

## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (“Lease”), is made and entered into this day of , 2021, (“Effective Date”) by and between the **CITY OF ATLANTA**, a municipal corporation organized under the laws of the State of Georgia (“Lessor” or “City”) and **ATLANTA POLICE FOUNDATION, INC.**, a Georgia nonprofit corporation (“Lessee”), for the use of certain real property located in Fulton County, Georgia.

### WITNESSETH THAT:

**WHEREAS**, Lessor is the owner of certain improved and unimproved parcels of real property located at: (1) Land Lot 83 of the 15th District, Dekalb County, Georgia, Tax Parcel ID 15-082-01-001, and known as 561 Key Road SE, Atlanta, (2) Land Lot 81 of the 15th District, Dekalb County, Georgia, Tax Parcel ID 15-081-08-001, and known as 3054 Fayetteville Road, Atlanta, and (3) Land Lot 81 of the 15th District, Dekalb County, Georgia, Tax Parcel ID 15-081-08-002, and known as 3184 Fayetteville Road, Atlanta collectively amounting to approximately 381 acres, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("Property"); and

**WHEREAS**, the improved portion of the Property is uninhabitable and in need of repair or demolition and reconstruction and the unimproved portion of the Property includes areas overgrown with invasive plant species that may be required to be removed by law; and

**WHEREAS**, Lessee desires to lease from Lessor certain area within and across the Property amounting to approximately 85 acres which will be developed into improvements, including buildings and other structures further described herein an initial design plan of the Premises as shown on Exhibit "B", and incorporated herein by this reference (the “Premises”); and

**WHEREAS**, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor the Premises in an “AS IS” condition, inclusive of improved and unimproved areas; and

**WHEREAS**, Lessee intends to improve the Premises with facilities and training areas in the minimum acreage necessary to accomplish the training requirements of the Atlanta Police Department and Atlanta Fire Rescue Department, expected to be approximately 85 acres, in order to support the preservation of the remaining Property of approximately 265 acres for greenspace, including at least approximately 170 acres to preserved for public purposes; and

**WHEREAS**, Lessee will convene a representative group of neighborhood and community leaders, including members of the DeKalb Community Council, to advise on the final public safety training campus and green space; and

**WHEREAS**, Lesse and Lessor desire that Lessee will develop Premises including clearing areas, removing debris, designing, and building new construction and landscaping as further described herein, (“Facility Improvement”) and upon completion of final planning and design of the Facility improvements, the Lease will be amended to reflect the final acreage of

the Premises; and

**WHEREAS**, the Lessee desire to fund, design and build the Facility Improvements for the use and operation of a state-of-the-art Public Safety Training Center by the Lessor, by its public safety agencies upon its completion and transfer back to Lessor; and

**WHEREAS**, Lessor, at a meeting of its City Council on , 2021, adopted City Council Ordinance , to authorize the leasing of the Premises to Lessee and upon completion of the final planning and design authorize the Mayor or Mayor's designee, on behalf of the City to amend this Lease to reflect the final acreage as shown on as-built plans.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises herein contained, upon the following terms and conditions to paid and kept by Lessee, Lessor grants and leases, and Lessee does hereby accept, take and lease, the Premises from Lessor. This Lease creates in Lessee an estate for years.

1.

USE OF PROPERTY

1.1 The Premises shall be used by Lessee for the removal, renovation and building of certain improvements approved by the Lessor for the construction of a state-of-the-art Public Safety Training Campus ("Improvements"), as more particularly described in Section 8.2 below and Exhibit D attached hereto, to be utilized by the City for public safety agencies and all related uses. Lessee shall have the right to make Improvements to the Property in accordance with the terms and conditions provided herein.

2.

OCCUPANCY OF PROPERTY

2.1 Without limitation of the foregoing, Lessee shall not (a) use the Premises for any illegal purpose, nor for any purpose inimical to the health, safety, and welfare of the public, or (b) commit, or suffer to be committed, any waste in or on the Premises or create or permit any nuisance in or on the Premises

2.2 Lessee shall develop the Premises for the occupancy and use of the Lessor continuously through the Term and shall not desert, surrender, abandon or permanently cease using the Premises during the Term (as hereinafter defined) other than during any temporary period during which Lessee fails to occupy the Premises as a result of: (i) alterations or renovations being performed in and to the Premises, provided that such alterations or renovations are diligently and in good faith being pursued to completion, or (ii) damage or destruction due to a casualty, eminent domain proceedings or actions, or other events of *Force Majeure* (each a "Permitted Closure").

2.3 Lessee shall upon completion of the Facility Improvements in accordance with the terms of this Lease, turn over occupancy and operation of the completed Public Safety Training Center

to the City of Atlanta.

3.

RENT

3.1 Lessee shall pay to Lessor an annual ground rental rate of Ten Dollars (\$10.00), in consideration of coordinating or collecting funding necessary for completing the Facility Improvements on the Premises and keeping the covenants and terms and conditions of this Lease required to be kept by Lessee, each of which shall constitute consideration in addition to the nominal rental rate. 3.2 Whenever the Term of this Lease expires, or is earlier terminated for any reason, then Lessee shall leave the Facility Improvements in the same or better condition as of the date of the completion of the Facility Improvements, normal wear and tear, and casualty and condemnation being excepted.

4.

TERM AND TERMINATION

- 4.1 The Term shall commence on \_\_\_\_\_, 2021 ("Commencement Date") and end at 11:59 p.m. on the day prior to the 50<sup>th</sup> anniversary of the Commencement Date (the "Expiration Date") unless this Lease shall be sooner terminated as hereinafter provided. The period from and including the Commencement Date to and including the Expiration Date is hereinafter referred to as the "Term."
- 4.2 Once the Commencement Date has been established, the parties shall execute a rent commencement date letter in the form attached hereto as Exhibit C, memorializing the Rent Commencement Date and the last day of the Term.
- 4.3 Lessor, at its sole option, may terminate this Lease with or without cause, upon providing at least 180 days written notice to Lessee.
- 4.4 Upon expiration or termination of this Lease, all rights and interests of Lessee (and all persons whomsoever claiming by, under or through Lessee) in and to the Premises and any improvements shall wholly cease and all right, title and interest to the Premises and the improvements, including but not limited to all permanent improvements, erections and additions constructed on the Premises by Lessee, shall vest in Lessor without further act or conveyance, and without liability to make compensation therefor to Lessee or to anyone whatsoever, and shall be free and discharged from all and every lien, encumbrance, claim and charge of any character created or attempted to be created by Lessee at any time other than pursuant to the specific terms of this Lease (with the exception of the Permitted Exceptions). This provision shall not relieve Lessee from liability for having left the Property or the improvements in unsound or unsafe condition or with encumbered title. Lessee, upon the request of Lessor, covenants and agrees to execute a quitclaim deed releasing all such rights in the Premises and any portion of the Property and any improvements in a form and substance acceptable to Lessor.
- 4.5 In addition to the termination provisions set forth above, if Lessee shall after thirty (30) days' notice thereof (or such longer period as may be reasonably required to cure a default as long as Lessee is diligently pursuing such cure) remain in default in the performance of any of

the stipulations, covenants, terms, conditions, agreements or provisions of this Lease, then and in any of the above events, Lessor, at its option, may at once or thereafter (but only during the continuance of such default), terminate this Lease. Upon such termination by default, Lessor may forthwith re-enter the Premises and repossess itself and remove all persons and effects therefrom, using such force as may be necessary without being guilty of trespass, forcible entry, detainer, or other tort.

5.

HOLDING OVER

5.1 Lessee shall not use or remain in possession of the Premises after the termination of this Lease. Any holding over or continued use or occupancy of the Premises by Lessee after the expiration or any termination of the Term, without consent of Lessor, shall not constitute a Tenancy At-Will in Lessee, but Lessee shall be a Lessee At-Sufferance, subject to the provisions of Paragraph 4 of this Lease.

6.

INSPECTION AND TITLE AND ENVIRONMENTAL

6.1 Lessee hereby acknowledges that it has fully inspected the Property and the Premises located therein and that the Premises and Property and title to the Property are accepted in their current "AS IS" "WHERE IS" condition and are satisfactory and suitable for the use intended by Lessee as hereinabove provided for in this Lease.

6.2 Lessee shall be responsible for ensuring the Facility Improvement meets all local, City, county, state, and federal environment requirements. Lessee shall obtain any legally required environmental studies, reports, or feasibility studies. Lessee hereby acknowledges that they have obtained a Phase I Environmental Site Assessment Report and a Preliminary Geotechnical Engineering Report for the Property. To the extent any of these reports have indicated any environmental condition(s) Lessee agrees to mediate such environmental condition(s) to the extent required by law and to complete the Facility Improvements on the Premises.

6.3 If a Phase II Environmental Site Assessment Report is required, Lessee shall enter into a separate agreement with Lessor with respect to obtaining that report and prior to undertaking any work to remediate any environmental condition(s).

7.

NO JOINT VENTURE

7.1 Nothing contained in this Lease shall make, or shall be construed to make, Lessor and Lessee partners in, of, or joint ventures with each other, nor shall anything contained in this Lease render, or be construed to render, either Lessor or Lessee liable to a third party for the debts or obligations of the other.

8.  
IMPROVEMENTS

8.1 Contingencies. Lessee's obligation to construct the Facility Improvements is conditioned on the satisfaction (or waiver by Lessor, in writing) of the following contingencies ("Contingencies"):

- A. Receipt of all necessary and appropriate governmental permits and approvals for the Facility Improvements; and
- B. Obtaining funding commitments for the Facility Improvements in an amount to fully finance 100% of the Facility Improvements on terms acceptable to Lessee.

8.2 Lessor will cooperate with Lessee in Lessee's pursuit of the satisfaction of these Contingencies. Lessee will diligently and in good faith pursue satisfaction of the Contingencies and will keep Lessor apprised of the progress of the satisfaction of the Contingencies. If at any time prior to, Lessee determines that satisfaction of one or more Contingencies is unfeasible or unlikely, Lessee may terminate this Lease upon one-hundred eighty (180) days' written notice to Lessor.

8.3 Lessee shall provide Lessor reasonable evidence that it has satisfied the Contingencies. In the event that the Lessee fails to provide the Lessor reasonable evidence that the Lessee has satisfied the Contingencies on or before \_\_\_\_\_, 20\_\_\_\_, Lessor may terminate this Lease by written notice to Lessee.

