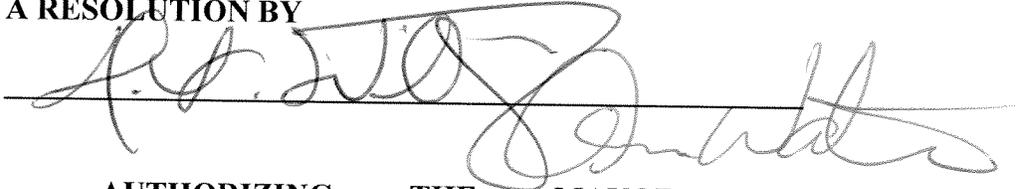


A RESOLUTION BY


AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT ("O&M IGA") FOR THE OPERATION AND MAINTENANCE OF THE ATLANTA STREETCAR WITH THE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY ("MARTA"), THE DOWNTOWN ATLANTA COMMUNITY IMPROVEMENT DISTRICT ("DACID") AND ATLANTA DOWNTOWN IMPROVEMENT DISTRICT, INC. ("ADID") (COLLECTIVELY "ADID") SETTING FORTH THE TERMS UNDER WHICH THE PARTIES WILL ALLOCATE ROLES AND RESPONSIBILITIES FOR THE OPERATION AND MAINTENANCE OF THE PROJECT; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") desires to build a modern streetcar system in the City ("Atlanta Streetcar Project" or "Project"). The first phase of the Project, currently under construction, will consist of a 2.7 mile segment within downtown Atlanta; and

WHEREAS, in furtherance of the Project, the Parties through their joint efforts, as well as the efforts of others, prepared and submitted to the Office of the Secretary of Transportation an application by the City for funding a portion of the construction of the Project through a TIGER Discretionary Grant; and

WHEREAS, said application by the City resulted in the award of Grant Number GA-79-0001 in the amount of Forty-Seven Million, Six Hundred and Sixty-Seven Thousand, Seven-Hundred and Seventy-Seven Dollars (\$47,667,777) for the Project from the TIGER II Discretionary Grants funding described in the award (the "Awarded Funds"). ADID agreed with the City to provide certain funds for the project and is a "Project Partner" with the City; and

WHEREAS, pursuant to 11-O-0327, the City, as Grantee/Recipient and MARTA, as Limited Agent/Designee, thereafter executed a Grant Agreement with the United States Department of Transportation ("USDOT") and the Federal Transit Administration ("FTA"), as administrator of the grant; and

WHEREAS, pursuant to 11-O-0327, the Parties entered into an Intergovernmental Agreement for the construction of the Project (the "Construction IGA"), the procurement of vehicles, the administration of the Awarded Funds, and the administration of other funds for the construction of the Project and the procurement of vehicles and other assets for the operation and maintenance of the Project; and

WHEREAS, in order to create a formal structure setting forth the terms under which the Parties will allocate roles and responsibilities for the operations and maintenance of the Atlanta Streetcar

Project, it will be necessary for the City to enter into an O&M IGA among the City, MARTA and ADD.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES, AS FOLLOWS:

SECTION 1: The Mayor is authorized to execute an O&M IGA with MARTA and ADID for the purpose of defining the roles and responsibilities for the operations and maintenance of the Atlanta Streetcar Project. The O&M IGA is to be substantially in the form, attached hereto, but certain amendments may be necessary to effectuate the intent of the agreement and the same are authorized provided however that such amendments shall not obligate the City to provide funding in excess of such funding as previously approved by the City Council.

SECTION 2: That the City Attorney is authorized to prepare all appropriate documents for execution by the Mayor.

SECTION 3: That all resolutions or parts of resolution in conflict with this resolution are hereby waived to the extent of the conflict.

SECTION 4: This resolution shall become effective immediately upon signing by the Mayor or as otherwise provided by the operation of law.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: Finance/Executive Committee

Caption:

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT ("O&M IGA") FOR THE OPERATION AND MAINTENANCE OF THE ATLANTA STREETCAR WITH THE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY ("MARTA"), THE DOWNTOWN ATLANTA COMMUNITY IMPROVEMENT DISTRICT ("DACID") AND ATLANTA DOWNTOWN IMPROVEMENT DISTRICT, INC. ("ADID") (COLLECTIVELY "ADID") SETTING FORTH THE TERMS UNDER WHICH THE PARTIES WILL ALLOCATE ROLES AND RESPONSIBILITIES FOR THE OPERATION AND MAINTENANCE OF THE PROJECT; AND FOR OTHER PURPOSES.

Council Meeting Date: September 3, 2013

Requesting Dept.: Department of Public Works

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to authorize the Mayor to execute an Operations and Maintenance Intergovernmental Agreement ("O&M IGA") with the Metropolitan Atlanta Rapid Transit Authority ("MARTA"), the Downtown Atlanta Community Improvement District ("DACID") and Atlanta Downtown Improvement District, Inc. ("ADID") (Collectively "ADID") for the purpose of defining the roles and responsibilities for the operations and maintenance of the Atlanta Streetcar Project.

2. Please provide background information regarding this legislation.

The City is in the process of constructing a modern streetcar system within the City ("Project"). The first phase of the Project will consist of a 2.7 mile segment within the City's downtown area. For construction of the Project, the City received a TIGER II Discretionary Grant from the United States Department of Transportation ("USDOT") in the amount of Forty-Seven Million, Six Hundred and Sixty-Seven Thousand, Seven-Hundred and Seventy-Seven Dollars (\$47,667,777) ("Grant"). The City and ADID agreed to provide additional funding for the Project. The City, as Grantee/Recipient, and MARTA, as Limited Agent/Designee, thereafter executed a Grant Agreement with USDOT and the Federal Transit Administration ("FTA"),

regarding administrator of the Grant. Further, the City, ADID and MARTA entered into an Intergovernmental Agreement for the administration of the awarded funds and construction of the Project. In order to create a formal structure setting forth the terms under which the Parties will allocate roles and responsibilities for the operations and maintenance of the Project, it will be necessary for the City to enter into an O&M IGA among the City, MARTA and ADID.

3. If Applicable/Known:

- (a) Contract Type:**
- (b) Source Selection:**
- (c) Bids/Proposals Due:**
- (d) Invitations Issued:**
- (e) Number of Bids:**
- (f) Proposals Received:**
- (g) Bidders/Proponents:**
- (h) Term of Contract:**

4. Fund Account Center:

5. Source of Funds:

6. Fiscal Impact:

7. Method of Cost Recovery:

This Legislative Request Form Was Prepared By: Yolanda Favors

**INTERGOVERNMENTAL AGREEMENT FOR
OPERATIONS AND MAINTENANCE OF
THE ATLANTA STREETCAR PROJECT**

1. INTRODUCTION

1.1 Parties. The parties to this Agreement are:

The City of Atlanta ("City"), a municipal corporation of the State of Georgia for the purposes of this Agreement the City shall mean, the Mayor or his designee, unless action of the governing body is required by law to effectuate the decision of the City;

The Metropolitan Atlanta Rapid Transit Authority ("MARTA"), a public body corporate created by the Georgia General Assembly as a joint public instrumentality of the City of Atlanta and the counties of Fulton, DeKalb, Cobb, Clayton and Gwinnett in the manner specified in that certain Act known as the Metropolitan Atlanta Rapid Transit Authority Act of 1965 (1965 Ga. Laws p. 2243), as amended, for the purpose of operating a public transit system throughout the City of Atlanta, Fulton County and DeKalb County (the MARTA Act").

The Downtown Atlanta Community Improvement District ("DACID"), a community improvement district in the City of Atlanta, Fulton County, Georgia, organized and existing under the laws of the State of Georgia pursuant to the "Atlanta Community Improvement District Act", enacted by the Georgia General Assembly as House Bill 544, 1991 Ga. Laws 3653, as amended, and created as the Downtown Atlanta Community Improvement District pursuant to City of Atlanta Resolution 95-R-1374, as supplemented by Resolution 02-R-0241.

