:

DocuSigned by:

Assistant City Attorney