8.4 Improvement. After the satisfaction or waiver of the Contingencies set forth above, and subject to the other conditions contained herein, and as Lessee determines is necessary to construct the Facility Improvements on the Premises, Lessee shall have the right to use or remove any or all of the existing improvements on the Premises, at Lessee's sole cost and expense, and to construct permanent improvements, erections and additions including, without limitation, a new infrastructure, and parking area. Lessee's right to construct the Facility Improvements on the Premises shall be subject to the following conditions:

- A. Lessee agrees that the Facility Improvements shall be completed substantially in accordance with the schematic plans and specifications, approved by Lessor's Department of Enterprise Asset Management (DEAM) and described on Exhibit D ("Preliminary Plans"), attached hereto, and incorporated herein by this reference. All design, scope, and specifications shall be approved by the City's Department of Enterprise and Asset Management ("DEAM") before execution. The design review shall be at all phases of design and development and construction documents including specification and city design standards. After Lessee has worked through the remainder of its development plan and fundraising efforts for the Facility Improvements, Lessee will cause construction documents for the Facility Improvements to be prepared and submitted to Lessor of all phases of design and

development and constructions documents, including specification and city design standards, code compliance and constructability review. Lessor will conduct its code compliance and constructability review within thirty (30) days of receipt of the construction documents and provide notice or its approval of the construction documents or state with specificity, the reasons for disapproval. The submitted construction documents approved by Lessor are referred to hereinafter as "Lessee's Construction Document". The Facility Improvements shall be constructed substantially in accordance with Lessee's Construction Documents.

- B. Following completion and approval of Lessee's Construction Documents, Lessee will provide Lessor written notice ("Project Commencement Notice") that Lessee is prepared to move forward with the Facility Improvements. Following delivery of the Project Commencement Notice, Lessee will cause the Facility Improvements to be commenced promptly and diligently pursued to completion. Lessee's construction of the Facility Improvements shall be performed in accordance with the approved Lessee's Construction Documents and all laws, regulations and rules of appropriate governmental authorities and insurance rating agencies. Lessee agrees that it will timely satisfy or bond over any mechanics, laborers, or other construction liens to be asserted against the Premises or the adjoining property of Lessor. Neither Lessee, nor any agent, employee, representative, contractor, subcontractor, or any other party claiming any interest through Lessee, shall have any power or authority to do any act or thing or to make any contract or agreement which will bind Lessor, or which may create or be the foundation for any mechanics' lien or other lien or claim upon or against the adjoining property owned by Lessor. Furthermore, Lessee hereby agrees to indemnify and hold Lessor harmless of, from and against any and all loss, cost, claims, demands, expenses, and liabilities resulting from Lessee's construction of the Facility Improvements.
- C. Lessee shall engage a contractor ("Contractor") or subcontractor, through a competitive process, that is licensed in the State of Georgia to construct the Facility Improvements. Contractor shall provide payment bonds for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of work provided in the contract. Contractor shall also provide a performance bond in the amount of at least the total amount payable by the terms of the contract for the construction of the Facility Improvements. Any construction contract for the construction of the Facility Improvements shall contain a provision requiring the contractor and its subcontractors to comply with the laws of the State of Georgia, including but not limited to the Georgia Security Immigration Compliance Act set forth at O.C.G.A. Section 13-10-90 et seq., the "Drug-Free Workplace Act" set forth at O.C.G.A. Section 50-24-1 et seq., O.C.G.A. Section 45-10-20 et seq., regarding conflicts of interest, and O.C.G.A. 50-5-60 et seq., regarding products manufactured or produced in Georgia.
- D. To ensure that businesses are not discriminated against with regard to prime contracting, subcontracting or other partnering opportunities with the City, the City has instituted the City of Atlanta's Equal Business Opportunity Program (the "EBO Program") applicable to contracts entered into by the City. In recognition of such

efforts, Lessee agrees to utilize good faith efforts to comply with the EBO Program, as well as encourage its construction contractor to use good faith efforts to engage in outreach to minority business enterprises (“MBE”) and female business enterprises (“FBE”), including minority and female business enterprises that are certified the Mayor’s Office of Contract Compliance (“OCC”), and engage them in contracts and subcontracts for work performed on the Premises. Lessee agrees to use best efforts to meet the City’s female enterprise and minority enterprise participation goals for construction services, which goals are as follows:

Construction Services: 26.7% MBE and 11.1% FBE

Lessee agrees to impose a joint venture requirement for any contracted services that are valued in excess of \$5 Million. On such projects, Lessee agrees to use good faith efforts to enter into a joint venture relationship with a certified MBE or FBE and otherwise comply with the terms set forth in Section 2-1450 of the Atlanta City Code and follow the City’s process as provided in “Appendix A” attached here to and incorporated herein by this reference. Lessee agrees to provide monthly reports to OCC related to the MBE and FBE participation. Monthly reports are due to OCC by the 5<sup>th</sup> calendar day of each month, and such reports shall include MBE and FBE participation during the preceding month.

- E. Lessee agrees to follow all applicable City of Atlanta and Dekalb County requirements for review and approval of the plan and for obtaining necessary permits. All plans should align with vision outlined in the Atlanta City Design, maximizing greenspace and open public areas. Lessee will use best efforts to preserve or protect trees on the Premises throughout the Term, and the Property during its construction of the Facility Improvements. Any tree removed during construction, which is not required to be removed by law, will be replaced pursuant to the requirements of the City’s Tree Protection Ordinance. In the event Lessor and Lessee determine that additional greenspace will be included in the Premises and/or that Lessee will be responsible for establishment and maintenance of additional greenspace during the Term, the Lease will be amended to include any additional acreage in the Premises and/or additional responsibilities of Lessee related to that acreage or any other area in Greenspace. Future plans for the Greenspace include development to allow for preservation of trees and allow for public access, including connection to public walking trails, such as the South River Trail or the Beltline.
- F. Lessee agrees that the Facility Improvements will include a dedicated space open to the public that will acknowledge the history of the Honor Farm. Lessee shall establish a community advisory committee as way to inform and obtain feedback from the community and other stakeholders.
- G. Lessee agrees to provide Lessor, at Lessee's cost and expense, an as-built drawing of the Premises within thirty (30) days after the date of completion of the Facility Improvements and of any alterations completed in accordance with Section 8.3 herein.

H. Lessee agrees to provide Lessor, at Lessee's cost and expense, an as-built survey of the Premises within thirty (30) days after the date of completion of the Facility Improvements and of any alterations completed in accordance with Section 8.3 herein, and with a surveyor's certificate to Lessor in the form described on the State Properties Commission ("SPC") website and containing the following items:

- i. that the drawing is a representation of a true and accurate survey;
- ii. that the perimeter of the survey was established by actual field measurements;
- iii. that the monuments were bound or set as shown on the survey;
- iv. that the Premises are entirely enclosed within the perimeters described therein;
- v. that there are no buildings or other structures of any kind, monuments, iron pins, encroachments, or easements upon the Property other than those shown thereon;
- vi. must be stamped and signed and dated by a Georgia Registered land surveyor in contrasting ink on each plat, which surveyor's registration number;
- vii. must have a Title Block, (as described below this page);
- viii. must list any/all revision dates and what was revised;
- ix. must state Land Lot, District, Section or Georgia Militia District (GMD);
- x. must list acreage by County in Title Block and on the face of the plat; and
- xi. must list Deed Book(s) and Page Number(s) which vested the Lessor's ownership and any corresponding Plat Book(s) and Page(s).

8.5 Alterations. Lessee shall have the right to alter, renovate, add, remodel, modify and/or change the Premises and/or Facility Improvements as Lessee may deem desirable, provided that if any such alterations, renovations, additions, modifications, remodeling and/or changes to the Premises and/or Facility Improvements substantially affect the Facility Improvements, Lessee shall first obtain the written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Neither Lessee, nor any agent, employee, representative, contractor, subcontractor, or any other party claiming any interest through Lessee, shall have any power or authority to do any act or thing or to make any contract or



agreement with will bind Lessor.

8.6 Lessee, at all times during the Term, at its sole cost and expense, shall keep the Premises in good order, condition and repair, ordinary wear and tear excepted. Lessee shall be required to make all capital repairs and replacements to the Premises of any kind or nature, in, on or to the Premises during the Term, subject to the provisions of Paragraph 11 hereof. However, Lessor shall have neither the right nor the obligation to demolish, remove, or relocate any improvements on the Premises without the prior written consent of Lessee.

8.7 Upon the expiration or earlier termination of this Lease, Lessee shall not be obligated to remove any improvements, temporary or permanent, existing as of the Effective Date.

## 9.

### LIABILITY

9.1 Lessee shall be responsible for all claims, damages, losses, or expenses arising from its use of the Premises that are (a) attributable to intentional or negligent acts, errors, or omissions by Lessee, its consultants or contractors or their officers, agents or employees, or its consultants' or contractors' subconsultants or subcontractors, or their officers, agents, or employees; and (b) all environmental liability under Section 14 of this Agreement.

9.2 Lessor shall only be responsible for claims, damages, losses, or expenses arising from its use of the Premises that are attributable solely to intentional or negligent acts, errors, or omissions by Lessor, its consultants or contractors or their officers, agents or employees, or its consultants' or contractors' subconsultants or subcontractors, or their officers, agents, or employees.

9.3 Notwithstanding any term to the contrary herein, Lessor shall be indemnified, defended, and held harmless by property managers, consultants, contractors, their subconsultants or subcontractors, the officers, agents or employees of those companies, or anyone else performing work at or related to the Premises.

## 10.

### INSURANCE

10.1 Insurance Certificates. Unless waived in writing, or as otherwise set forth herein or otherwise provided by Lessor, Lessee shall, prior to taking possession, procure or self-insure as to the insurance coverages identified below at Lessee's own expense and shall furnish Lessor an insurance certificate listing Lessor as the certificate holder, or written notice that Lessee has elected to self-insure pursuant to Paragraph 10.6. The insurance certificate must provide the following:

- A. Name and address of authorized agent
- B. Name and address of insured
- C. Name of insurance company(ies)

- D. Description of policies
- E. Policy Number(s)
- F. Policy Period(s)
- G. Limits of liability
- H. Name and address of Lessor as certified holder
- I. Project Number and Name
- J. Signature of authorized agent
- K. Telephone number of authorized agent

10.2 Policy Provisions. Each of the insurance coverages required below (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. Each such policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents, or other representatives ("Separation of Insureds").

10.3 Insurance Coverages. Lessee agrees to self-insure or purchase and have the authorized agent state on the insurance certificate that the following types of insurance coverages, consistent with the policies of and requirement of O.C.G.A. § 50-21-37 have been purchased by Lessee. The minimum required coverages and liability limits may be amended from time to time during the term of this Lease by Lessor to reflect then current reasonable and standard limits by giving notice to Lessee pursuant to Paragraph 19 and both parties shall execute an amendment to the Lease to reflect the change. The minimum required coverages are as follows:

- A. Workers' Compensation. Lessee agrees to provide Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group-insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating Lessee qualifies to pay its own workers' compensation claims. Lessee shall require all contractors using the Premises or performing work under this Lease to obtain an insurance certificate showing proof of Workers' Compensation and shall submit a statement on the letterhead of Lessee in the following language prior to taking possession of the Premises:

"This is to certify that all contractors performing work on this property are covered by their own worker's compensation insurance or are covered by Lessee's worker's compensation insurance."