Atlanta Downtown Improvement District, Inc. ("ADID") is a private not for profit corporation formed to exercise and fulfill the rights, powers, duties and obligations of the DACID. References to ADID herein shall include DACID where it is necessary for DACID to act through ADID and such actions are not specified.

Each of the foregoing is referred to as a "Party" and collectively as "the Parties".

1.2 Project Description. The City desires to build and operate a modern streetcar system in the City of Atlanta ("**the Atlanta Streetcar**"). The first phase of the Atlanta Streetcar, currently under construction, will consist of a 2.7 mile segment within downtown Atlanta currently under construction (this first segment being referred to in this Agreement as "the Atlanta Streetcar Project" or "the Project").

In furtherance of the Project, the Parties through their joint efforts, as well as the efforts of others, prepared and submitted to the Office of the Secretary of Transportation an application by the City for funding a portion of the construction of the Project through a TIGER Discretionary Grant.

Said application by the City resulted in the award of Grant Number GA-79-0001 in the amount of Forty Seven Million, Six Hundred and Sixty Seven Thousand, Seven-Hundred and Seventy-Seven Dollars (\$47,667,777) for the Project from the TIGER II Discretionary Grants funding described in the award (the "Awarded Funds"). DACID agreed with the City to provide certain funds for the project and is a "Project Partner" with the City. MARTA is named as the operator of the Project and the City's Limited Agent/Designee under the Grant.

The City, as Grantee/Recipient and MARTA, as Limited Agent/Designee, thereafter executed a Grant Agreement with the United States Department of Transportation (hereinafter "USDOT") and the Federal Transit Administration (hereinafter "FTA"), as administrator of the grant.

The Parties have entered into an Intergovernmental Agreement for the Construction of the Project (the "Construction IGA"), the procurement of vehicles, the administration of the Awarded Funds, and the administration of other funds for the construction of the Project and the procurement of vehicles and other assets for the operation and maintenance of the Project.

The Construction IGA has been modified by three (3) amendments providing for additional funding for the Project through the Transit Enhancements Grant, the Luckie Street Grant and the funding of work included in the Project for the benefit of the City's Department of Watershed Management.

The Construction IGA provides for MARTA to be responsible for operating and maintaining the Project, subject to the execution of an operations and maintenance agreement acceptable to all Parties, separate from the Construction IGA.

In accordance with 49 U.S.C. 5323(n) certain certifications and assurances are required for all Federal Transit Administration ("FTA", the use of the term "FTA" is used in the broadest sense to include any federal agency or department that may have jurisdiction over any matter affecting this Agreement) assistance programs including, without limitation, assurance that the City has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability to assure proper planning, management and completion of the project to be built with the Awarded Funds (the "Project") and will initiate and complete the Project within the applicable time period following receipt of FTA approval. The term "Project" refers to the construction and operation of a fixed-guideway transit line as set forth in the Application and as further set forth in this Agreement.

This Project Description is not intended to supersede or replace the definitions set forth in other agreements between the parties. The completion of the construction of the Project assumes that the infrastructure that is put in place by such construction will be operated as a streetcar system (the "Atlanta Streetcar") utilizing physical assets that are made available by the City, and have been funded by ADID, the City, and the Awarded Funds. No exact time of transition between the construction of the Project and the operation of the Atlanta Streetcar is intended by the use of these terms at any particular place in the Agreement. The testing of the operational readiness of the constructed assets and the testing and use of the physical assets for the training of the operational personnel and the obligations of the design build contractor may overlap. This Agreement is not intended to change or modify any obligations for which third parties may have contracted with any of the Parties.

This Intergovernmental Agreement for Operation and Maintenance of the Atlanta Streetcar (hereinafter designated the "O&M IGA") shall provide for the operation and maintenance of the Project as contemplated by the Parties, the USDOT and the FTA in the various Project Agreements described above.

2. ROLES AND RESPONSIBILITIES OF THE PARTIES

This Agreement creates a formal structure through which the Parties herein will coordinate and discuss the decisions necessary for the operation and maintenance of the Atlanta Streetcar. The City

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is the system owner, and subject to the structure set forth herein, promulgates strategic policy and dictates the overall direction of the Atlanta Streetcar system. The City is responsible for funding all direct and indirect costs associated with the operation and maintenance of the Project and all financial aspects of the Streetcar project, including operating, maintenance, and capital costs. As the Operations and Maintenance (O&M) operator, MARTA has no such obligations unless otherwise previously or separately agreed to.

The roles and responsibilities of the Parties are summarized in the Responsibility Matrix attached hereto as Appendix A and incorporated by reference.

2.1 The Atlanta Streetcar Project Management Committee. The City and the Atlanta Downtown Improvement District, acting on behalf of the Downtown Atlanta Community Improvement District (hereinafter referred to as "ADID"), have agreed to form the Atlanta Streetcar Project Management Committee (the "Management Committee") to oversee the vision, mission, values and policies for the Atlanta Streetcar as well as exercise final decision-making authority over operational decisions.

2.1.1 The Management Committee shall have responsibility for matters including, without limitation:

- (a) Providing policy and strategic directives for the Atlanta Streetcar;
- (b) Determining the Atlanta Streetcar's ultimate mission and purpose;
- (c) Setting fares, rates and fees for the Project;
- (d) Together with the City's Streetcar Deputy Commissioner (from time to time called the "Executive Director") approving the Atlanta Streetcar's overall goals and objectives;
- (e) Exercising final decision-making authority over those operational matters brought to the Subcabinet by the Executive Director;
- (f) Developing and approving operating and capital budgets for the Streetcar, and ensuring that sufficient funds are available; and
- (g) Providing for all public notice and input, including the conduct of public hearings, that may be required to adopt changes to the Service Plan, budget, fares or other matters that may require public notice, public hearing or community involvement.

2.1.2 The Management Committee shall consist of the following voting members:

- (a) The City's Chief Operating Officer and the Commissioner of the Department of Public Works;
- (b) The Executive Director; and
- (c) Two members appointed by ADID's President.

2.1.2.1 The Management Committee may include a non-voting member appointed by MARTA, who shall have function as a member of the Management Committee under the Management Committee Charter, By-Laws, and related governing documents with the exception of voting rights. To avoid potential conflicts of interest or the appearance thereof, MARTA's non-voting member shall not participate in Executive Session discussions relating to operator performance, operator contracts, or such similar discussions, as determined by the Management Committee.

2.1.3 The Management Committee may adopt such bylaws and rules of procedure separate and apart from this Agreement but such bylaws and rules of procedure shall not change the manner in which final decision as to those matters vested in the Management Committee are reached.

2.1.4 Final decision concerning those matters vested in the Management Committee shall be determined by a majority vote of the Management Committee.

2.1.5 The Management Committee will meet at least quarterly to discuss necessary changes or adjustments to the operation or maintenance of the Project. Such discussions will include opportunities to improve the efficiency of the operation and maintenance of the Atlanta Streetcar.

2.1.6 The Management Committee shall have the responsibilities set forth in the Management Committee Charter. Such responsibilities shall be exercised through the Management Committee Charter, By-Laws and related governing documents.

2.2 Executive Director (Streetcar Deputy Commissioner). The Executive Director (sometimes referred to as the “Streetcar Deputy Commissioner”) has policy and budgetary responsibilities over the activities related to the operation and maintenance of the Atlanta Streetcar Project in accordance with this Agreement and the established budget, schedule and scope. The Executive Director is responsible for implementation of the Management Committee’s decisions. MARTA, as the operator of the Project, shall abide by the instructions of the Executive Director. The Executive Director’s duties will include, without limitation:

- (a) Reviewing and recommending approval of the various plans submitted by MARTA under this Agreement for the operation and maintenance of the Project;
- (b) Developing and maintaining the plans that are the responsibility of the City under this Agreement and the City’s status as Grantee/Recipient and owner of the Project assets;
- (c) Preparing reports summarizing findings and recommendations from various audits and inspections, including text, tables, maps, charts, photos and other appropriate graphics, and presenting results to the Management Committee, City Council, Mayor and the public.