- B. Employers' Liability Insurance. Lessee shall also maintain Employers'

Liability Insurance Coverage with limits of at least:

- i. Bodily Injury by Accident- \$1,000,000 each accident; and
- ii. Bodily Injury by Disease - \$1,000,000 each employee.

Lessee shall require all contractors performing work under this Lease to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall submit a statement on the letterhead of Lessee in the following language prior to taking possession of the Premises:

"This is to certify that all contractors performing work on this property are covered by their own employers' liability insurance or are covered by the general Lessee's employers' liability insurance."

- C. Commercial General Liability Insurance. Lessee shall provide Commercial General Liability Insurance CG 00 00 01 or equivalent which shall include, but need not be limited to, coverage for bodily injury and property damage arising from Premises and operations liability, products completed operations liability, personal injury and advertising liability, contractual liability, and fire legal liability. The Commercial General Liability Insurance shall provide, at a minimum, the following limits:

	<i>Coverage</i>	<i>Limit</i>
1.	Property and Operations	\$1,000,000 per Occurrence
2.	Products and Completed	\$1,000,000 per Occurrence
3.	Personal Injury and Advertising	\$1,000,000 per Occurrence
4.	Contractual	\$1,000,000 per Occurrence
5.	Fire Legal	\$1,000,000 per Occurrence
6.	General Aggregate	\$2,000,000 per Occurrence

Additional Requirements for Commercial General Liability Insurance:

- i. The policy or policies must be on an "occurrence" basis.
  - ii. The policy must include separate aggregate limits for the Premises.
- D. Commercial Business Automobile Liability Insurance. Lessee shall provide Commercial Business Automobile Liability Insurance which shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile in connection with any work at the Premises, occupancy of the Premises, or performance under this Lease. The Commercial Business Automobile Liability Insurance Policy shall provide not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limits for each occurrence.

Additional Requirements for Commercial Business Automobile Liability Insurance:

- i. Owned, Non-owned and Hired Vehicles;
- ii. Waiver of Subrogation in favor of the City of Atlanta; and
- iii. The policy or policies must be on an "occurrence" basis.

E. Commercial Umbrella Liability Insurance. Lessee shall provide a Commercial Umbrella Liability Insurance Policy to provide excess coverage above the Commercial General Liability, the Commercial Business Automobile Liability, and the Workers' Compensation and Employers' Liability to satisfy the minimum limits set forth herein. The minimum amount of Umbrella limits required above the coverages and minimum limits stated in 10.3(a), (b), (c) and (d) shall be:

\$2,000,000 per Occurrence  
\$2,000,000 Aggregate

Additional Requirements for Commercial Umbrella Liability Insurance: The policy or policies must be on an "occurrence" basis.

10.4 Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein continues throughout the Term shall not terminate until the Lease has been terminated.

10.5 Failure of Insurers. Lessee is responsible for any delay resulting from the failure of its insurance carriers to furnish proof of proper coverage in the prescribed form.

10.6 Self-Insurance. Any or all of the insurance required to be maintained by Lessee under this Lease may be provided through self-insurance adequate to provide coverage equal to the required policies, in which event Lessee shall be the insurer to the same extent as if Lessee had obtained the insurance policies from a third party provider as otherwise required by this Lease.

11.

DAMAGE OR DESTRUCTION

11.1 If the Premises or the Facility Improvements are damaged by fire or any casualty, then Lessee shall, at its sole cost and expense, and subject to the provisions of this Section, promptly commence and diligently pursue to completion the repair of such damage upon receipt of any applicable insurance proceeds so that the Premises are restored to a condition of similar quality, character, and utility for Lessee's purposes existing in the Premises prior to such damage. Notwithstanding anything contrary contained herein, if the Premises are not repaired and restored within five (5) years from the date of damage, Lessor may terminate the Lease at any time before Lessee completes the repairs and delivers the Premises after the expiration of such time. If Lessor does not so terminate, Lessee shall diligently continue to restore the Premises.

- 11.2 If damage or destruction is caused by a peril not required to be insured against hereunder and for which insurance proceeds are not available, Lessee is not relieved of its obligations under this Section to repair and restore the Premises at its sole cost and expense.
- 11.3 If Lessee is required to repair or restore the Premises under any provision of this Section and Lessee's use of the Premises is materially and adversely affected, then until Lessee completes such repair or restoration, rent and all other charges payable by Lessee hereunder shall abate based on the degree of damage and the impact such damage and repairs have on Lessee's use and the relation of such impact to the charges contemplated. Notwithstanding any provision of this Section to the contrary, in no event shall this Section be deemed to require Lessor to share in and/or be responsible for the costs of restoration and repair of the Premises caused by fire or other casualty.
- 11.4 Notwithstanding anything in this Article 11 to the contrary, if a casualty event occurs during the last five (5) years of the Term of this Lease, then Lessee may terminate this Lease, in which event Lessee shall not be obligated to repair or restore the Premises but shall assign to Lessor any rights to insurance proceeds (other than business interruption proceeds) payable with respect to such casualty loss.

## 12.

### UTILITIES

- 12.1 At its sole cost and expense, Lessee shall cause to be furnished and shall pay for all water, gas, light, power, sanitation (sewerage or otherwise), garbage pick-up and disposal, telephone and other utilities or services required for Lessee's use of the Premises.

## 13.

### TAXES AND ASSESSMENTS

- 13.1 Lessee covenants and agrees, during its use and/or occupancy of the Premises, to pay or cause to be paid, to the public officer charged with the collection thereof, before the same shall become delinquent (a) any and all taxes, assessments, license fees, excises, imposts, fees and charges of every sort, nature and kind, hereinafter collectively referred to as "impositions," which during Lessee's use or occupancy of the Premises may be assessed, levied, charged or imposed upon, against or with respect to the Premises, including, but not limited to, fixtures, equipment and personal property, if any there be, located therein or thereon; and (b) any and all impositions assessed, levied, charged or imposed on or with respect to the conduct of Lessee's business in or on the Premises.
- 13.2 Nothing herein shall obligate or require the payment of any imposition by Lessee unless such obligation or requirement is provided by law. Lessee may contest the validity, legality, liability, or amount of any imposition in the manner provided by law. Within ten (10) days after the

payment of Lessee of any imposition, Lessee shall furnish Lessor with a copy of said receipt evidencing such payment.

ENVIRONMENTAL LIABILITY

14.1 Definitions. As used in Section 14 of this Agreement the following terms shall have the meanings defined below:

**"Environmental Laws"** means all present and future federal, state, and local laws, ordinances, regulations, standards, rules, governmental requirements, and policies, administrative rulings, court judgments and decrees, and all amendments thereto, relating to pollution or protection of human health, wildlife, natural resources, or the environment (including ambient air, surface water, ground water, land surface, or subsurface strata) including such laws governing or regulating the use, generation, storage, removal, remediation, recovery, treatment, handling, transport, disposal, control, release, discharge of, or exposure to, Hazardous Materials. Without limiting the generality of the foregoing, Environmental Laws include the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Clean Air Act, 42 U.S.C. Sections 7401, et seq., the Safe Drinking Water Act, 42 U.S.C. Section 300f, et seq., the Occupational Safety and Health Act, 29 U.S.C. Chapter 15, et seq., the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136, et seq., and the River and Harbors Appropriation Act, 33 U.S.C. Section 403, et seq., and all regulations adopted thereunder and all state and local analogs. In addition to the foregoing, Environmental Laws also means and includes all voluntary cleanup programs and/or brownfields programs under federal, state, or local law and all requirements imposed by any applicable permits.

**"Hazardous Materials"** means any substance, chemical, material, or waste now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "regulated substance," "contaminant," "pollutant," or "emerging contaminants" (or words of similar import) within the meaning of or regulated or addressed under any Environmental Law. Without limiting the generality of the foregoing, Hazardous Materials includes: significant mold; petroleum and petroleum products and compounds containing them or derived from them, including gasoline, diesel fuel, oil, and other fuels and petroleum products or fractions thereof; pesticides and herbicides; radon; carcinogenic materials; explosives; flammable materials; infectious materials; corrosive materials; mutagenic materials; radioactive materials; polychlorinated biphenyls (PCBs), and compounds containing them; lead and lead-based paint; asbestos or asbestos containing materials in any form that is or could become friable; underground or aboveground storage tanks, whether empty or containing any substance; any medical products or devices, including those materials defined as "medical waste" or "biological waste" under relevant statutes or regulations pertaining to any Environmental Law; and any other substance the presence of which on, under, or about the Premises is regulated or

prohibited by any Governmental Authority. Notwithstanding the foregoing, any existing contaminants which would otherwise constitute a Hazardous Material, as defined herein shall be deemed a Hazardous Material for purposes of this Agreement only to the extent that such existing contaminants are subject to remediation or removal by Lessee pursuant to the provisions below.

**"Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including abandoning, or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material. Notwithstanding the foregoing, Release shall not include the safe and lawful use and storage by Lessee or any of Lessee Party of prepackaged supplies, cleaning materials, petroleum products, and other substances in such quantities and types as are customarily used in the operation and maintenance of properties that are comparable to the Premises so long as all the foregoing are used, stored, handled, transported, and disposed of in compliance with Environmental Laws; and

14.2 From and after the Effective Date, Lessee shall not bring or deposit, or allow its contractors, officers, directors, employees, agents, successors, and assigns (collectively, "Lessee Parties") to bring or deposit, in, on, under, about, or upon the Premises any pollutant or Hazardous Materials, except for substances ordinarily used in the care, maintenance and operation of the Premises and in compliance with applicable law and all other applicable provisions of this Lease.

14.3 From and after the Effective Date, Lessee and Lessee Parties shall not cause any of the following to occur on the Premises: (A) any generation, treatment, recycling, storage or disposal of any Hazardous Materials except as defined in Section 14.1; (B) installation of any underground storage tank, surface impoundment, lagoon or other containment facility for the temporary or permanent storage, treatment or disposal of Hazardous Materials; (C) installation or operation of any landfill or solid waste disposal area; (D) installation of any asbestos-containing material as defined by the Toxic Substances Control Act; (E) use of any polychlorinated biphenyl (PCB) in hydraulic oils, electric transformers, or other equipment; (F) use of any substance or materials containing per- or polyfluoroalkyl substances (PFAS or PFOA) or any substances or materials containing precursors to PFAS or PFOA; or (G) any release or threatened release of Hazardous Materials to the environment in forms or quantity requiring reporting or remedial action under Environmental Laws. In addition, Lessee warrants that it will not violate Environmental Laws on the Premises.

14.4 To the fullest extent permitted by law, Lessee agrees to promptly indemnify, protect, defend and hold harmless Lessor and Lessor's contractors, officers, directors, employees, agents, successors, and assigns (collectively, "Lessor Parties") from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the Release of Hazardous Materials on, in, under, or about the Premises which are caused by Lessee or any Lessee Parties during the Term of this Lease, or were present on the Premises at any time prior to the Term of this Lease, including arising from or caused in whole or in part, directly or indirectly, by (i) Lessee's or Lessee Parties'

actual, proposed or threatened use, treatment, storage, transportation, holding, existence, disposition, manufacturing, control, management, abatement, removal, handling, transfer, generation or Release (past, present, or threatened) of Hazardous Materials to, in, on, under, about, or from the Premises in violation of Environmental Laws or this Lease; (ii) any past, present, or threatened non-compliance or violations of any Environmental Laws in connection with Lessee and/or Lessee's particular use of the Premises; (iii) personal injury claims; (iv) the payment of any environmental liens, or the disposition, recording, or filing or threatened disposition, recording or filing of any environmental lien encumbering or otherwise affecting the Premises; (v) diminution in the value of the Premises; (vi) damages for the loss or restriction of use of the Premises, including prospective rent, lost profits and business opportunities; (vii) sums paid in settlement of claims; (viii) reasonable attorneys' fees, consulting fees, and expert fees; (ix) the cost of any investigation of site conditions; and (x) the cost of any repair, clean-up, or remediation ordered by any governmental or quasi-governmental agency or body. Lessee's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup, or detoxification or decontamination of the Premises, or the preparation and implementation of any closure, remedial action, or other required plans in connection therewith. For purposes of the indemnity provisions in this Section, any acts of Lessee and/or Lessee's Parties or others acting for or on behalf of Lessee (whether or not they are negligent, intentional, willful, or unlawful) shall be strictly attributable to Lessee. The provisions of this Section will survive the expiration or termination of this Lease.

14.5 Lessee agrees to promptly notify Lessor of any Release of Hazardous Materials on, in, under, or about the Premises which Lessee becomes aware of during the Term of this Lease, whether caused by Lessee or any other persons or entities. In the event of any release of Hazardous Materials caused by or discovered by Lessee or any of Lessee's Parties, Lessor shall have the right, but not the obligation, to cause Lessee, at Lessee's sole cost and expense, to immediately take all reasonable steps Lessor deems necessary or appropriate to remediate such Release and prevent any similar future release as required by Environmental Law to the satisfaction of Lessor. Lessee will, upon the request of Lessor at any time during which Lessor has reason to believe that Lessee is not in compliance with this Section (and in any event no earlier than sixty (60) days and no later than thirty (30) days prior to the expiration of this Lease), cause to be performed an environmental audit of the Premises at Lessee's expense by an established environmental consulting firm reasonably acceptable to Lessor. If the environmental audit determines that corrective or remedial action is required, Lessee shall immediately perform the same at its sole cost and expense.

## 15.

### INSPECTION AND AUDIT

15.1 For the purpose of inspecting the Premises, Lessee shall permit Lessor at reasonable times to enter in and on the Premises upon reasonable advance notice, not less than 48 hours provided that such entry and inspection does not unreasonably interfere with Lessee's operation, maintenance, improvement, or use of the Premises.

15.2 Lessee shall retain financial and operational records with respect to the Premises in



accordance with Lessee's record retention policy as in effect from time to time. Lessor shall have the right to audit (but not more frequently than once in any calendar year) all such financial and operational records of the Premises by giving Lessee not less than thirty (30) days advance notice of any such audit and the specific records that Lessor wishes to audit. Such audit shall be conducted at Lessee's offices, and Lessee shall have the right to have a representative present during any such audit. Any audit shall be conducted expeditiously, and in no event shall any audit continue for more than three (3) consecutive business days. Any such audit shall be for informational purposes only, and in no event shall any audit be grounds for a default under this Lease.

16.

DEFAULT; REMEDY

16.1 The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee:

- A. The failure by Lessee to make any payment required to be made by Lessee hereunder, including Additional Rent, as and when due, where such failure shall continue for a period of five (5) days after Lessee's receipt of written notice thereof from Lessor to Lessee.
- B. The failure by Lessee to keep, perform or observe any of the covenants, agreements terms or provisions contained in this Lease that are to be kept or performed by Lessee other than with respect to payment of Rent or other liquidated sums of money and Lessee fails to commence and take such steps as are necessary to remedy the same within ten (10) days after Lessee receives written notice specifying the same, or having so commenced, thereafter fails to proceed diligently and with continuity to remedy the same.
- C. If an involuntary petition is filed against Lessee under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or if a receiver of Lessee or of all or substantially all of the property of Lessee is appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event.
- D. If Lessee makes an assignment of its property for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law or seeks relief under any other law for the benefit of debtors.
- E. The leasehold hereunder demised shall be taken by execution or other process of law in any action against Lessee.
- F. Except for a valid termination of this Lease by Lessee pursuant to any provision hereunder including, without limitation, the provisions of Section 4 above, Lessee otherwise notifies Lessor, at any time prior to the Delivery of the Premises, that Lessee does not intend to take occupancy of the Premises upon

the Delivery of the Premises, or Lessee shall fail to promptly move into and take possession of the Premises when the Premises are ready for occupancy.

- G. Lessee shall become insolvent or unable to pay its debts as they become due, or Lessee notifies Lessor in writing that it anticipates either condition.

16.2 If a Lessee Default occurs, Lessor may, at any time thereafter prior to the curing thereof and without waiving any other rights hereunder or available to Lessor at law or in equity (Lessor's rights being cumulative), do any one or both of the following:

- A. Lessor may terminate this Lease by giving Lessee written notice thereof, in which event this Lease, and the leasehold estate hereby created and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice were the day originally fixed in Section 4.1 for the expiration of the Term. Lessor, its agent or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Premises and remove all persons and property therefrom with process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches thereof. In the event of such termination, Lessee shall be liable to Lessor for damages in an amount equal to (i) the discounted present value of the amount by which the Rent reserved hereunder for the remainder of the stated Term exceeds the then net fair market rental value of the Premises for such period of time, plus, (ii) all expenses incurred by Lessor enforcing its rights hereunder. Upon the acceleration of such amounts, Lessee agrees to pay the same at once, together with all Rent and other charges and assessments due, at Lessor's address as provided herein.
- B. Lessor may terminate Lessee's right to possession of the Premises without terminating this Lease or the leasehold estate created hereby, re-enter and take possession of the Premises and remove all persons and property therefrom (except for sublessees as provided in Section 17) with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof, and lease, manage and operate the Premises and collect the rents, issues and profits therefrom all for the account of Lessee, and credit to the satisfaction of Lessee's obligations hereunder the net rental thus received (after deducting therefrom all reasonable costs and expenses of repossessing, leasing, managing and operating the Premises). Lessee hereby waives notice of such re-entry or repossession. Lessor shall not be responsible for the care or safekeeping of any such property and Lessee waives any claim against Lessor relating thereto. Lessor may re-let all or part of the Premises for Lessee's account, for a term or terms which may, at Lessor's option, be equal to, less than, or greater than the period which would otherwise have constituted the balance of the Term, holding Lessee liable in damages for all expenses incurred in any such reletting including, without

limitation, expenditures in connection with renovation, maintenance, repairs and/or alterations for the new Lessee, broker's commissions, legal fees, etc. and for any difference between the amount of rent received from such reletting and the Rent due and payable under the terms of his Lease. If the net rental so received by Lessor exceeds the amounts necessary to satisfy all of Lessee's obligations under this Lease, nevertheless Lessor shall retain such excess. In no event shall Lessor be liable for failure to so lease, manage or operate the Premises or collect the rentals due under any subleases and any such failure shall not reduce Lessee's liability hereunder. If Lessor elects to proceed under this Section, it may at any time thereafter elect to terminate this Lease as provided in Section 16.2. Lessor may exercise all other remedies available to Lessor at law or in equity, including, without limitation, injunctive relief of all varieties. All of Lessor's remedies shall be cumulative and not exclusive. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. Without limiting the generality of the foregoing, the maintenance of any action of proceeding to recover possession of the Premises or any Rent or any other monies that may be due or become due from Lessee to Lessor shall not preclude Lessor from thereafter instituting and maintaining subsequent actions or proceedings for the recovery of possession of the Premises or of any other Rent or monies that may be due or become due from Lessee. Any entry or re-entry into the Premises by Lessor shall not be deemed to absolve or discharge Lessee from liability under this Lease.

16.3 Notwithstanding anything contained herein to the contrary, Lessor shall never be entitled to dispossess Lessee of the Premises pursuant to any "lock out" or other nonjudicial remedy, Lessor hereby waiving its right to forcibly dispossess Lessee from the Premises, whether peaceably or otherwise, without judicial process, such that Lessor shall not be entitled to any "commercial lock-out" or any other provisions of applicable law which permit Lessors to dispossess Lessees from commercial properties without the benefit of judicial review.

16.4 Lessee hereby expressly waives any and all rights of redemption and rights to relief from forfeiture granted by or under any present or future laws, if Lessee shall be evicted or dispossessed from the Premises for any cause, or Lessor reenters the Premises following the occurrence of any Event of Default hereunder, or this lease is terminated before the expiration date thereof originally fixed herein. For the enforcement of Lessor's remedies, Lessor may have recourse to any applicable legal or equitable process for the recovery of possession of the Premises and the right to seek an injunction or a declaratory judgment as if no other remedies were provided herein for such breach. Except as otherwise specifically required by this Lease, Lessee waives any and all statutory and legal notice requirements.

17.

NO DISCRIMINATION

17.1 In its occupancy and use of the Premises, Lessee shall not discriminate against any person

based on race, gender, color, national origin, religion, age, or disability. This covenant of Lessee may be enforced by termination of this Lease (provided that notice of the breach of such covenant shall have been given to Lessee and such breach shall not have been cured, as provided in Section 4.4 of this Lease), injunction, and by any other remedy available at law to Lessor.

18.