2.3 The City of Atlanta Streetcar Office. The City plans to establish the Atlanta Streetcar Office within its Department of Public Works and designate employees to work therein under the direction of the Executive Director. City employees who perform services for the Streetcar Office shall be employees of the City. The City will be responsible for all facets of the employment of Streetcar Office employees, including without limitation, the setting of salaries, the withholding of taxes, supervision, discipline, drug testing, unemployment insurance, workers compensation coverage, social security contributions, and employee benefits such as vacation, sick pay, disability, insurance and pensions in the same manner as with other City employees.

(a) Upon the City’s request, MARTA will provide, or cause to be provided by its contractor, training to the City’s Atlanta Streetcar personnel, Atlanta Police Department and Atlanta Fire Rescue Department and such other personnel identified by the City. Any technical training provided by MARTA or as defined in any contract between MARTA and the O&M contractor will be the subject of separate cost reimbursement agreements between the City and MARTA.

(b) The City may at its sole discretion change the organizational structure of the Atlanta Streetcar Office including its creation as a separate department of City government.

2.4 Compensation of Members of the Management Committee. Members of the Management Committee shall receive no compensation from the Project budget for their participation in the activities of the Management Committee other than each member’s regular salary or compensation from the appointing entity.

3. OPERATION AND MAINTENANCE OF THE PROJECT

As set forth in the TIGER II Grant proposal and confirmed by this agreement, MARTA will provide Operations & Maintenance services for the Atlanta Streetcar Project. As the operating entity, MARTA shall provide for the operation of the Project and the maintenance of the assets provided to MARTA in accordance with the terms of this Agreement. MARTA shall have the right to contract with third parties for the performance of any or all of the operation and maintenance of the Project.

3.1 Contracting with Third Parties; Assignment.

- (a) MARTA may contract with third parties to provide for the operation and maintenance of the Project. At the time of the execution of this Agreement, such an arrangement is contemplated and the Parties are engaged in the procurement process for the selection of a third party contractor for the operation and maintenance of the Project pursuant to a letter of agreement dated May 8, 2013. MARTA's selection of any third-party contractor or the selection of any subcontractors for the operations and maintenance of the Project shall be subject to approval of the Management Committee.
- (b) Such contracts with third parties shall include compliance with the responsibilities of MARTA set forth herein.
- (c) MARTA shall require timely and skillful performance of its third party contractors of all obligations contained in third party contracts, and shall duly enforce all contractual obligations of third parties for the operation and maintenance of the Project. The City and ADID, through the Management Committee, shall have the right to require MARTA's termination of any third-party contractor or subcontractor.
- (d) Any contract between MARTA and third parties for the operation and maintenance of the Project shall include specific language providing that MARTA's rights, interests and obligations in said contract are assignable to the City and that the consent of any third party shall not be required.

3.2 Assignment of Third Party Contract. At such time as the USDOT and the FTA approve the City as the operator of the Project and relieve MARTA of all obligations to USDOT and FTA related thereto, and upon request by the City, MARTA agrees that it shall assign to the City contracts between MARTA and third parties. An assignment agreement shall define terms that MARTA and the City shall negotiate at the time of assignment, and MARTA shall not object to the City's request for assignment, nor to reasonable terms of the assignment agreement.

3.3 Payment of Project Costs. The City shall fund all costs associated with the operation and maintenance activities undertaken by MARTA or MARTA's third party contractors by depositing sufficient funds for the monthly operation and maintenance of the Project, as determined by the adopted budgets, as set forth in Section 10.3(b). The first such deposit, for the mobilization of the operations and maintenance activities, shall be so deposited fifteen days prior to the commencement of Project mobilization. MARTA as operator or otherwise shall have no obligation to advance any sums for the payment of costs for the mobilization, operation and maintenance of the Project. At the conclusion of each month, MARTA shall bill the City for any deficiency in the quarterly deposit, and such sums shall be due and payable in accordance with an invoicing procedure to be agreed upon by the City and MARTA.

3.4 Operator's Compliance Obligations. MARTA shall comply with, or cause its third party contractors to comply with, all local, state or federal laws and regulations directly applicable to the operation, maintenance and management of the Atlanta Streetcar Project. As the Grantee and owner

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of the Project assets, the City explicitly retains responsibility for ensuring compliance with all other legal and regulatory requirements applicable to the Streetcar project.

3.5 Operating Authority. The City is the operating authority for the Atlanta Streetcar Project by and through its ownership of the tracks, stops, maintenance facility, vehicles and other infrastructure of the Project, and provides the permission and authority for the operation of the Project by MARTA in the manner set forth in this Agreement.

4. SERVICE PLAN AND STREETCAR OPERATIONS

4.1 Operating Policy. The Atlanta Streetcar operating policy incorporates the following general objectives applicable to this Project and any further expansion of the Atlanta Streetcar system:

- (a) Provide safe, secure, convenient, reliable, clean service to the general public;
- (b) Configure Atlanta Streetcar service into a minimum number of routes designed to provide a one-seat ride for the greatest number of passengers;
- (c) Adjust Atlanta Streetcar headways and operating strategies to reflect forecasted passenger demand consistent with passenger loading standards;
- (d) Accommodate special event ridership;
- (e) Minimize Atlanta Streetcar operating expenses and capital costs, but optimize operational effectiveness;
- (f) Provide fiscal year planning in a manner that is consistent with the City of Atlanta fiscal year; and
- (g) Accommodate expansion of the Atlanta Streetcar System and interconnectivity.

4.2 Service Plan. On an annual basis as provided in this Section, MARTA will develop the following documents that will reflect the Operating Policy and that shall constitute the "Service Plan:"

- (a) Plans for regular service operations, special services, and emergency operations;
- (b) Standard operating procedures for the guidance of its staff in order to carry out the operations of the Atlanta Streetcar in accord with the Operating Policies;
- (c) Service Plan Budget indicating the cost to deliver the level of service described in the Service Plan described in line item detail as is normal and customary in industry practice to aid the Management Committee in the consideration of the approval of the Service Plan. Such budget shall consider value engineering actions to reduce Project costs.
- (d) Performance Measures for the execution of the Service Plan, including, but not limited to, those performance measures listed in Section 4.12(a)-(h) of this Agreement, ridership productivity, service efficiency, safety, quality of service, on-time performance, and other such measures as are standard industry practice.

The initial Streetcar Service Plan has been agreed to and set forth by the City and MARTA in its Request for Proposals (RFP) for O&M services. The initial Service Plan is attached hereto as Appendix C. Subsequent or proposed Service Plans shall be submitted to the Management Committee no later than February 28th each year thereafter for the coming fiscal year and the adopted Service Plan shall be Appendix C. The Management Committee shall adopt and approve a Service Plan for the coming fiscal year no later than April 1st each year. In the event that the Management Committee fails to adopt a Service Plan for the coming fiscal year, MARTA shall continue to operate the Service Plan then in effect during the coming fiscal year until such time as a new Service Plan is adopted and communicated to MARTA. Upon the adoption of the fiscal year's

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Service Plan or any amendment thereto, the duly adopted plan shall become a part of this Agreement as Appendix C.