TRANSFER, ASSIGNMENT AND SUBLETTING

18.1 Lessee shall not transfer or assign (whether by instrument or operation of law, or if applicable, by withdrawal, sale, gift, exchange, change in partnership ownership or membership, change in stock ownership, merger, consolidation, dissolution or reorganization of any type) this Lease or any right or privilege of Lessee hereunder without the prior written consent of Lessor. Lessor, in its sole discretion, may refuse to give its consent to any proposed transfer or assignment. Except as hereinafter provided, Lessee shall not sublet the Premises or any building built thereon or part thereof, or any right or privilege appurtenant thereto, nor permit nor suffer any party other than Lessee to use or occupy the Premises or any portion thereof without the prior written consent of Lessor, in Lessor's sole discretion, subject to the use of the Premises by the public. Any transfer, assignment, or subletting without the prior written consent of Lessor shall be void *ab initio* and shall at the option of Lessor terminate this Lease. Lessor's consent to a transfer, assignment, or subletting, or to any use or occupancy by a party other than Lessee, shall not invalidate or constitute a waiver of this provision, and each subsequent use and occupancy by a party other than Lessee shall likewise be made only with the prior written consent of Lessor. Notwithstanding the foregoing, Lessee shall have the right, without Lessor's consent, to enter into lease/management or management agreements respecting the operation of the Premises as long as any such agreement expressly provides for its automatic expiration upon the expiration or earlier termination of the Term of this Lease.

19.

NOTICES

19.1 All notices, statements, reports, demands, requests, consents, approvals, waivers and authorizations, hereinafter collectively referred to as "notices", required by the provisions of this Lease to be secured from or given by either of the parties hereto to the other shall be in writing (whether or not the provision hereof requiring such notice specifies written notice) and the original of said notice shall be sent United States Certified Mail – Return Receipt Requested, postage prepaid, by a prepaid nationally recognized overnight service, or by a prepaid courier service and addressed to the recipient party at such party's below set forth address. The sender of said notice shall request the United State Postal Service, overnight delivery service, or courier service to "Show to whom, date and address of delivery" of said notice on the returned receipt. The day upon which such notice is so mailed shall be deemed the date of service of such notice. The parties hereto agree that, even though notices, where applicable, shall be addressed to the attention of the person or title, or both if applicable, hereinabove set forth, valid and perfected delivery of notice shall be accomplished under this Lease even though the said named person or the person holding

said title is not the person who accepts or receives delivery of the said notice. Any notice, so mailed or delivered, the text of which is reasonably calculated to apprise the recipient party of the substance thereof and the circumstances involved, shall be deemed sufficient under this Lease. Either party hereto may from time to time, by notice of the other, designate a different person or title, or both as applicable, address or addresses to which notices to said party shall be given.

Lessor's address for notice:

City of Atlanta Department of  
Commissioner of Department of Enterprise  
Asset Management  
68 Mitchell St., Suite 1225  
Atlanta, Georgia 30303

With a copy to:  
City of Atlanta Department of Law  
Attn: City Attorney  
55 Trinity Ave. SW, Suite 5000  
Atlanta, GA 30303

Lessee's address for notice:

\Atlanta Police Foundation  
Attn: W. David Wilkinson  
191 Peachtree St. SW, Suite 191  
Atlanta, GA 30303

20.

TIME IS OF THE ESSENCE

20.1 All time limits stated herein are of the essence of this Lease.

21.

NON-WAIVER

21.1 No failure of a party to exercise any right or power given to such party under this Lease, or to insist upon strict compliance by the other party with the provisions of this Lease, and no custom or practice of Lessor or Lessee at variance with the terms and conditions of this Lease, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party with the terms and conditions of this Lease.

22.

RIGHTS CUMULATIVE

22.1 All rights, powers and privileges conferred by this Lease upon Lessor and Lessee shall be cumulative of, but not restricted to, those given by law.

23.

BINDING EFFECT

23.1 Each of the terms and conditions of this Lease shall apply, extend to, be binding upon, and inure to the benefit or detriment of the parties hereto, to the successors and assigns of Lessor, and to the extent that Lessor has consented to a transfer or assignment of this Lease (if such consent is required) to the successors and assigns of Lessee, and to any leasehold mortgagee and its successor and assigns. Subject to the foregoing, whenever a reference to a party hereto is made, such reference shall be deemed to include the successors and assigns of said party, the same as if in each case specifically expressed.

24.

INTERPRETATION

24.1 Should any provision of this Lease require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply the presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.

25.

GEORGIA AGREEMENT

25.1 This Lease shall be governed by, construed under, performed and enforced in accordance with the laws of the State of Georgia.

26.

SECTION HEADINGS

26.1 The brief headings or titles preceding each section herein are merely for purposes of section identification, convenience, and ease of reference, and shall be completely disregarded in the construction of this Lease.

27.

COUNTERPARTS

27.1 This Lease is executed in two (2) counterparts which are separately numbered but each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other. To facilitate the execution and delivery of this Lease, the parties may execute and exchange counterparts of the signature pages by electronic mail over the internet in electronic format (e.g., so-called "PDF" or "portable document format") or by facsimile, and the signature page of either party to any counterpart may be appended to any other counterpart. An electronic signature, as defined in O.C.G.A. § 10-12-1 et seq., of any party or parties hereto shall have the same force and effect as an original of such signature(s), and the parties hereto agree to be bound by any electronic

signature(s) and by any electronic record of this instrument executed or adopted with one or more electronic signatures.

28.

NO THIRD-PARTY BENEFICIARY

28.1 Nothing in this Lease, whether express or implied, is intended to confer upon any other person or entity other than the parties hereto and their respective successors and assigns, any right or interest whatsoever. No person or entity other than the parties hereto is entitled to rely in any way upon the warranties, representations, obligations, indemnities, or limitations of liability whatsoever in this Lease.

29.

SEVERABILITY

29.1 If any provision of this Lease, or any portion thereof, should be ruled void, invalid, unenforceable, or contrary to public policy by any court of competent jurisdiction, then any remaining portion of such provision and all other provisions of this Lease shall survive and be applied, and any invalid or unenforceable portion shall be construed or reformed to preserve as much of the original words, terms, purpose, and intent as shall be permitted by law.

30.

WHEREAS PROVISIONS AND EXHIBITS

30.1 The "Whereas" clauses appearing at the beginning of the Lease and the Exhibits attached hereto are hereby incorporated by reference herein. To the extent that Exhibits conflict with any of the foregoing terms and conditions of this Lease, the Exhibits shall control.

31.

ENTIRE AGREEMENT

31.1 This Lease constitutes the entire Lease between the parties. This Lease supersedes all prior negotiations, discussions, statements and agreements between Lessor and Lessee with respect to the Premises and Lessee's use and occupancy thereof. No member, officer, employee or agent of Lessor or Lessee has the authority to make, or has made, any statement, agreement, representation, or contemporaneous agreement, oral or written, in connection herewith amending, supplementing, modifying adding to, deleting from, or changing the terms and conditions of this Lease. No modification of or amendment to this Lease shall be binding on either party hereto unless such modification or amendment is made in writing, properly authorized, and executed by both Lessor and Lessee and incorporated in and by reference made a part hereof.

*[Signatures continue on following page.]*



**IN WITNESS WHEREOF**, Lessor and Lessee have caused these presents to be signed, sealed, and delivered all as of the date hereof.

Signed, sealed and delivered  
As to Lessor in our presence:

**LESSOR:**  
**CITY OF ATLANTA**  
a municipal corporation organized under the laws of  
the State of Georgia,

**ATTEST:**

\_\_\_\_\_  
Municipal Clerk

By: \_\_\_\_\_  
Keisha Lance Bottoms, Mayor

[SEAL]

**RECOMMENDED BY:**

\_\_\_\_\_  
Rodney Bryant, Chief of Police

\_\_\_\_\_  
Rodrick Smith, Fire Chief

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Nina R. Hickson  
City Attorney

**LESSEE:**  
**ATLANTA POLICE FOUNDATION, INC.**  
a Georgia nonprofit corporation

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

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

**561 Key Road**

**Parcel ID No. 15-082-01-001**

All that tract or parcel of land lying and being in the Fifteenth District of DeKalb County, Georgia and being known as the W. B. Key plantation and described as follows:

**Beginning** at a point in land of eighty three (83) where the south land lot line thereof is intersected by the center of Intrenchment Creek, and running thence northerly along the center of said creek to the north line of land lot eighty three (83) and extending thence west along the north line of land lot eighty three (83) and the north line of land lot eighty two thirty two hundred and twenty eight (3228) feet to the northwest corner of land lot eighty two (82) marked with an iron pin; thence south along west line of land lot eighty two (82) eighteen hundred thirty five (1835) feet to corner of formerly the Ogden property; thence east twelve hundred and fourteen and six tenths (1214.6) feet to a stone corner; thence south nineteen hundred and eighty five (1985) feet to a stone corner on the south line of land lot eighty-two (82) being the center of Constitution Road and extending thence east along said south line of land lot eighty two (82) and along the center of Constitution Road twenty hundred and sixty (2060) feet to beginning point, containing two hundred and forty eight and seven tenths (248.7) acres as per plat and survey of Chief of Construction, City of Atlanta, November, 1911, hereto attached.

**3054 Fayetteville Road**

**Parcel Id. No. 15-081-08-001**

All that tract or parcel of land lying and being in Land Lot No. 81 of the 15<sup>th</sup> District of originally Henry, now DeKalb County, Georgia and being more particularly described as follows:

**BEGINNING** at the intersection of the southern line of Key Road with the northwestern line of old Fayetteville Road, if said street lines were extended to form an angle instead of a curve, and running thence westerly along the southern side of Key Road four hundred eleven (411) feet; thence southerly two hundred fifty-three and four-tenths (253.4) feet; thence southeasterly two hundred forty and two-tenths (240.2) feet to the northwestern side of old Fayetteville Road; thence northeasterly along the northwestern Fayetteville Road three fifty-five (355) feet to Key Road at the point of beginning, this description being in accordance with a plat of said property made by C. S. Mercer, Surveyor, dated September 17, 1943, and recorded in Plat Book 13, page 19, of DeKalb County Records.

**ALSO:**

All that tract or parcel of land lying and being in Land Lots Nos. 81 and 82 of the 15<sup>th</sup> District of originally Henry, now DeKalb County, Georgia, and being more particularly described as follows:

**BEGINNING** at the southwest corner of said Land Lot No. 82, and running thence easterly (north 89 degrees and 30 minutes east) along the south line of said Land Lot No. 82 twelve hundred eight (1208) feet; thence northerly (north 30 minutes west) nineteen hundred seventy-seven (1977) feet

to an iron pin corner; thence westerly (south 89 degrees and 30 minutes west) eighteen hundred forty-eight (1848) feet to the center of Fayetteville Road; thence southwesterly (south 36 degrees and 15 minutes west) along the center line of Old Fayetteville Road six hundred eleven and five-tenths (611.5) feet; thence easterly (north 89 degrees east) one hundred thirty-eight (138) feet; thence southwesterly (south 10 degrees and 30 minutes west) twelve hundred eight (1208) feet to an iron pin corner on the southern Railroad Right-of-way; thence southeasterly (south 60 degrees east) along the northeastern line of said Railroad Right-of-way three hundred five (305) feet; thence northerly (north 4 degrees and 30 minutes east) two hundred twenty-four (224) feet; thence southeasterly (south 74 degrees east) seventy-five (75) feet; thence continuing southeasterly (south 56 degrees and 30 minutes east) one hundred fifty-five (155) feet; thence easterly (south 88 degrees and 30 minutes east) six hundred eighteen (618) feet to the east line of said land Lot No. 81, being the dividing line between Land Lots Nos. 81 and 82; thence southerly (south 1 degree east) along said land lot line four hundred thirteen (413) feet to the beginning corner, containing eight-six and sixty-eight one hundredths (86.68) acres, as per plat of same made by T. C. Jackson, Surveyor, dated November, 1937, and recorded in Plat Book 12, page 91, of the DeKalb County records.

**3184 Fayetteville Road  
Parcel ID No. 15-081-08-002**

All that tract and parcel of land lying and being in Land Lot 81 of the 15<sup>th</sup> District of originally Henry, now DeKalb County Georgia, more particularly described as follows:

**BEGINNING** at a stake on the eastern side of Fayetteville Road (formally old Decatur Road), running thence north one degree and forty-five minutes ( $1^{\circ}45'$ ) east four hundred sixty-five and ninety-six one-hundredths (465.96) feet to a stake at the curve of said road; thence north thirty degrees ( $30^{\circ}$ ) east five hundred one and sixty one-hundredths (501.60) feet to another stake; on said road; thence north eighty-five degrees and forty-five minutes ( $85^{\circ}45'$ ) east one hundred forty-five and twenty one-hundredths (145.20) feet to a stake; running thence south thirteen degrees ten minutes ( $13^{\circ}10'$ ) west one thousand, thirty-six and twenty-One-hundredths (1,036.20) feet to another stake located near the Constitution Depot; thence north 62 degrees forty-five minutes ( $62^{\circ}45''$ ) west two hundred eight and fifty-six one-hundredths (208.56) feet to the stake on the eastern side of Fayetteville Road at the point of beginning, said tract containing five acres, more or less, and lying north of the railroad; this being the same property conveyed by warranty deed from Newton St. John to Ray Almand on December 3, 1913 recorded in deed book 84, page 298, DeKalb County records.

EXHIBIT B

PARCEL  
OVERLAY



**ATLANTA PUBLIC SAFETY TRAINING AREA & GREEN SPACE**  
SCALE 1" = 500'





# CITY OF ATLANTA

Keisha Lance Bottoms  
Mayor

SUITE 5100  
68 MITCHELL STREET  
ATLANTA, GA 30303

OFFICE OF CONTRACT COMPLIANCE

Bruce T. Bell

(404) 330-6010 Fax: (404) 658-7359

Internet Home Page: [www.atlantaga.gov](http://www.atlantaga.gov)

## EXHIBIT C

### CONFIRMATION OF COMMENCEMENT DATE

Re: Ground Lease Agreement (the "Lease") dated \_\_\_\_\_, 2021, between ATLANTA POLICE FOUNDATION, INC., a Georgia nonprofit corporation ("Lessee"), and THE CITY OF ATLANTA, a Georgia municipal corporation ("Lessor"). Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Lease.

Ladies and Gentlemen:

Lessee and Lessor agree as follows:

1. Condition of Property. Lessee has accepted possession of the Premises pursuant to the Lease. There are no improvements required by the terms of the Lease to be made by Lessor and Lessor has fulfilled all of its duties under the Lease. Furthermore, Lessee acknowledges that the Premises are suitable for the Permitted Use.
2. Commencement Date. The Commencement Date of the Lease is, 20\_\_\_\_ Premises .
3. Expiration Date. The Term is scheduled to expire on 20\_\_\_\_Property\_, which is the last day of the 50th full calendar month following the Commencement Date.

4. Contact Person. Lessee's contact person in the Premises is:

Karen Rogers  
c/o W. David Wilkinson  
Telephone:  
Facsimile:

5. Ratification. Lessee hereby ratifies and confirms its obligations under the Lease and represents and warrants to Lessor that it has no defenses thereto. Additionally, Lessee further confirms and ratifies that, as of the date hereof, the Lease is and remains in good standing and in full force and effect, and Lessee has no claims, counterclaims, set-offs or defenses against Lessor arising out of the Lease or in any way relating thereto or arising out of any other transaction between Lessor and Lessee.

6. Binding Effect; Governing Law. Except as modified hereby, the Lease shall remain in full effect and this letter shall be binding upon Lessor and Lessor and their respective successors and assigns. If any inconsistency exists or arises between the terms of this letter and the terms of the Lease, the terms of this letter shall prevail. This letter shall be governed by the laws of the state in which the Premises are located.

Please indicate your agreement to the above matters by signing this letter in the space indicated below and returning an executed original to us.

Sincerely,

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

Agreed and accepted:

**CITY OF ATLANTA**  
a municipal corporation organized under the laws  
of the State of Georgia,

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

EXHIBIT D

PRELIMINARY PLANS

DRAFT

APPENDIX A

OCC EBO REQUIREMENTS



**CITY OF ATLANTA**

Keisha Lance Bottoms  
Mayor

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TO: Martin H. Clarke, Chief Procurement Officer  
Department of Procurement

FROM: Bruce T. Bell

Interim Director- Mayor's Office of Contract Compliance

RE:

DATE: **August 2, 2021**

**MEMORANDUM**

---

The EBO bid documents with project specific availability for Project No.: **XXXX** are enclosed.

The entire OCC package, including both the standard and project specific EBO/EEO sections must be included in the bid documents. Please note that the enclosed package is solely for this project.

If there are questions, please contact me at (404) 330-6010, or **Bruce T. Bell** at (404) 330-6010.

cc: **Keith Boykin, OCC**





# CITY OF ATLANTA

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Mayor

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August 2, 2021

**RE: XXXX**

Dear Prospective City of Atlanta Bidder:

The Office of Contract Compliance (OCC) information is an integral part of every eligible City of Atlanta bid. All Bidders are required to make efforts to ensure that businesses are not discriminated against on the basis of their race, ethnicity or gender, and to demonstrate compliance with these program requirements at or prior to the time of Bid opening, or upon request by OCC. Bidders are required to ensure that prospective subcontractors, vendors, suppliers and other potential participants are not denied opportunities to compete for work on a City contract on the basis of their race, ethnicity, or gender, and must afford all firms, including those owned by racial or ethnic minorities and women, opportunities to participate in the performance of the business of the City to the extent of their availability, capacity and willingness to compete. Please read all of the information very carefully. Pay close attention to the specific goals for minority and female business enterprise participation for this project and the EBO program reminders listed on page 6.

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.**

# TABLE OF CONTENTS

Policy Statement .....	1
Implementation of EBO Policy .....	2
Determination of Non-discrimination During Bid Process .....	2
OCC Review of Bidder Submissions.....	3
Equal Business Opportunity Program Bid.RFP Submittals.....	4
Monitoring of EBO Policy.....	4
Implementation of EEO Policy .....	4
Monitoring of EEO Policy .....	4
Joint Venture Participation on City of Atlanta Projects.....	5
Joint Venture Agreement Pre-Award Review .....	6-9
Equal Business Opportunity M/FBE Availability for This Project .....	10
Equal Business Opportunity Program Reminders .....	11
Covenant of Non-discrimination (EBO-1).....	12
EBO Subcontractor Contact Form (EBO-2) .....	13-14
EBO Subcontractor Utilization Plan (EBO-3).....	15
Letter of Intent .....	16-17
Termination/Substitution Acknowledgement Form .....	18

**CITY OF ATLANTA**  
**EQUAL BUSINESS OPPORTUNITY (EBO)**  
**POLICY STATEMENT**

It is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City. The City must ensure that firms seeking to participate in contracting and procurement activities with the City are not prevented from doing so on the basis of the race or gender of their owners. The City is committed to ensuring that it is not a passive participant in any private scheme of discrimination. To ensure that businesses are not discriminated against with regard to prime contracting, subcontracting or other partnering opportunities with the City, the City has developed an Equal Business Opportunity (EBO) Program. It is also the policy of the City of Atlanta to actively promote equal employment opportunities for minority and female workers and prohibit discrimination based upon race, religion, color, sex, national origin, marital status, physical handicap or sexual orientation through the City's Equal Employment Opportunity (EEO) Program. The purpose of the Equal Business Opportunity and Equal Employment Opportunity Programs is to mitigate the present and ongoing effects of the past and present discrimination against women and minority owned businesses and women and minority workers so that opportunity, regardless of race or gender, will become institutionalized in the Atlanta marketplace. It is important to note that all bidders, without exception, including minority and female owned business enterprises, must comply with the City of Atlanta's EBO and EEO Program requirements. Goals for minority and female business enterprises are set for this project on page 6.

## **Implementation of EBO Policy**

The Office of Contract Compliance will review information submitted by Bidders pertaining to efforts to promote opportunities for diverse businesses, including M/FBEs, to compete for business as subcontractors and/or Suppliers. A Bidder is eligible to be further considered for award of a City contract upon a finding by OCC that the Bidder has engaged in, and provided with its bid submission documentation of efforts to ensure that its process of soliciting, evaluating and awarding subcontracts, placing orders, and partnering with other companies has been non-discriminatory. To assist prime contractors in this effort, the Office of Contract Compliance has set forth in this solicitation document the M/FBE goals within the relevant NAICS Codes, for this Project.

For subcontracting, the Subcontractor Project Plan must include **all** subcontractors (majority and minority owned) to be utilized on the project, detail the services to be performed, the dollar value of the work to be performed by each subcontractor, and the City of Atlanta M/FBE certification number and supplier id number as applicable.

For suppliers, the Subcontractor Project Plan must include **all** subcontractors (majority and minority owned), the supplies to be provided, including the dollar value of the supplies being provided and the City of Atlanta M/FBE certification number and supplier id number as applicable.

### **Determination of Non-discrimination During Bid Process**

No Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the non-discrimination requirements of section 2-1448 on such Eligible Project. Accordingly, each Bidder shall submit with each Bid the following

1. Covenant of Non Discrimination. Each Bidder shall submit with her/his Bid a Covenant of Non-Discrimination which is set forth herein as Exhibit EBO1.
2. Outreach efforts documentation. Each bidder shall submit with her/his bid written documentation demonstrating the bidder's outreach efforts to identify, contact, contract with, or utilize businesses, including certified M/FBEs as subcontractors or suppliers on the contract. This information shall be set forth on Exhibit EBO2, which is included herein.
3. Subcontractor project plan. Each bidder shall submit with her/his bid a completed and signed subcontractor project plan, in a form approved and provided by the office of contract compliance, which lists the name, address, telephone number and contact person of each subcontractor or other business to be used in the contract, the NAICS Code and the type of work or service each business will perform, the dollar value of the work and the scope of work, the ownership of each business by race and gender, if applicable the AABE, APABE, HABE, or FBE certification number of each business, and any other information requested by the office of contract compliance. In order for the office of contract compliance to officially consider a firm to be an M/FBE, the M/FBE firm must be certified by or have a certification application pending with the office of contract compliance prior to the bidder's submission of the bid. The subcontractor project plan shall not be changed or altered after approval of the plan and award of the contract without the written approval of the director of the office of contract compliance. A written letter to the director of the office of contract compliance requesting approval to change the subcontractor project plan must be submitted prior to any change in the plan or termination of an M/FBE's contract.