4.3 Service Plan Budget. Concurrent with the presentation of the Service Plan, MARTA shall submit a Service Plan Budget defining the costs associated with the provision of the service set forth in the Service Plan for the fiscal year. Approval of the Service Plan shall include approval of the Service Plan Budget. The City shall cause the Service Plan Budget to be included in the City Budget for the fiscal year and provide for funds sufficient to pay to MARTA all costs identified in the Service Plan Budget.

4.3.1 The reallocation of costs in line items set forth in the Service Plan Budget shall be in the discretion of the Executive Director who may choose to present such reallocation to the Management Committee for approval. Upon such approval, MARTA shall modify the provision of service to meet the reallocation of costs in line items of the Service Plan Budget.

4.3.2 During any fiscal year, the hours of operation and operating headways may be dependent upon changes in available operating funds. The Service Plan and associated budget may be modified accordingly during any fiscal year through duly adopted action of the Management Committee. Any such changes will be communicated to MARTA and such communication shall include a date certain for such changes to commence not less than thirty (30) days from the date of such notice.

4.4 Additional Streetcar Operations. MARTA shall provide a detailed price estimate for additional services specified by the City.

- (a) Upon the Executive Director's request, MARTA shall enter into good faith negotiations to finalize the cost of such additional services.
- (b) Should the City and Operator agree upon a final price for additional services, the City shall authorize Operator in writing to perform said services.
- (c) In no event shall the performance of additional services agreed upon exceed the original term of this Agreement unless authorized by an amendment approved by the Atlanta City Council.
- (d) The City specifically reserves the right to contract with another person, corporation or other entity for performance of any tasks for which it is responsible according to the O&M matrix. Any employee or contractor of such person, corporation or other entity shall be permitted to perform the contracted functions at any location on the Atlanta Streetcar system; provided, however, that no such employee or contractor shall unreasonably interfere with Operator's provision of MARTA services as set forth in further agreements between the City and MARTA.

4.5 Scheduling and Staff Assignments. Based upon the adopted Service Plan, MARTA will prepare schedules for operation and assignments of personnel and equipment to meet the requirements of the Service Plan. MARTA will provide a plan for staffing of operators, supervisors and technicians on the Streetcar System to levels appropriate to meet service and performance standards, specifically those regarding on-time performance and maintenance requirements.

4.6 Standard Operating Procedures. MARTA shall prepare, or cause to be prepared, written procedures for operation of the Service ("Standard Operating Procedures"). The Standard Operating Procedures shall be part of the Service Plan and shall be incorporated in any contract awarded to any third party contractor either by reference or by amendment and shall become a part of any contract when such Standard Operating Procedures are amended.

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4.7 Additional Operating Procedures: Safety Procedures. MARTA shall observe all safety rules and other requirements with regulatory bodies having jurisdiction over the Service Area and operate the vehicles with the highest regard for all aspects of safety. This Agreement is not intended to conflict with any safety rules and other requirements with regulatory bodies having jurisdiction over the Service Area. It is the responsibility of the City and MARTA to be aware of and follow all required safety rules and other requirements with regulatory bodies having jurisdiction over the Service Area related to their respective designated duties on the Responsibility Matrix. Likewise, appropriate ADID personnel shall be trained with respect to safety rules and other requirements as may be relevant to their job responsibilities.

4.8 Emergency Preparedness Plan. Emergency operations include accidents, loss of power, natural disasters or any event that interrupts service. As required elsewhere in this Agreement, the City shall maintain an Emergency Preparedness Plan (EPP) – distinct from the System Safety Program Plan (SSPP) and System Security Plan (SSP) for which the City is also responsible – addressing the manner of operation in response to such events and includes a Crisis Management section to help assure the timely, orderly flow of information during a natural disaster or other emergency situations. MARTA may provide technical assistance in the development of this plan. Said plans are attached to this Agreement as Appendices D, E and F respectively. Any amendment to any of said plans shall be incorporated into this Agreement as the appropriate appendix.

4.9 Emergency Action. If an emergency endangering the safety or protection of persons, the physical assets of the Atlanta Streetcar, or property located near the Atlanta Streetcar occurs, the Parties shall take all necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss. The Parties shall make all reasonable efforts to follow the EPP, SSPP and SSP. After such actions, MARTA shall promptly notify the appropriate governmental agency and the Executive Director. The Parties shall make reasonable efforts to minimize any cost associated with remedial action in case of such an emergency.

4.10 Training for Emergency Actions. MARTA shall train all Streetcar personnel under its supervision about the procedures set forth in the Plans in Appendices D, E and F.

4.11 Service Disruption Response Plan. MARTA shall develop a Service Disruption Response Plan, detailing operating strategies to be implemented in order to maintain service on portions of the system not impacted by an emergency as set forth in the SEPP. The Service Disruption Response Plan may include procedures for establishing a bus bridge service around the affected area using buses and personnel supplied by MARTA (a “Bus Bridge”). A draft of the Service Disruption Response Plan shall be submitted to the Management Committee at least 60 days prior to the anticipated date of the first day of revenue passenger service for the City's review and approval. All costs associated with bus bridges and/or other supplemental services provided by MARTA in response to a service disruption shall be on a fully allocated cost reimbursable basis.

In no case will a Bus Bridge be deployed in the event of a service disruption if it is determined that the bus bridge will degrade MARTA's scheduled service, as determined by MARTA's Director of Bus Transportation or MARTA's Chief Operating Officer.

4.12 Reporting on Streetcar Operations. MARTA shall submit a monthly report to the Management Committee for the purpose of evaluation of current performance against the established performance measures, such as headway times, and spending variance against budget. The description set forth herein is illustrative and the Executive Director may make reasonable requests

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for the inclusion of additional items at any time. At a minimum, the monthly operations report shall include the following:

- (a) Monthly ridership by fare type
- (b) Vehicle hours operated
- (c) ADA boardings
- (d) Number of accidents or incidents
- (e) Number of delays in headway for more than 10 minutes
- (f) Hours of Extra Service provided
- (g) Hours of Special Service provided
- (h) Complaints received and corrections
- (i) Compliments

4.13 Annual Reports. By August 31st of each fiscal year, MARTA shall provide an annual report to the Management Committee on the previous fiscal year including, without limitation:

- (a) all safety audits required by any agency;
- (b) month to month ridership trends;
- (c) financial performance data;
- (d) summary of monthly operational and maintenance reports;
- (e) proposals for improvements to be included in the upcoming Service Plan

5. MAINTENANCE

5.1 Maintenance Plan. The obligations of the Parties for the maintenance of the Project assets is summarized in the Responsibility Matrix attached as Appendix A. The Maintenance Plan submitted by MARTA shall be limited to those items which are the responsibility of MARTA under the Responsibility Matrix attached as Appendix A. MARTA will develop the following documents that shall constitute the Maintenance Plan to be implemented by MARTA concurrent with the Service Plan for the upcoming fiscal year:

- (a) Plan for maintaining the physical assets necessary to provide regular service operations, special services and emergency operations, not including capital renewal plans and FTA asset management plans which shall be the responsibility of the City as the owner of the Project assets;
- (b) Maintenance operating procedures for the guidance of its staff;
- (c) Warranty procedures necessary to maintain the warranty on any Atlanta Streetcar asset, whether based on manufacturer's recommendations or requirements, industry practices or information provided by designers or installers of the equipment or systems;
- (d) Maintenance Plan Budget setting forth the cost to comply with the maintenance obligations set forth in this Agreement with sufficient line item detail as is normal and customary in industry practice to aid the Management Committee in the consideration of the approval of the Maintenance Plan.
- (e) Performance Measures for the execution of the Maintenance Plan.

Any maintenance obligations and responsibilities which MARTA has under this Agreement whether set forth in the Maintenance Plan or otherwise may be the subject of third party contracts which shall be assignable to the City.

5.2 Maintenance Plan Budget. Concurrent with the presentation of the Maintenance Plan, MARTA shall submit a Maintenance Plan Budget defining the costs associated with the performance of the activities set forth in the Maintenance Plan for the fiscal year. Approval of the Maintenance Plan shall include approval of the Maintenance Plan Budget. The City shall cause the Maintenance Plan Budget to be included in the City Budget for the fiscal year and provide for funds sufficient to pay to MARTA all costs identified in the Maintenance Plan Budget.

5.3 Presentation of the Maintenance Plan for Approval. The Maintenance Plan will be presented to the Management Committee at least two (2) months prior to the anticipated date of the first day of revenue passenger service and on February 28th of each year thereafter for the Management Committee's review and approval. In the event the Management Committee fails to approve the Maintenance Plan and Maintenance Plan Budget for the coming fiscal year, MARTA shall continue to maintain the Project under the plans and budget then in effect until such time as a new plan and budget are approved. The Parties will meet as necessary to discuss the approval of the Maintenance Plan prior to MARTA's implementation. The Maintenance Plan may be amended during the year upon agreement of the Parties in writing. Upon approval, the Maintenance Plan and Maintenance Plan Budget shall be incorporated into this Agreement as Appendix H.

5.4 Implementation of the Maintenance Plan. MARTA shall have all responsibility for the implementation of the Maintenance Plan. MARTA may employ the services of third party contractors for the implementation of the Maintenance Plan. Any such contracts shall provide for assignment to the City. MARTA shall be paid by the City for the costs associated with the implementation of the Maintenance Plan.

5.5 Maintenance Cost Adjustments for Items not in Maintenance Plan. The Parties acknowledge that there may be unforeseen but necessary costs related to maintenance items that have not been included in the Maintenance Plan. In non-emergency cases, MARTA will provide the Executive Director with the written documentation prior to incurring any costs for items not in the Maintenance Plan.

In the event that the Executive Director deems it necessary to cause the Maintenance Plan Budget to be amended, the Management Committee shall be notified and MARTA shall provide a proposal for such amendments.

5.6 Emergency Maintenance. MARTA will notify the Executive Director of any expenditure necessary to address an emergency maintenance issue. The Executive Director may give oral approval of emergency expenditures, provided that within two working days of receiving approval, MARTA will provide the City with a written proposal describing the work to be performed, a proposed schedule for completion, and estimated costs. The Executive Director shall notify the Management Committee and take such steps as deemed necessary to address MARTA's proposal.

5.7 Vehicle Maintenance Facility. To assist in the carrying out of the Maintenance Plan for the Project, the City shall provide certain tools and equipment for the use of MARTA or its third party contractors at the Project's Vehicle Maintenance Facility ("VMF"). At the VMF, the City shall also provide certain spare parts and materials to be maintained in the VMF inventory. A list of all tools, spare parts and materials to be furnished to MARTA by the City is provided on Exhibit 1.

- (a) MARTA shall be responsible for tracking the use of all tools, equipment, spare parts and materials, and re-supplying as necessary. All spare parts and inventory items must either be from the Original Equipment Manufacturer ("OEM") or meet the OEM's

approved equals. MARTA shall provide reports of usage to the City as a part of the Maintenance Plan or upon request.

- (b) MARTA must maintain all equipment and tools in good working order and return them to the City in a condition appropriate to their initial condition, use and wear. All City resources and inventory accumulated during the term of this Agreement will be the property of the City.
- (c) MARTA shall be responsible for maintaining the condition of the VMF in a manner consistent with industry standards and returning it to the City at the conclusion of the term of this Agreement.
- (d) MARTA is responsible for maintaining the cleanliness of the exterior of the VMF. In particular, the exterior spaces surrounding the VMF must always be free of trash, debris, spills, and other refuse, free from graffiti, free of rodents and other vermin, insects, birds or other types of pest infestations, or signs of rodents and other vermin, insects, birds or pests infestations.

5.8 Vehicle Maintenance. The revenue fleet for the Project consists of four (4) Siemens S70 Ultrashort Light Rail Vehicles (“the Project Vehicles”). MARTA will be responsible for maintaining the Project Vehicles in accordance with the Maintenance Plan. MARTA shall have responsibility for the maintenance of non-revenue vehicles utilized in the Project; all costs for the use and maintenance of such MARTA assets shall be reimbursed to MARTA consistent with the Service Plan Budget or Maintenance Plan Budget, as applicable. The maintenance of automobile and truck assets provided by the City for the use of the Streetcar Office shall be undertaken by the City.

5.9 Project Vehicle Cleanliness. MARTA is responsible for maintaining the cleanliness of the interior and exterior of all Project Vehicles in accordance with the Maintenance Plan.

5.10 Maintenance of Electrical Systems and Components.

- (a) MARTA will be responsible for the maintenance of Project electrical facilities and systems. This will include both hardware and software elements of traction power substations, overhead contact system, electrical switchgear, yard and shop power distribution and lighting, and electrical facilities.
- (b) The City will be responsible for maintenance of traffic signals including train-to-wayside communications (TWC) equipment connected to the traffic signal system controls. TWC equipment on the streetcars will be maintained by MARTA.

5.11 Corrosion Control Assets. The Project is constructed with certain corrosion control and electrolysis prevention systems. As specified in the Maintenance Plan, MARTA will maintain the corrosion control assets so that they are intact, in service, and in good working order.

5.12 Maintenance of Remaining Project Assets. MARTA shall be responsible for the maintenance of Project assets as required by the adopted Maintenance Plan. The City shall undertake all maintenance responsibilities for the Project assigned to it in the Responsibility Matrix attached as Appendix A, unless a specific responsibility is allocated to another party in this Agreement or when allocated to another party in accordance with the current adopted Maintenance Plan.

5.13 Maintenance Reporting. MARTA shall submit a monthly maintenance report to the Executive Director. Any event that is not set forth in the Maintenance Plan as a preventive maintenance item or as an item necessary to meet the requirements necessary to keep valid all warranties shall be considered an event that is separately reportable. Such separately reportable items shall include, without limitation, the following:

- (a) Number of traction power system failures;
- (b) Number of vehicle failures and type;
- (c) Number of preventive maintenance services

6. MAJOR EQUIPMENT OVERHAUL AND CAPITAL IMPROVEMENTS

As the owner of the Project assets, the City is responsible for all major equipment overhauls and capital improvements to Project assets.

6.1 Major Equipment Overhaul. The cost of all major equipment teardowns and overhauls for the Project assets shall be the responsibility of the City. MARTA shall promptly notify the City in writing of any such teardowns and overhauls of major equipment that MARTA believes are necessary or advisable, together with a proposed schedule for completing such repairs or improvements. As they are identified, the budget, schedule and responsibility for such major equipment overhauls, including the management and monitoring of third party contracts for such work, shall be included in the annual Service Plan and Maintenance Plan and associated budgets for approval by the Parties.

6.2 Capital Improvements for Maintenance Assets. The cost for capital improvements necessary for the creation of new maintenance assets or the renovation of existing capital assets needed for maintenance activities shall be the responsibility of the City. MARTA shall promptly notify the City in writing of capital expenditures that MARTA believes are necessary or advisable for the efficient operation of the Maintenance Plan, together with a proposed schedule for completing such improvements. As they are identified, the budget, schedule and responsibility for such capital improvements for maintenance assets, including the management and monitoring of third party contracts for such work, shall be included in the annual Service Plan and Maintenance Plan and associated budgets for approval by the Parties.