## OCC Review of Bidder Submissions

The Office of Contract Compliance shall determine whether a Bidder has satisfied the non-discrimination requirements of section 2-1448 based on its review of the Covenant of Non Discrimination, the Outreach Efforts Documentation, the Subcontractor Project Plan, and its review of other relevant facts and circumstances, including complaints received as part of the bid process. In reviewing the documents submitted by a Bidder to determine whether the Bidder has satisfied the non-discriminatory practices requirement of this section, the Office of Contract Compliance will consider, among other things, the total project dollars subcontracted to or expended for services performed by other businesses, including certified M/FBEs, whether such businesses perform Commercially Useful Functions in the work of the contract based upon standard industry trade practices, whether any amounts paid to Supplier businesses are for goods customarily and ordinarily used based upon standard industry trade practices, and the availability of certified M/FBEs within the relevant NAICS Codes for such Eligible Project.

(a) **Receipt of Complaint of Discrimination in the Bid Process**

The office of contract compliance shall accept complaints of alleged discrimination during the bid process regarding any participant in the bid process. Where the complaint of discrimination is specific to the procurement which is under consideration by the city, the office of contract compliance may investigate said complaint, determine its validity, and determine whether the actions complained of impact the bidder's responsiveness on the specific procurement. Allegations of discrimination based on events, incidents or occurrences which are unrelated to the specific procurement will be placed in the bidder's file maintained in the vendor relations database and handled in accordance with the procedure established in the city's vendor relations subdivision, section 2-1465, et seq.

(b) **Determination of Violation of EBO Process**

Where the office of contract compliance investigates a complaint of discrimination that is related to the specific bid process, the details of that investigation, including findings, shall be recorded and maintained in the vendor relations database, pursuant to section 2-1471.

(c) **Office of Contract Compliance Determination of Non-Compliance**

When, based upon the totality of the circumstances, the office of contract compliance determines that a bidder fails to satisfy the requirements of section 2-1448(a) of a city bid solicitation, the director of the office of contract compliance shall present a written determination of non-compliance to the Chief Procurement Officer which states the determination and lists the reasons for the determination. A bid that does not comply with the requirements set forth in section 2-1448(a) shall be deemed non-responsive and rejected.

## **Equal Business Opportunity Program Bid/RFP Submittals**

The Office of Contract Compliance will make any determination of non-responsiveness. The covenant of non-discrimination, the outreach efforts documentation, the subcontractor project plan, and any other information required by OCC in the solicitation document pursuant to section 2-1448 must be completed in their entirety by each bidder and submitted with the other required bid documents in order for the bid to be considered as a responsive bid. Failure to timely submit these forms, fully completed, will result in the bid being considered as a non-responsive bid, and therefore, excluded from consideration.

### **Monitoring Of EBO Policy**

Upon execution of a contract with the City of Atlanta, the successful bidder's M/FBE Project Participation Plan will become a part of the contract between the bidder and the City of Atlanta. The M/FBE Project Participation Plan, all executed subcontract agreements, operating agreements, other contract governing documents, along with all other pertinent records required by OCC as deemed necessary will be placed on file. Said documentation shall be in a format that is established by the Office of Contract Compliance and 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 M/FBE 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 EBO 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.

### **Implementation of EEO Policy**

The City effectuates its EEO policy by adopting racial and gender work force availability for every contractor performing work for the City of Atlanta. These percentages are derived from the work force demographics set forth in the 2010 Census EEO file prepared by the United States Department of Commerce for the applicable labor pool normally utilized for the contract.

### **Monitoring of EEO Policy**

Upon award of a contract with the City of Atlanta, the successful bidder must submit a Contract Employment Report (CER), describing the racial and gender make-up of the firm's work force. If the CER indicates that the firm's demographic composition does not meet the adopted EEO goals, the firm will be required to submit an affirmative action plan setting forth the steps to be taken to reach the adopted goals. The CER and the affirmative action plan, if necessary, will become a part of the contract between the successful bidder and the City of Atlanta. Compliance with the EEO requirements will be monitored by the Office of Contract Compliance.

## Joint Venture Participation on City of Atlanta Projects

The City of Atlanta encourages, where economically feasible, the establishment of joint ventures to ensure prime contracting opportunities for all businesses, including good faith outreach efforts to utilize certified minority and female business enterprises on Eligible Projects. On projects valued at five (5) million dollars or greater, the Office of Contract Compliance shall determine on a project-by-project basis whether non-discriminatory outreach efforts to enter into a joint venture shall be required. On such Eligible Projects, joint venture member businesses must have different race ownership, different gender ownership or both. The minority and female business enterprise members of the joint venture on projects on which a Joint Venture is required must be certified as such by the Office of Contract Compliance, and the joint venture team shall include in its bid submittal the MBE or FBE certification number of each MBE or FBE joint venture member. **OCC has made the determination non-discriminatory outreach efforts to enter into a joint venture are required for this solicitation.**

No bid on a City contract for an Eligible Project shall be accepted from a joint venture team unless each participant independently signs and submits a Covenant of non-discrimination (EBO-1)

A joint venture may submit its agreement to the Office of Contract Compliance for pre-approval to the attention of [kboykin@atlantaga.gov](mailto:kboykin@atlantaga.gov) no later than fourteen (14) calendar days prior to the date set for receipt of bids on an Eligible Project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an Eligible Project.

### Components of a Joint Venture Agreement

The Joint Venture agreement should include at a minimum:

- The name of the Joint Venture
- Contact information of designated primary JV contact person
- Identification of all firms participating in the JV
- The initial capital investment of each venture partner
- Terms and conditions under which future contributions may be necessary
- The proportional allocation of profits and losses to each venture partner
- Description of proportion of work controlled by and management of the joint venture team members
- The method of, and responsibility for, accounting
- Frequency of JV meetings and method for minutes taking and storage
- The methods by which disputes are resolved.
- Provide the specific citation/section of your JV that speaks to the Contract's non-discrimination and assurance requirements
- All other pertinent factors of the joint venture.
- The Joint Venture agreement must be signed by all the partners.



**City of Atlanta Office of Contract Compliance**  
**Joint Venture Information Pre-Award Review-EBO**

**Proponent Instructions:** All Proponents must use their executed proposed JV agreement to complete the questions below (Attach additional pages if needed):

1. Name of Joint Venture:
  
2. Name, address and phone number of joint venture contact person serving as managing partner:
  
3. Firms participating in joint venture (use additional pages if necessary):  
Name of firm:  
  
Address:  
  
Office Phone Number:  
  
Primary Contact name/phone number:  
  
% ownership: \_\_\_\_\_ %  
M/FBE:     No  
           Yes

Date of Certification:  
NAICS code(s) for which certification was granted:

Name of firm:

Address:

Office Phone Number:



Contact name/phone number:

% ownership: \_\_\_\_\_%

M/FBE:  No

Yes

Date of Certification:

NAICS code(s) for which certification was granted:

4. Was there an M/FBE initial capital contribution required? Amount? \_\_\_\_\_
5. Does the JV document describe the portion of the work or elements of the business controlled by the M/FBE JV team member(s)?  
 No  Yes Referenced in What Section?
6. Does the JV document describe the portion of the work or elements of the business controlled by the non-M/FBE JV team member(s)?  
 No  Yes Referenced in What Section?
7. Does the JV document describe the M/FBE team member's involvement in the overall management of the joint venture. (e.g., participation on a management committee or managing board, voting rights, etc.)?  
 No  Yes Referenced in What Section?
8. Does the JV document list the M/FBE team member's share in the profits/risk in the joint venture:  No  Yes Referenced in What Section?
9. Does the JV document describe the roles and responsibilities of each joint venture participant with respect to operation of the joint venture (use additional sheets if necessary):  No  Yes Referenced in What Section?
- a. Majority interest holder joint venture participant:
- b. Minority interest holder joint venture participant(s):

10. Does the JV document detail which firm will be responsible for accounting functions relative to the joint venture's business?

No  Yes Referenced in What Section?

11. Does the JV document explain what authority each party will have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties?

No  Yes Referenced in What Section?

12. Did the JV document provide the name of the person who will be responsible for hiring employees for the joint venture.

No  Yes Referenced in What Section?

13. Did The JV Describe the frequency of JV meetings, method for minutes taking, and storage for audit provisions?

No  Yes Referenced in What Section?

14. Are any of the proposed joint venture employees currently employees of any of the joint venture partners?

No  Yes If yes, list the number and positions and indicate which firm currently employs the individual(s)?

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15. Did the JV Detail the methods by which disputes are resolved?

No  Yes Referenced in What Section?

16. Is a copy of the proposed joint venture agreement, promissory note(s), and loan agreement(s) (if applicable), and any and all written agreements between the joint venture partners included in the proposal submission

No  Yes Referenced in What Section?

17. Does the JV document describe all other business relationships between the joint venture participants, including other joint venture agreements in which the parties are jointly involved?

No  Yes Referenced in What Section?

18. Does the JV document provide a specific citation/section that speaks to the non-discrimination and assurance requirements related to this solicitation?

No  Yes Referenced in What Section?

Additional Comments:

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**Equal Business Opportunity M/FBE GOALS for this Project**

**Project No.: XXXX**

Part 1: All proponents must ensure that non-discriminatory practices are utilized to enter into a Joint Venture Agreement in accordance with the City of Atlanta's EBO/SBO Ordinance. The Joint Venture Agreement, at the very least, should reflect details of the member company's/companies' involvement in the.: XXXX throughout the life of the contract. (See Page 6)

Part 2: All proponents must ensure that non-discriminatory practices are utilized during efforts to engage minority and female subcontractors and suppliers throughout the life of the contract. All outreach efforts must be documented and included with this bid submittal.

The dominant NAICS code and trade to be engaged for the above referenced phase is:

**237310 – Concrete Paving  
238110 – Concrete Repair  
561990 – Traffic Control**

The above referenced dominant NAICS code was used for the purposes of calculating the appropriate participation goal(s). However, any COA certified firm that is engaged by the successful Prime proponent who performs a commercially useful function in the execution of the project will be eligible for participation credit. The availability of certified M/FBE firms for the procurement categories in the various scopes associated with this project is:

**26.7% MBE & 11.1% FBE**

Please be reminded that no Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the non-discrimination requirements of section 2-1448 on such Eligible Project. Details of the O.C.C. review process for determination of non-discrimination are outlined on page 3 of this document.

**Note:** Each Joint Venture (JV) team(s) must include a signed copy of their JV agreement with their bid submission. Each JV team must consist of at least one City of Atlanta certified M/FBE partner.

OCC will count M/FBE participation in the form of a certified joint venture partner (self-performing a scope of work), and certified M/FBE subcontractor arrangements. 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.

## **Equal Business Opportunity Program Reminders for This Solicitation**

1. **Certification.** It is the prime contractor's responsibility to verify that MBEs and FBEs included on the Subcontractor Project Plan are certified by the City of Atlanta's Office of Contract Compliance, or have a certification application pending with the City of Atlanta's Office of Contract Compliance.
2. **Joint Venture Agreements.** The Joint Venture member businesses must have different race ownership, different gender ownership, or both. MFBE members of the Joint Venture must be certified as such by the Office of Contract Compliance. The Joint Venture team shall include in its submittal the MFBE certification number of each MFBE Joint Venture member.
3. **Subcontractor Contact Form.** It is required that bidders list and submit information on all subcontractors they solicit for quotes, all subcontractors who contact them with regard to the project, and all subcontractors they have discussions with regarding the project. Failure to provide complete information on this form will result in your bid being declared non-responsive. For your convenience, fillable versions of the Appendix A documents are available on the OCC webpage should you require additional pages.
4. **Reporting.** The successful bidder must submit monthly EBO participation reports to the Office of Contract Compliance in a manner as prescribed by the OCC contract monitor of record.
5. **SBO/EBO Ordinance.** The EBO Program is governed by the provisions of the SBO/EBO Ordinance set forth in the City of Atlanta Code Division 12, section 2 - 1356 through 2 -1480. The ordinance can be obtained from the City of Atlanta Clerk's Office at (404) 330-6032.
6. **Supplier Participation.** In order to receive full M/FBE credit, suppliers must manufacture or warehouse the materials, supplies, or equipment being supplied for use on the Eligible Project.
7. **OCC Registry of Certified Firms.** To access OCC's real time registry of vendors (certified or non-certified), visit our PRISM Compliance Management portal at: <http://atlanta.prismcompliance.com/DirectRequest.ashx?t=100&j=jggizwSWWYnRk55uW%2Bjkonkgm04tizEb>. You may search by "Industry" for a list of firms in that category or search for a specific company under "Company Name". You may also go to the website: [www.atlantaga.gov/contractcompliance](http://www.atlantaga.gov/contractcompliance) and scroll down to the section heading "Registry of Certified Firms" Click OCC's quarterly list to access the current directory of certified firms.
8. **Contract Assurance.** The Contractor 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 City ordinance 2-1448 a (2) in the award and administration of any eligible City 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 enforceable through the City of Atlanta regulations.

**COVENANT OF NON-DISCRIMINATION**

The undersigned understands that it is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City of Atlanta. The undersigned covenants that we have not discriminated, on the basis of race, gender or ethnicity, with regard to prime contracting, subcontracting or partnering opportunities. The undersigned further covenants that we have completed truthfully and fully the required forms EBO-2 and EBO-3. Set forth below is the signature of an officer of the bidding entity with the authority to bind the entity.

\_\_\_\_\_  
Signature of Attesting Party

\_\_\_\_\_  
Title of Attesting Party

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, the person who signed the above covenant in my presence.

\_\_\_\_\_  
Notary Public

Seal

**FORM EBO-1**

## SUBCONTRACTOR CONTACT FORM

List *all subcontractors or suppliers* (Majority, EBO and Non-EBO Certified) that were contacted regarding this project.

Name of Sub-contractor/Supplier/JV Partner	Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Scope of Work Solicited for	Solicited for JV? (Yes or No)	Business Ownership (see code below)	M/FBE Certification No. and Expiration Date	Results of Contact

Name of Sub-contractor/Supplier/JV Partner	Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Scope of Work Solicited for	Solicited for JV? (Yes or No)	Business Ownership (see code below)	M/FBE Certification No. and Expiration Date	Results of Contact

Business Ownership Code: AABE - African American Business Enterprise, HABE – Hispanic Business Enterprise, FBE – Female Business Enterprise, APABE – Asian (Pacific Islander) American Business Enterprise (SBE and DBE Certifications will not suffice for this procurement)

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

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

Contact (Print): \_\_\_\_\_

Date: \_\_\_\_\_

FORM EBO-2 (Page 2 of 2)



**EQUAL BUSINESS OPPORTUNITY SUBCONTRACTOR PROJECT PLAN  
SUBCONTRACTOR/SUPPLIER UTILIZATION**

List all Majority, EBO Certified, and Non-EBO Certified 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)	Joint Venture Partner? (yes or no)	NAICS Code	Scope of Work to be Performed	Ethnicity of M/FBE Ownership (see code below)	M/FBE Certification No. and Expiration Date	Dollar (\$) Value of Work and Scope of Work	Percentage (%) of Total Bid Amount

Dollar Value of Prime Proponent self-Performance: \$ \_\_\_\_\_

**Total MBE%** \_\_\_\_\_ **Total FBE%** \_\_\_\_\_ **Total EBO%** \_\_\_\_\_

Code: AABE - African American Business Enterprise, HABE – Hispanic American Business Enterprise, FBE – Female Business Enterprise, APABE – Asian (Pacific Islander) American Business Enterprise (SBE and DBE Certifications will not suffice for this procurement)

**Proponent Company Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**FC#:** \_\_\_\_\_

**Proponent's Contact Number:** \_\_\_\_\_

**Contact Name (Print)** \_\_\_\_\_

**Date:** \_\_\_\_\_

(THIS PAGE SHALL BE SUBMITTED FOR EACH SUB FIRM)

**LETTER OF INTENT**

FC# \_\_\_\_\_

**Proponent** Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Subcontracting Firm:** Firm Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Sub firm Contact Person:** Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

**Firm is performing as:**  Non-certified Sub  Certified Sub  Joint Venture Team Member

If Certified, Certification # and Expiration Date: \_\_\_\_\_

Work item(s) to be performed by Sub	Description of Work Item	Dollar(s) Value of Work and Scope of Work	Percentage (%) of Total Bid Amount
TOTAL Diversity% Credit Claimed for this Contractor			

The bidder/offeror is committed to utilizing the above-named Subcontractor firm for the work described above. The estimated participation is as follows:

Sub contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_%

**AFFIRMATION:**

The above-named Subcontractor 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 bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void

(THIS PAGE SHALL BE SUBMITTED FOR EACH SUB FIRM)

**LETTER OF INTENT**

FC# \_\_\_\_\_

**Proponent** Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Subcontracting Firm:** Firm Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Sub firm Contact Person:** Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

**Firm is performing as:**  Non-certified Sub  Certified Sub  Joint Venture Team Member

If Certified, Certification # and Expiration Date: \_\_\_\_\_

Work item(s) to be performed by Sub	Description of Work Item	Dollar(s) Value of Work and Scope of Work	Percentage (%) of Total Bid Amount
TOTAL Diversity% Credit Claimed for this Contractor			

The bidder/offeror is committed to utilizing the above-named Subcontractor firm for the work described above. The estimated participation is as follows:

Sub contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_%

**AFFIRMATION:**

The above-named Subcontractor 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 bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void

## DIVERSITY FIRM TERMINATION/SUBSTITUTION ACKNOWLEDGEMENT FORM

As a participant in an eligible City of Atlanta (COA) diversity program contract, certain restrictions and procedures apply to the termination and substitution of a diversity certified entity by a prime concessionaire or prime contractor, as mandated by federal regulations and City ordinances. These requirements are established by 49 C.F.R. § 26.53(f), code sections 2-1356- 2-1380, and 2-1441- 2-1480 of the COA code of ordinances, as may be amended from time to time. OCC will not allow a prime concessionaire or prime contractor to substitute or terminate a diversity program certified entity without OCC's prior written consent, which will be granted only upon a written finding of good cause. OCC requires completion of a form document to accompany the reason(s) for the request to terminate and/or substitute, which is available at:

<http://www.atlantaga.gov/modules/showdocument.aspx?documentid=491>

For ease of reference, the federal requirements are quoted below:

49 C.F.R. § 26.53(f)

- (1) (i) [OCC] must require that a prime contractor not terminate a DBE/[ACDBE] subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE/[ACDBE] firm) without [OCC's] prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE/[ACDBE] subcontractor with its own forces or those of an affiliate, a non-DBE/[ACDBE] firm, or with another DBE/[ACDBE] firm.
- (ii) [OCC] must include in each prime contract a provision stating:
  - (A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and
  - (B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE/[ACDBE].
- (2) [OCC] may provide such written consent only if [OCC] agree[s], for reasons stated in [OCC's] concurrence document, that the prime contractor has good cause to terminate the DBE/[ACDBE] firm.
- (3) For purposes of this paragraph, good cause includes the following circumstances:
  - (i) The listed DBE/[ACDBE] subcontractor fails or refuses to execute a written contract;
  - (ii) The listed DBE/[ACDBE] subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE/[ACDBE] subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
  - (iii) The listed DBE/[ACDBE] subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
  - (iv) The listed DBE/[ACDBE] subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
  - (v) The listed DBE/[ACDBE] subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
  - (vi) [OCC] ha[s] determined that the listed DBE/[ACDBE] subcontractor is not a responsible contractor;
  - (vii) The listed DBE/[ACDBE] subcontractor voluntarily withdraws from the project and provides to [OCC] written notice of its withdrawal;
  - (viii) The listed DBE/[ACDBE] is ineligible to receive DBE/[ACDBE] credit for the type of work required;
  - (viii) A DBE/[ACDBE] owner dies or becomes disabled with the result that the listed DBE/[ACDBE] contractor is unable to complete its work on the contract;
  - (ix) Other documented good cause that [OCC] determine[s] compels the termination of the DBE/[ACDBE] subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE/[ACDBE] it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE/[ACDBE] contractor was engaged or so that the prime contractor can substitute another DBE/[ACDBE] or non-DBE/[ACDBE] contractor after contract award.
- (4) Before transmitting to [OCC] its request to terminate and/or substitute a DBE/[ACDBE] subcontractor, the prime contractor must give notice in writing to the DBE/[ACDBE] subcontractor, with a copy to [OCC], of its intent to request to terminate and/or substitute, and the reason for the request.
- (5) The prime contractor must give the DBE/[ACDBE] five days to respond to the prime contractor's notice and advise [OCC] and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why [OCC] should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), [OCC] may provide a response period shorter than five days.
- (6) In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE/[ACDBE] firms put forward by offerors in negotiated procurements.

The undersigned acknowledges these requirements on behalf of the below-listed entity.

Prime: \_\_\_\_\_

Contract No.: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

DRAFT