7. CITY RESPONSIBILITY FOR TRAFFIC SIGNAL SYSTEM, STATION STOPS AND CONTROL OF RIGHT OF WAY

7.1 Traffic Signal System.

- (a) The City shall operate, maintain, repair and upgrade the Traffic Signal System (TSS) in accordance with the TSS Operations Plan, attached hereto as Appendix G. The TSS as defined herein includes only a part of the City's entire traffic signal system and the TSS obligations as set forth herein shall only apply to those parts which actually have a significant impact on the operations of the Atlanta Streetcar Project. Changes in the TSS Operations Plan shall be approved by mutual agreement of MARTA and the City. Either MARTA or the City may request a change in the TSS Operations Plan. However, any such change must be supported by appropriate documentation, which may include a separate traffic engineering study, the cost of which will be borne by the party requesting the change. In either event, the cost of implementing such change in the operation of Traffic Signal System will be borne by the City.

- (b) The City shall not make any changes to the TSS without appropriate consultation with MARTA, as the operator of the Project. If the Parties are unable to agree on a proposed change to the TSS, or if a change requested by one party is rejected by the other, the matter shall be referred to the Management Committee for final determination.

7.2 Maintenance of Traffic Signal System.

- (a) The City shall have sole responsibility for the actual maintenance, repair and operation of the TSS, but shall have the right in its sole discretion, to assign this responsibility, in whole or in part, to a third-party contractor
- (b) The City is responsible for maintenance of train-to-wayside communications (TWC) equipment connected to the traffic signal system controls, provided however that the TWC equipment on the streetcar vehicles shall be maintained by MARTA in accordance with the Maintenance Plan identified in Section 4 below.
- (c) The City shall provide reasonable notice to MARTA before any upgrade, modification and/or scheduled repair to the TSS that will have a significant impact on the operation of the Streetcar. The City or its contractor(s) shall have the right to make routine adjustments to the TSS without having to consult with or obtain the approval of MARTA.
- (d) If the TSS malfunctions, the City shall provide notice to MARTA and immediately take steps to protect public safety. If the problem cannot be corrected within a sixty (60) minute service span, the City shall inform MARTA of its plan to resolve the issue and the timeframe for implementation.

7.3 ROW Permitting, Track Access & Utility Mark-outs.

- (a) The Atlanta Streetcar operates in the Right-of-Way (ROW) of several of the City's streets along tracks that intersect with public utility equipment (e.g., manhole covers and cable access points), travel over water lines, sewer lines and gas lines and will encounter periodic street paving and repair projects and is adjacent to private property that may be subject to future development. In order to centralize the control over work in or near the ROW whether performed by the City, its contractors or other parties, the City shall issue any permits needed for work near and in the ROW over which the Atlanta Streetcar travels. MARTA shall follow all the track access procedures for any entity granted permits to perform work near and in the ROW over which the Atlanta Streetcar travels.
- (b) The policies and procedures under which such permits are to be issued are set forth in: (1) Appendix I to the City of Atlanta Department of Public Works Office of Transportation City's Public Right-of-Way Manual Rules and Regulations for Construction Activities along the Alignment of the Atlanta Streetcar Project; (2) the Track Access Procedures Agreement; and (3) related agreements, between the City and the Georgia Power Company; all of which are attached hereto as Exhibit ____.

- (c) MARTA shall designate a single point of contact that is available on a 24 hour-a-day basis for that work occurring in or near the ROW over which the Atlanta Streetcar travels, as it directly impacts the Atlanta Streetcar's ability to provide timely and consistent service. Such point of contact shall be able to make temporary scheduling changes when appropriate, at which time MARTA shall promptly notify the Executive Director.
- (d) MARTA will be responsible for reporting all visible damage to utility entrance points and street surface to the Executive Director or their designee as soon as reasonably possible.

7.4 Clearing Blockages on the Streetcar Track. MARTA is not responsible for removing disabled or illegally parked automobiles or vehicles from the ROW where such vehicles interfere with the operations of the Atlanta Streetcar Project. MARTA shall immediately report disabled or illegally parked automobiles to the Executive Director by electronic means. The City shall take immediate action to clear the Streetcar Track so that MARTA may continue revenue service operations.

7.5 Stations, Shelters & Stops. As established in the Responsibility Matrix attached as Appendix A, the City shall be responsible for the maintenance, upkeep, cleaning, repair and renovation of all stations, shelters and stops for the Project. As indicated in the Responsibility Matrix, ADID shall not be primarily responsible for the maintenance, upkeep, cleaning, repair and renovation of stations, shelters, and stops, but shall serve to support the City's responsibilities as appropriate and as consistent with ADID's activities separate from this Agreement.

8. SAFETY & SECURITY PLANS

The City is responsible for all safety and security plans associated with the Project including, without limitation, those currently required or that may be required in the future by the US Department of Transportation, Federal Transit Administration, Georgia Department of Transportation, and local entities having jurisdiction over the Project. MARTA is responsible for complying with the requirements of all duly adopted safety and security plans in connection with MARTA's operation and maintenance of the Project. Likewise, the City and ADID shall fully comply with the requirements of all duly adopted safety and security plans in the performance of their respective responsibilities in connection with the Project.

8.1 Documents Comprising the Safety and Security Plan.

- (a) The operational safety and security requirements including the responsibilities of each party and the procedures to be employed are set forth in the following documents that are attached as appendices to this Agreement. Such documents may be revised from time-to-time and upon the effective date of any such revision, the revised documents shall be made a part of this Agreement.

- (1) Atlanta Streetcar System Safety Program Plan (SSPP)
- (2) Atlanta Streetcar System Security Plan (SSP)
- (3) Atlanta Streetcar Emergency Preparedness Plan (EPP)
- (4) City of Atlanta – Department of Public Works Right of Way Manual

- (b) Where it is deemed necessary for all or any part of the documents attached to this Agreement to remain confidential and kept from public review pursuant to O.C.G.A. § 50-18-72(25), the reference

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to the documents shall be considered sufficient for them to be included as a part of this Agreement. Each of the Parties agrees that such confidential parts of the documents shall be reviewed separately by a representative and the execution of the Agreement shall be acceptance of its terms.

8.2 Operator Access to the Safety and Security Plan. The City will provide MARTA with access to the SSPP, SSP, and EPP that have been approved as required by the Georgia Department of Transportation (GDOT). The Parties agree that these plans address key training, safety and security requirements, include accident/incident reporting, annual safety and security audit requirements, assist in accident and claims investigation, set forth the random and annual safety audits and provide for the coordination for security during special events. MARTA shall be required to comply with the SSPP, SSP, and EPP at all times, including those procedures relating to the protection of security-sensitive information in the SSP.

8.3 Updates to the Safety and Security Plan. The City will update the SSPP, SSP, and EPP annually and submit them to GDOT for approval. The approved plan will replace earlier versions and be provided to MARTA. MARTA will be responsible for supporting any safety audits of the Atlanta Streetcar's plans, including, but not limited to, GDOT's triennial audit of the SSPP, SSP, and EPP. The City and MARTA shall develop corrective action plans to respond to any noted deficiencies., provided however that MARTA consent shall not be required for it to be bound to the corrective action required by GDOT.

8.4 Obligation for Security of Patrons or Fare Enforcement. MARTA shall have no duty to provide law enforcement, security, fare enforcement, or police protection to patrons of the Project or to the physical assets of the Project. The City of Atlanta Police Department shall provide all such functions for the protection of life and property, the enforcement of laws and ordinance and the provision of emergency response services, with the exception of any mutual aid response that MARTA agrees to by separate agreement or as established in the plans attached hereto.

9. RISK MANAGEMENT

9.1 Coverage to be Maintained by the City. As owner of the Project, the City shall maintain from and after the date of this Agreement the insurance described below and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

- (a) Property Insurance: Property insurance on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage. The City may provide self-insurance in lieu of the requirements set forth in this Section.

9.2 Coverage to be Maintained by Third Party Contractor. MARTA shall cause any third party contractor operating and maintaining the Project to maintain, during the term of any agreement between such third party and MARTA. the insurance described below with insurance companies acceptable to the City and with limits and coverage provisions not less than the following limits and coverage provisions as described in the attached Exhibit 3 (THIS WILL BE IDENTICAL TO WHAT HAS BEEN APPROVED AND INCLUDED IN THE RFP)

10. FINANCE AND BUDGET

10.1 Definition of Operations and Maintenance Costs. Operations & Maintenance (O&M) costs refers to the annual cost of MARTA's work to provide the scheduled level of service identified in the

Service Plan and the work described in the Maintenance Plan, as adopted by the Management Committee for each fiscal year.

- (a) O&M costs include direct and indirect costs of staff involved in carrying out the work described in this agreement and the overhead support for that staff. In addition, materials and supplies utilized by the staff for the purpose of the Project are O&M costs.
- (b) Other costs considered to be eligible for inclusion as O&M costs are the costs associated with all state and federal compliance-related activities, insofar as such costs are directly and solely attributable to the operation and maintenance of the Project.

10.2 Reporting of O&M Costs. O&M costs shall be estimated annually for the upcoming fiscal year by MARTA, with costs for the following year identified not later than the deadlines set forth herein associated with the preparation of the Service Plan and the Maintenance Plan.

- (a) Indirect costs, including allocations from support departments or other overhead allocations should be separately reported as a part of the total O&M cost. In addition, the basis of the allocation and supporting documentation shall be made available upon request. Any changes to the methodology or overhead rates which would impact the indirect component of O&M costs shall be communicated no later than the period where the change would take effect.
- (b) To facilitate proper planning for future service and maintenance requirements and concurrent with the annual submission of the Service and Maintenance Plan, MARTA shall submit a forecast of foreseeable service and maintenance activities and costs for the next five-year period. In particular, this forecast shall include activities and costs beyond those anticipated to occur on an annual (recurring) basis.

10.3 Funding for O&M Costs. As described more fully below, O&M costs will be exclusively funded by the City and ADID. MARTA shall bear no responsibility for any such expenditures, and shall be reimbursed for all approved and reasonable expenditures and activities associated with the operation and maintenance of the Project.

- (a) The City and ADID will each contribute to O&M funding to the Project during the period of this agreement, pursuant to the provision of Section 3.13 and Section 5.07 of the Construction IGA. In no event does this Agreement obligate ADID to provide funds beyond the operational support obligation set forth in Section 5.07 of the Construction IGA.
- (b) The City shall remit to MARTA on a monthly basis, in advance, ninety percent of the amount required for the operation and maintenance of the Project as identified in the adopted Service Plan Budget and Maintenance Plan Budget. In the event emergency or other approved expenditures exceed the sum remitted to MARTA in advance, MARTA shall invoice the City for such additional costs and provide documentation therefore. The City will thereafter remit payment to MARTA in accordance with an approval process to be established by the Parties.

10.4 Compensation for Additional Work. In the event the City requests that MARTA perform additional duties not set forth in the adopted Service Plan or Maintenance Plan, the City shall fully

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compensate MARTA for the reasonable costs associated with such duties. Such compensation shall be agreed upon on a task order basis, said task order to define the scope, schedule and budget for such additional duties and any requirements for the procurement of goods or third party services in connection therewith. Until such task order is approved by both parties, MARTA shall have no responsibility to perform any duties or activities in furtherance of the Project except for those established in the duly adopted Service Plan and duly adopted Maintenance Plan.

10.5 Audits, Inspections and Reports. The City's Internal Auditor, ADID's Auditor, and their representatives may audit MARTA's records relative to the performance of this Agreement for a period of three (3) years following the completion of any fiscal year. The obligation to provide records for audit shall extend to any third party contractor performing operations and maintenance functions under contract to MARTA.

10.6 Record Retention & Open Records Requests. Records pertaining to O&M costs of the Project shall be retained by the Parties as specified by their respective record retention schedules and open records request processes, provided however that each such party shall at all times be required to keep such records in accord with applicable law and in a manner that shall comply with all federal requirements, including but not limited to USDOT and FTA requirements. All records pertaining to other aspects of the Project shall likewise be retained as specified by the Parties' respective records retention schedule, or as required by the USDOT or FTA.

The City and MARTA are subject to the requirements of the Georgia Open Records Act, O.C.G.A. §50-18-70, *et seq.*, as it may be amended from time to time. Prior to any release of records related to the Project as part of a request for public records, the Party receiving such request shall notify the other Parties of such request with sufficient promptness to allow the other Parties to assert any potential objections to unredacted disclosure of documents.

11. FARE COLLECTION AND ENFORCEMENT; LAW ENFORCEMENT

11.1 Fare Structure.

The Management Committee shall establish the fares for the Project subject to a Fare Collection and Enforcement Policy.

11.2 Police Power. The Parties acknowledge the right vested in the City pursuant to local and state law to exercise its police power for the protection of the health, safety and welfare of its constituents and their properties. Nothing in this Agreement shall be construed as precluding the City from exercising such powers in connection with the Project. MARTA shall have no duty to exercise its police power in connection with the Project during that period of time when it may be the Operator, with the exception of mutual aid response as set forth in the various plans attached to this Agreement. The assignment of this Agreement shall not supersede or otherwise affect MARTA's obligation of mutual aid response as set forth in the various plans attached to this Agreement unless specifically set forth in the Assignment Agreement.

11.3 Police/Security/Fare Evasion Enforcement.

- (a) The City will provide security for passengers on trains, at stations, and on the System at a level and using a means, that the City determines to be appropriate, and in accordance with the System Safety Program Plan, System Security Plan and Emergency Preparedness Plan. Interface between the City and MARTA, and any third party operator contracting with MARTA, regarding security procedures for the System

will be coordinated through quarterly meetings. Nothing in this Section restricts state and local police powers, as authorized by state and local laws.

- (b) The City is responsible for Atlanta Streetcar fare evasion enforcement, code enforcement, law enforcement and security for use by the City's law enforcement personnel and police officers.

12. EXTERNAL RELATIONS

12.1 Marketing/Public Relations. The City and ADID, through the Management Committee, shall be jointly responsible for maintaining any and all communications with the media regarding the Project from the Project's revenue service date.

12.2 Marketing and Advertising Programs.

- (a) As part of the annual budget process, the Management Committee shall establish marketing and advertising programs and budgets. Said budget shall be separate from the annual Service Plan Budget. All decisions as to the implementation of any Marketing and Advertising programs shall be made by the Executive Director, with review from the Management Committee, and technical support provided by the parties. Payment for any technical support provided by MARTA shall be made in accordance with the Service Plan Budget, the contractual terms of any third party contract relating to such services, or by task order.
 - (1) Marketing Program – The Marketing Program is to raise awareness of the Atlanta Streetcar, generate ridership and build community relations.
 - (2) Advertising Program – The Advertising Program specifies how advertising space on and in streetcar vehicles, at streetcar station stops, on the streetcar website, and on other identified venues, will be sold and managed. The program shall be overseen by the Management Committee.
- (b) The City and ADID may utilize or authorize the utilization of Project assets, property, rolling stock or equipment for the display of any written or printed advertising, promotional materials or public information notices, subject to review and approval by the Management Committee
- (c) During the annual budget process, the Management Committee shall establish the Marketing and Advertising programs for the year under discussion. As a part of the budget process, the parties shall establish mechanisms to implement the Marketing and Advertising Programs, such as task orders, to execute work assignments associated therewith.
- (d) If the City or ADID contracts directly with a third party to provide advertising or marketing services, MARTA shall assist in such efforts as provided in specific task orders issued to MARTA. In the absence of a negotiated task order, MARTA shall have no responsibility for the Marketing & Advertising programs.

12.3 Sponsorship Program.

- (a) At the City's sole discretion, a Sponsorship Program may be implemented for the

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purpose of receiving revenue from the sale of naming rights to station stops, streetcars or other system features. The Parties agrees that City has the sole right to sell naming rights for station stops, streetcars or other system features to third parties in order to raise sponsorship revenue and further agrees to participate as necessary in the Sponsorship Program.

- (b) Costs associated with installation, maintenance and removal of signage and restoration of the streetcar or other system asset, if needed due to the removal of signage, shall be part of the agreement negotiated with the individual sponsors and shall not be borne by MARTA or its third party contractors.
- (c) Revenue generated through the sale of sponsorships shall be the property of the City.

12.4 Interface with Regulatory and Governmental Agencies. While the City is responsible for all regulatory compliance requirements, MARTA will coordinate with and work alongside employees and representatives of the City, ADID, GDOT, FTA, other regulatory agencies, and other consultants or contractors, as required. MARTA shall confer, closely coordinate with and receive prior approval from the Management Committee before engaging in significant discussions or planning with any regulatory agencies, including, but not limited to, FTA and GDOT. MARTA shall keep the Executive Director or his designee fully apprised, both by oral notification and in writing, of any such discussions or contacts with FTA, GDOT or other regulatory personnel, within a reasonable timeframe.

12.5 Community Relations.

The Management Committee shall develop and implement Public Relations and Community Outreach Programs for the purpose of building awareness of the Atlanta Streetcar system. While the City will be responsible for development, design and publication of the materials, MARTA shall cause to be displayed or distributed the materials as directed by the City. MARTA shall participate in customer information sessions or other customer events as requested by the City.

13. TERM AND TERMINATION

13.1 Term. If not earlier terminated as provided herein, this Agreement shall have a term of five (5) years (the "Term"), to be renewed for additional terms by the consent of the Parties.

13.2 Termination. This Agreement may be terminated, in full or in part, at any time during the Term:

- (a) When the following conditions are satisfied and memorialized in a termination document specifying the obligations, rights and responsibilities of the Parties as conditions precedent and conditions subsequent to termination. Such termination document shall, at a minimum, provide for the following:
 - (1) the assignment to the City by MARTA of all interests and obligations in third party contracts for the operation and maintenance of the Project;
 - (2) the continued protection of any Federal interest in and to the assets of the Project; and
 - (3) the satisfaction or release of all obligations between MARTA and the USDOT and FTA as created by the Grant Agreement or otherwise with respect to the Project; and
 - (4) the continued operation and maintenance of the Project, including the funding sources therefore; or

- (5) in the alternative, the orderly suspension or termination of services and the disposition of assets, including the repayment of any Federal interest remaining at the time of termination.
- (b) For non-performance by MARTA of its obligations as set forth herein, including non-performance by a third-party contractor under MARTA's supervision; or
- (c) For cause, including the negligent operation of Project assets by MARTA or a third-party contractor under MARTA's supervision.

Such termination shall become effective upon the approval or concurrence of the USDOT and the FTA, as their interests may require.

14. EFFECT OF EXISTING AGREEMENTS

14.1 The Effect of Federal Transit Administration Documents and Agreements. The Grant Agreement between the City, MARTA, USDOT and the FTA is incorporated in this Agreement, as the interests of the City and MARTA may be affected thereby. The Grant Application and Appendices may be used to supplement the terms of this Agreement and further specify the obligations of the City and MARTA to each other and to the USDOT with respect to the obligations which each may have to the other under any agreement or set of agreements which are required by USDOT or FTA.

14.2 Effect of Existing Agreements. Nothing in this Agreement is intended to amend the rights and responsibilities of the Parties as previously set forth in the following documents:

- (a) the rights and responsibilities of all Parties in the Construction Intergovernmental Agreement or its amendments;
- (b) the rights and responsibilities of the City and MARTA with respect to the Rapid Transit Contract and Assistance Agreement between the City, MARTA and the counties of Fulton, DeKalb, Clayton and Gwinnett, or
- (c) the rights and responsibilities of the City and MARTA with respect to the License Agreement between MARTA and the City regarding the placement of the Traction Power Substations (TPSS) at the Peachtree Center MARTA Rail Station, or
- (d) any of the other various agreement between two or more of the Parties arising out of or relating to the Project which predate the effective date of this Agreement.

15. NOTICES

Unless otherwise specified herein, notices to any Party by any other Party required under this Agreement shall be in writing and delivered to the addresses shown below. Wherever notice is specified to be given by MARTA to the Management Committee, notice to the Executive Director, along with notice to at least one City representative and one ADID representative, shall be deemed to be sufficient notice to the Management Committee.

To the City: Executive Director of Streetcar
 City of Atlanta
 55 Trinity Avenue, S.W, Suite ____
 Atlanta, GA, 30335

With copies to:

Commissioner of Public Works
City of Atlanta
55 Trinity Avenue, S.W, Suite 4700
Atlanta, GA, 30335

City Attorney
The City of Atlanta Law Department
68 Mitchell St.
Suite 4100
Atlanta, Ga. 30303

To ADID:

President, Atlanta Downtown Improvement District, Inc.
50 Hurt Plaza
Suite 110
Atlanta, Georgia 30303-2914

With a copy to:

David C. Kirk
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, Georgia 30308
404-885-3415 – Fax 404-962-6794

To MARTA:

Keith T. Parker
General Manager/CEO
Metropolitan Atlanta Rapid Transit Authority
2424 Piedmont Road
Atlanta, Georgia 30324-3330

With a copy to:

Elizabeth M. O'Neill
Assistant General Manager of Legal Services/Chief Counsel
Metropolitan Atlanta Rapid Transit Authority
2424 Piedmont Road
Atlanta, Georgia 30324-3330

All notices, submittals or other communications shall be made to the designated representative in writing and delivered by: (a) hand delivery at the address indicated herein; (b) United States Certified Mail - return receipt requested, postage prepaid; (c) by facsimile immediately followed by a confirmation call; or (d) a nationally recognized overnight delivery service. The day upon which such notice is hand delivered or faxed and confirmed shall be deemed the date of service of such notice if delivered by such means. The date of signature on the return receipt or overnight delivery receipt or the date of refusal shall be deemed the date of service of such notice if delivered by United States Certified Mail or overnight delivery service. Any Party may change its designated representative by notice to the other Parties as provided herein or may name other persons as sub-designees for the receipt of specific types of materials, such as engineering plans, or other voluminous documents, provided however that the designated representative shall always receive a simultaneous notice describing the type material which is sent to any sub-designee.

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16. General Provisions

- (a) The brief headings or titles preceding each paragraph are for purposes of identification, convenience and ease of reference, and shall be disregarded in the construction of this Agreement.
- (b) No failure of any Party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by any other Party with this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of any Party's right to strict compliance by any other Party hereto with the terms and conditions of this Agreement.
- (c) This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia. The Parties agree that this Agreement shall be enforceable in Fulton County, Georgia, and if legal action is necessary to enforce it, exclusive venue shall lie in the Superior Court of Fulton County, Georgia.
- (d) Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the Parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and 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.
- (e) The termination of this Agreement shall not operate to cut off any claims or uses of action in favor of any Party which occurred or arose prior to the effective date of such termination.
- (f) No term of the Agreement is to be construed for or against any Party because of that Party's role in the drafting of such term.
- (g) Time is of the essence of this Agreement.
- (h) This Agreement may be executed in multiple counterparts and the executed counterparts taken together shall constitute this Agreement.
- (i) This Agreement supersedes all prior negotiations, discussions, statements and agreements and constitutes the full, complete and entire agreement between the Parties with respect to the terms of the Agreement; no member, officer, employee, representative or agent of any Party has 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 Agreement. No modification of or amendment to this Agreement, except with respect to a modification that is specifically identified herein shall be binding on any Party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by all Parties and incorporated in and by reference made a part hereof.

IN WITNESS WHEREOF, the Parties hereto have caused their authorized representative to execute this Agreement in counterparts, each of which is to be considered as an original: