

CITY OF ATLANTA
HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT

CONTRACT

PROJECT NUMBER FC-6311-C

MANAGING GENERAL CONTRACTOR SERVICES



KASIM REED

MAYOR

CITY OF ATLANTA

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AGREEMENT

This **CONTRACT NO. FC-6311-C; MANAGING GENERAL CONTRACTOR SERVICES** ("Contract") between City of Atlanta ("City") and Manhattan/RFB, A Joint Venture comprised of Manhattan Construction Company and RFB Construction, LLC ("Contractor") is entered into effective February 10, 2014, 2013 ("Effective Date"). This Contract is authorized by Resolution attached as Exhibit A adopted by City effective November 04, 2013.

ARTICLE 1
THE CONSTRUCTION TEAM, INTENT AND EXTENT OF AGREEMENT

1.1 The Intent of the Agreement.

- 1.1.1 Contractor accepts the relationship of trust and confidence established between it and City by this Contract. Contractor covenants with City to furnish its best skill and judgment and to cooperate with City. Contractor agrees to furnish efficient business administration and superintendence and to complete any Projects assigned to it by Task Order under this Contract in the most efficient, expeditious and economical manner consistent with the Contract Documents and the interests of City.
- 1.1.2 For any Project assigned to it under this Contract, Contractor may be issued a Task Order that describes the scope of Work to be performed by Contractor, the delivery method to be used and the method of payment. The Task Order may direct Contractor to perform the work using the design-build method, the construction manager at risk delivery method, the design-bid-build method or any other industry accepted delivery method. Contractor may be compensated on a cost of Work plus a fee basis, unit price basis, lump sum basis or a combination of any of these bases. A Task Order will, to the extent available, contain the drawings, specifications, and other documents necessary to describe the work to be performed. The Task Order will contain the date by which the work must be completed or a performance period (which may include milestones) during which the Work must be commenced and completed.
- 1.1.3 Contractor acknowledges and agrees that for any Services provided under this Contract, Contractor is bound by the terms and conditions contained herein as well as by any Task Order issued under the Contract. Contractor further acknowledges and agrees a Task Order issued under the Contract may contain Project specific terms and conditions pursuant to which the work will be performed.

1.1.4 By executing this Contract, City is not guaranteeing that it will issue a Task Order to Contractor. Whether Contractor is issued a Task Order is at the sole and complete discretion of City.

1.2 Term.

1.2.1 Initial Term. The initial Term of this Contract is 3 years. This initial term of the Contract and any renewal term(s) are collectively referred to as the "Term". Any Task Order issued under this Contract may have a performance period that extends beyond the applicable expiration date of this Contract. Contractor is bound to complete all work under the Task Order as long as such Task Order was issued prior to that expiration date of the Contract.

1.2.2 Renewal Terms. City shall have the right, in its sole discretion, to renew this Contract for 1 additional 2 year term according to the following procedure:

1.2.2.1 If City desires to exercise its option to renew, it will submit legislation authorizing such renewal for consideration by City's Council and Mayor prior to the expiration of the initial Term of this Contract. The legislation will establish that the date of such renewal will be the day immediately following the expiration day of the Initial Term;

1.2.2.2 If such legislation is enacted, within 10 days of such enactment, City will notify Contractor in writing of such renewal, at which time Contractor shall be bound to perform under the Contract during such renewal Term, without the need for the Parties to execute any further documents evidencing such renewal, it being acknowledged by Contractor that its initial execution of this Contract is deemed its agreement to continue to perform the Services under it during any renewal Term.

**ARTICLE 2
CONTRACTOR'S SERVICES**

2.1 Harmony. Contractor agrees that it will exert every reasonable and diligent effort to assure that all labor employed by Contractor and its Subcontractors/Suppliers for the Work on any Task Order shall work in harmony with and be compatible with all other labor being used by other contractors now or in the future on the site of the Project. Contractor further agrees that this provision will be included in all Subcontracts/Supply Agreements.

2.2 Task Orders. The services that Contractor will provide for a particular Project will be defined in the Task Order issued to Contractor for that Project.

- 2.3 **Bonds.** If Contractor is issued a Task Order, Contractor shall provide Bonds to City, on forms furnished by City, which are attached collectively as **Exhibit C**, each in an amount equal to 100 percent of the amount of the applicable Task Order. Contractor is required to provide such Bonds at the time the Contractor presents the Task Order to the City for execution. The Bonds must be issued according to the requirements set forth in **Exhibit D**.
- 2.4 **Office of Contract Compliance Requirements.** If Contractor is issued a Task Order, Contractor shall comply with the applicable requirements set forth in **Appendix A**.
- 2.5 **Insurance.** If Contractor is issued a Task Order, Contractor shall provide insurance in accordance with **Exhibit D**.
- 2.6 **Construction Health and Safety Plan.** If Contractor is issued a Task Order, Contractor shall comply with the requirements of City's Health and Safety Requirements attached hereto as **Exhibit D**.
- 2.7 **General and Special Conditions.** The Work shall be performed in accordance with the General Conditions which are attached hereto as **Exhibit G**. Special Conditions will be included in each Task Order, as needed.

ARTICLE 3 TASK ORDER PROPOSALS

- 3.1 **Bidding:** Appropriate solicitation documentation will be prepared by City for projects anticipated to be awarded pursuant to this Contract and competitively bid amongst a selected number of the Managing General Contractors (MGC) at the City's sole discretion. However, the City reserves the right to seek a Task Order proposal from a single MGC. Contractor(s) are required to submit a valid and realistic proposal responding to any solicitation document issued to Contractor by City.
- 3.2 **Award:** The selected MGCs will develop a Task Order proposal using the delivery method and compensation basis directed by City for the Project based on the requirements and criteria set forth in the solicitation document. The City will award a Task Order to the most responsible and responsive MGC in accordance with the criteria established in the City of Atlanta Procurement and Real Estate Code Section 2-1188(k).
- 3.3 **Submittal Requirements:** Submittal requirements will be established on a Task Order by Task Order basis, however, in all cases Contractor is required to submit a separate General Conditions line item. The General Conditions submittal must include supporting documentation identifying Contractor proposed personnel, role, duration, and fully burdened hourly rate all of which are subject to negotiation. Fully burdened hourly rates may be adjusted annually based upon the ongoing Consumer Price Index (CPI) with the City of Atlanta's (COA) approval. The contractor must provide a detailed explanation justifying the increase including a spreadsheet of specific personnel,

current rate, proposed rate, and other information as needed by the COA. Contractor acknowledges that personnel direct hourly rates are subject to validation by the City requiring certified pay roll submittals. Other General Conditions costs must be itemized including, as applicable, number of units, cost, and duration and cannot be submitted as lump sum items.

3.4 **Contractors Fee.** The Contractor's Fee (profit) for any Work awarded to Contractor under this Contract is established at seven and one-half (7-1/2%) percent and applicable in accordance with Article 6 of this Contract.

3.5 **Delivery Methods and Compensation Basis.**

3.5.1 Delivery methods that the City may elect to use are traditional design-bid-build, design-build, construction management at risk, or some combination thereof.

3.5.2 Compensation basis can be lump sum, unit price, guaranteed maximum price or some combination thereof.

3.5.2.1 **Lump Sum.** If the compensation method is lump sum, the pricing proposal shall include a tabulation of the MGC pricing in accordance with the City's required pricing format. MGC is required to submit a tabulation of all subcontractor bids received as well as the MGC's recommendation concerning award of subcontract(s). In addition the MGC must certify in writing that the MGC has reviewed the bids and that the recommended subcontractor(s) General Conditions costs and fees in combination do not exceed twenty (20%) percent of the subcontractor bid.

3.5.2.2 **Unit Price.** If the compensation method is based on unit prices, Contractor shall provide unit prices based upon the estimated quantities provided by City and in accordance with the City's required pricing format. Unit prices are subject to negotiation and will be compared against the Department of Aviations historical cost data base.

3.5.2.3 **Guaranteed Maximum Price (GMP).** If the compensation method is a guaranteed maximum price, the contractor shall be compensated for actual costs incurred plus a fixed fee subject to a ceiling price. The contractor is responsible for cost overruns, unless the GMP has been increased via formal change order (only as a result of additional scope from the client, not price overruns, errors, or omissions). Savings resulting from cost under-runs are returned to the City. The City may elect to share savings based on an incentive clause in the solicitation document. MGC is required to submit with it's GMP proposal the direct cost report or estimate that forms the basis of the GMP proposal.

- 3.6 **Reject Task Order Proposal.** If City rejects a Task Order Proposal, the Proposal shall be deemed withdrawn and of no effect.
- 3.7 **Modify Task Order Proposal.** City may issue revisions to the design, the specifications or other aspects of the project and require a modification of the Task Order Proposal for the City's consideration.
- 3.8 **Remove a Project from Consideration.** City may remove the Project from consideration for award to an MGC and construct the Project using another MGC or procure the services of another individual or entity through a competitive procurement authorized by City's Procurement and Real Estate Code or any other method of procurement authorized by Applicable Law.
- 3.9 **Performance.** The City reserves the right not to award a Task Order to an MGC who has failed to perform satisfactorily on previous Task Orders or Department of Aviation Contracts in accordance with Code Section 2-1188(k) 4.
- 3.10 **Work Distribution:** The City is not required to equitably distribute work amongst the selected successful MGCs.

ARTICLE 4 SUBCONTRACTS

- 4.1 **Goods and Services.** Contractor will procure goods and services for each Task Order in accordance with Contractor's accepted Procurement Plan and Equal Business Opportunity Plan which shall be submitted by Contractor and attached to this Agreement as Exhibit E when approved by City. To the extent possible, Contractor will procure the goods and services in an open competition, public invitation to bid manner, published in electronic and/or print media. Contractor must document its good faith outreach efforts in identifying opportunities for Subcontractors and Suppliers to provide goods and services to Contractor.
- 4.2 **Open Competition.** In the event that the complexity of the Project, schedule requirements or other extenuating circumstances preclude open competition, Contractor may utilize a limited competition solicitation for Subcontractors and Suppliers to provide goods and services to Contractor in accordance with the following:
- 4.2.1 Contractor must identify a minimum of three qualified Subcontractors or Suppliers that have the expertise to complete the Work, or any portion of it, in accordance with the performance requirements of this Contract and associated Project documents.
- 4.2.2 Contractor must provide a list of the qualified Subcontractors or Suppliers to City for review and approval. City will review the list and advise Contractor

whether any Subcontractor or Supplier should be deleted because, in City's opinion, the Subcontractor or Supplier does not possess the necessary qualifications to complete the Work in accordance with the performance requirements of this Contract and associated Project documents.

4.2.3 Once the Subcontractors and Suppliers are identified and finalized between Contractor and City, Contractor must issue a Request for Proposals/Bid and solicit from the Subcontractors and Suppliers competitive proposals/bids for the Work, or any portion of it, as required to meet the schedule and budget requirements for the Project.

4.3 **Subcontractor Selection.** If the Contractor bids the Work prior to submitting the Task Order proposal, the Contractor must include a tabulation of all bids received as well as a written recommendation for award of the Work. If the Work is not bid prior to the submission of a Task Order proposal, Contractor must submit a tabulation of all bids received and a written recommendation prior to awarding the Subcontract or Supply Agreement within five (5) business days of the receipt of bids/proposals. City may reasonably reject recommended Subcontractors or Suppliers, in which event, Contractor shall recommend another Subcontractor or Supplier.

4.4 **Equipment.** Individual purchases of materials or leases of equipment amounting to less than \$1,000 each may be made without competitive selection when reasonably necessary to expedite the Work on the Project; however, Contractor shall not divide or separate a procurement in order to avoid the competitive requirements of in this Contract.

4.5 **Site Utilities.** Site utilities may be acquired at market rates from the entity (ies) providing such in the area.

4.6 **Limits on Self-Performed Work.** Contractor shall perform all trade Work using Subcontractors and not self-perform the Work, unless authorized by City in writing.

**ARTICLE 5
SCHEDULE, TIME OF COMMENCEMENT,
AND SUBSTANTIAL COMPLETION**

5.1 **General.** If City requests Contractor to submit a Task Order Proposal, it must include a Schedule, including the required date(s) for Substantial Completion, Final Completion and City occupancy. Contractor agrees to complete the construction of the Project set forth in the applicable Task Order in accordance with the agreed upon Substantial Completion date, Final Completion date and City occupancy date. Contractor acknowledges that failure to complete the Task Order Work within the times set forth in the approved schedule and applicable Task Order shall result in substantial damages to City sufficient to justify the imposition of liquidated damages. The amount of liquidated damages for a specific Project will be set forth in the applicable Task Order.

**ARTICLE 6
COST OF THE WORK**

- 6.1 **General.** Unless otherwise set forth in a Task Order, the term "Cost of the Work" shall include the items set forth in this Article. Such costs shall be at rates no higher than the standard rates paid at the place of the Project, except with prior consent of City. The Cost of the Work may include only the items set forth in the Clauses 6.2 through 6.7 below entitled "Labor Costs", "Subcontract Costs", "Costs of Material and Equipment Incorporated in the Completed Construction", "Costs of Other Materials and Equipment, Temporary Facilities and Related Items", "Miscellaneous Costs on which Contractor's Fee Shall Not Apply" and "Other Costs and Emergencies".
- 6.2 **Labor Costs.**
- 6.2.1 Wages of laborers and mechanics directly employed by Contractor to perform the construction of the Work at the site or, with City's approval, at off-site workshops. When requested by City, Contractor shall submit certified payroll cost accounting records with the initial Application for Payment.
- 6.2.2 Wages or salaries of Contractor's supervisory and administrative personnel when stationed at the site with City's approval. Supervisory and administrative personnel costs to be reimbursed in the performance of the Work shall include actual hourly rates times a negotiated burden rate supported by certified payroll. When requested by City, Contractor shall submit cost accounting records and certified payroll records with the initial Application for Payment. Contractor's personnel hourly rates and accepted burden rates shall be submitted by Contractor and attached as **Exhibit F** when approved by City.
- 6.2.3 Wages and salaries of Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, with City's approval, but only for that portion of their time required for the Work. When requested by City, CONTRACTOR shall submit certified payroll cost accounting records with its initial Application for Payment.
- 6.2.4 Costs paid or incurred by Contractor as apportioned to the Project Work for taxes, insurance, contributions, assessments and benefits required by Applicable Law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in Subsection (1) of the Clause entitled "Labor Costs".
- 6.2.5 All premium pay (overtime) work must be authorized in writing by City prior to proceeding.

6.3 **Subcontract Costs.** Payments made by Contractor to Subcontractors in accordance with the requirements of the Subcontracts and provisions of this Contract. A Subcontract may be a Lump Sum Agreement or reimbursement of reasonable and approved costs, plus specified rates for all fees, overhead and profit. The total for fees and general condition costs shall not collectively exceed twenty percent (20%), unless otherwise approved by City. All Subcontracts must be approved by City prior to proceeding. When requested by City, all Subcontractors must submit cost accounting records and certified payroll with the initial Application for Payment for reimbursement Subcontracts.

6.4 **Costs of Materials and Equipment Incorporated in the Completed Construction.**

6.4.1 Costs including transportation and storage at the site of materials and equipment incorporated, or to be incorporated, in the completed construction.

6.4.2 Costs of materials described in the preceding Subsection (1) in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become City's property at the completion of the Work or, at City's option, shall be sold by Contractor. Any amounts realized from such sales shall be credited to City as a deduction from the Cost of the Work.

6.5 **Costs of Other Materials and Equipment, Temporary Facilities and Related Items.**

6.5.1 Costs, including transportation and installation, maintenance, dismantling and removal of materials, supplies, machinery, and equipment, that are provided by Contractor at the site and fully consumed in the performance of the Work; and costs (less salvage value) of such items if not fully consumed, whether sold to others or retained by Contractor. Cost for items previously used by Contractor shall mean current market value. Hand tools not customarily owned by construction workers will be paid at the rate of One Dollar Fifty-Five cents (\$1.55) per man-hour of non-salaried employees. The rate includes replacement cost of parts consumed in the normal course of Work for Project related scope.

6.5.2 Fair market rental charges at the most cost effective rates as established by Construction Kelly Bluebook for machinery, equipment, and hand tools not customarily owned by construction workers that are provided by Contractor at the site, whether rented from Contractor or others, and costs of their transportation, installation, minor repairs and replacements, dismantling and removal thereof. Quantities of equipment to be rented shall be submitted to City for prior approval.

6.5.3 Costs of removal and disposal of debris from the site. All disposals shall be to an approved disposal site.

- 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the Jobsite and reasonable petty cash expenses of the Jobsite office. All costs are subject to City's approval.
- 6.5.5 That portion of the reasonable expenses of Contractor's personnel incurred while traveling in discharge of duties connected with the Work. The maximum rate allowable for vehicle usage is the most cost effective rate established by Construction Kelly Bluebook.
- 6.5.6 Costs of materials and equipment stored off-site at a mutually acceptable location, if approved in writing in advance by City.

6.6 **Miscellaneous Costs on which Contractor's Fee shall not apply.**

- 6.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract.
- 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which Contractor is liable.
- 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections Contractor is required by the Contract Documents to pay.
- 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded and which do not fall within the scope of Section (3) of the Clause entitled "Other Costs and Emergencies".
- 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against Contractor resulting from such suits or claims and payments of settlements made with City's consent. Such costs of legal defenses, judgments and settlements shall not be included in the calculation of Contractor's Fee; however, if such royalties, fees and costs are excluded by other provisions of the Contract Documents, they shall not be included in the Cost of the Work.
- 6.6.6 Deposits lost for causes other than Contractor's negligence or failure to fulfill a specific responsibility to City as set forth in the Contract Documents.
- 6.6.7 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between City and Contractor, reasonably incurred by Contractor in the performance of the Work and with City's prior written approval, which shall not be unreasonably withheld.

6.6.8 Expenses incurred in accordance with Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved in writing in advance by City.

6.7 **Other Costs and Emergencies.**

6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by City.

6.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by Contractor, Subcontractors or Suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of Contractor and only to the extent that the cost of repair or correction is not recovered by Contractor from insurance, sureties, Subcontractors or suppliers.

6.8 **Non-Reimbursable Items**

The following costs shall not be reimbursed to Contractor and are not included in Cost of the Work:

6.8.1 Salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or offices other than the site office, except as specifically provided in the Clause entitled "Labor Costs".

6.8.2 Expenses of Contractor's principal office and offices other than the site office.

6.8.3 Home office overhead and general expenses.

6.8.4 Contractor's capital expenses, including interest on Contractor's capital employed for the Work.

6.8.5 Rental costs of machinery and equipment, except as specifically provided in the Clauses entitled "Labor Costs", "Subcontract Costs", "Costs of Material and Equipment Incorporated in the Completed Construction", "Costs of Other Materials and Equipment, Temporary Facilities and Related Items", "Miscellaneous Costs on Which Contractor's Fee Shall Not Apply" and "Other Costs and Emergencies".

6.8.6 Except as provided in the Clauses entitled "Labor Costs", "Subcontract Costs", "Costs of Material and Equipment Incorporated in the Completed

Construction”, “Costs of Other Materials and Equipment, Temporary Facilities and Related Items”, “Miscellaneous Costs on Which Contractor’s Fee Shall Not Apply” and “Other Costs and Emergencies”, costs due to the negligence or failure to fulfill a specific responsibility of Contractor, Subcontractor and Suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

6.8.7 Any cost not specifically and expressly described in the Clauses entitled “Labor Costs”, “Subcontract Costs”, “Costs of Material and Equipment Incorporated in the Completed Construction”, “Costs of Other Materials and Equipment, Temporary Facilities and Related Items”, “Miscellaneous Costs on Which Contractor’s Fee Shall Not Apply” and “Other Costs and Emergencies”.

ARTICLE 7 DISCOUNTS AND PENALTIES

7.1 **General.** All discounts for prompt payment shall accrue to City to the extent the Cost of the Work is paid directly by City or from a fund made available by City to Contractor for such payments. To the extent the Cost of the Work is paid with funds of Contractor, all cash discounts shall accrue to Contractor. All trade discounts, rebates, refunds, and all returns from sales of surplus materials and equipment, shall be credited to the Cost of the Work. All penalties incurred due to Contractor’s fault for late payments of Cost of the Work will be paid by Contractor.

ARTICLE 8 PAYMENTS TO CONTRACTOR

8.1 **Invoices.** Invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit, as well as at any intervals determined by City during the course of the Project. Invoices for any travel expenses permitted under this Contract shall be submitted in accordance with procedures specified by City.

8.2 **Monthly Applications for Payment.** Contractor shall submit on a monthly basis to City a sworn Application for Payment, along with cost reports, showing in detail the percent of Work completed, and if a GMP, all monies paid out, costs accumulated, or costs incurred on account of the Cost of the Work during the previous month.

8.3 **Final Payment.** Final Payment for a Task Order, constituting the unpaid balance of the Task Order’s lump sum amount or the Cost of the Work and applicable Fee, shall be due and payable in accordance with the Clause entitled “Payment Terms”.

8.4 **Payments to Subcontractors.** Contractor shall pay promptly, within five (5) business days after receipt of payment from City, all amounts due Subcontractors less a retainage of ten percent (10%) of the amounts due under the Subcontract. At the Owner’s discretion, once a Project is fifty percent (50%) complete, and based on

Contractor's evaluation of the Subcontractor's acceptable performance, City may approve a reduction in retainage on future amounts earned from ten percent (10%) to five percent (5%), providing for retainage of approximately seven and one-half percent (7-1/2%) at Substantial Completion. Once a Subcontractor claims to have fully and satisfactorily completed its Work, Contractor and Architect or Engineer shall inspect the Work and list those items required for completion. At that time and at City's discretion, Contractor may release the Retainage held for the Subcontractor's Work except for an amount equal to two hundred percent (200%) of the estimated cost of completing or correcting any unfinished or non-conforming items, provided that the unfinished or non-conforming items and cost of completing them are listed separately. Thereafter, Contractor shall pay to the Subcontractor, monthly, the amount retained for each incomplete item after each item is completed. Before issuance of final payment to the Subcontractor without any retainage, the Subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project and the Subcontract have been paid or otherwise satisfied, warranty information is complete, "As-Built" markups have been submitted, and instructions for City's operating and maintenance personnel is complete. Final Payment may be made to a Subcontractor whose Work is satisfactorily completed prior to the Project's Final Completion, but only upon City prior written approval. When requested by Contractor and approved by City, the requirement to withhold retainage on subcontractors may be waived.

8.5 **Payments for Materials and Equipment.** Payments will be made for material and equipment not incorporated in the Work but delivered and suitably stored at the site or another location subject to prior written approval and acceptance by City on each occasion.

8.6 **Withholding Payments to Subcontractors.** Contractor shall not withhold payments to Subcontractors if such payments have been made to Contractor. Should this occur for any reason, Contractor shall immediately return such monies to City, adjusting Applications for Payment and Project bookkeeping as required.

8.7 **Payment Terms.**

8.7.1 Unless otherwise provided in a Task Order, on or before the twenty-fifth (25th) day of each month, Contractor shall prepare and submit to City for its review and approval an Application for Payment in accordance with the requirements of the Task Order. Within fourteen (14) days of City's timely receipt of an Application for Payment from Contractor, City shall approve payment of it or notify Contractor in writing of its reasons for withholding approval. City may withhold payment on account of Contractor's failure to provide information it is required to provide, or on account of any ground, which permits the withholding of payments under this Contract. City shall not withhold payment of undisputed amounts owed.

- 8.7.2 Subject to its right to withhold payments under this Contract or Applicable Law, City shall pay to Contractor the approved amount of any Application for Payment. All Applications for Payment shall be subject to adjustment on account of any prior overpayments.
- 8.7.3 City is entitled to retain from interim payments made pursuant to this Article the amount of ten percent (10%) of the amounts properly billed by Contractor as Retainage. Once the Project reaches fifty percent (50%) completion, City, at its sole discretion, may reduce Retainage on subsequent self-performed work, general conditions and Contractor's Fee to five percent (5%) of the Cost of the Work. Retainage on Work performed by Subcontractors shall be in accordance with the Clause entitled "Payments to Subcontractors". Therefore, the Retainage at Substantial Completion may be approximately seven and one-half (7-1/2%). At City's sole discretion, it may reinstate Retainage of ten percent (10%) if it believes it is necessary to protect its rights. At City's sole discretion, prior to Final Completion of the Project, upon request of Contractor, City may release the Retainage being withheld for a Subcontractor's or Supplier's work when all of that Subcontractor's or Supplier's work has been satisfactorily performed and City has determined that the release of the Retainage would not be detrimental to the Project.
- 8.7.4 Upon (1) City's issuance of a Certificate of Substantial Completion for a Project; (2) a proper submission of an Application for Payment by Contractor (including but not limited to properly executed waivers and releases from Contractor and all Subcontractors and Suppliers in the forms approved by City and included in the Project Manual); (3) satisfactory evidence that all payrolls, Subcontractors, Suppliers, material bills and other indebtedness connected to the Project have been paid or otherwise satisfied; (4) all warranties are in place and the information to be provided to City has been provided; (5) all required instructions and training of City's operating and maintenance personnel is complete; and (6) all "As-Built" markups have been submitted to City, City shall pay to Contractor an amount (including any retained amounts) equal to the sum of the unpaid balance owed Contractor as Cost of the Work, so long as the sum of such Cost of the Work does not exceed the GMP for the Project, less (i) an amount equal to two hundred percent (200%) of the estimated cost of completing or correcting any unfinished or non-conforming work ("Final Payment Retainage"); (ii) an amount sufficient to pay all unpaid claims against Contractor as may be provided by the Contract Documents or by Applicable Law; (iii) an amount equal to all liquidated damages due but not recovered from Contractor; and (iv) an amount equal to any claims against City or its property for any labor, materials, supplies, services, or equipment claimed to have been furnished to or incorporated into the Project, or for any other alleged contribution to such amounts, unless and until such has been discharged. Notwithstanding the foregoing, City may withhold any amounts otherwise payable under this Article if grounds exist for such withholding under any provision of this Contract, Applicable Law or equity.

If City is withholding Final Payment Retainage, Contractor, City and the Architect or Engineer shall list those incomplete or non-conforming items prior to receiving Final Payment, and the items and costs of completing or correcting shall be listed separately. Thereafter, City shall pay to Contractor, monthly, the amount retained for each incomplete item after each is completed by it. City will provide seven (7) days prior written notice if City contends that Contractor has failed to promptly correct any deficiency. If after seven (7) days Contractor has failed to correct the deficiency or complete the item, Contractor waives its rights to payment for such items and will be responsible to City for all costs incurred to correct or complete such item.

- 8.7.5 Contractor's acceptance of Final Payment for all of the Work shall constitute a waiver of all claims by Contractor with respect to the Project not expressly reserved by Contractor in its Application for Payment for the Final Payment.
- 8.7.6 This Contract does not create any contractual relationship between City and any Subcontractor or Supplier under contract with Contractor, or any duty by City to any such Subcontractor or Supplier. City shall have no obligation to pay or to see that payment of money owed to Subcontractors or Suppliers is made by Contractor.
- 8.7.7 In addition to other grounds set forth in this Contract, City may withhold the whole or part of any payment due Contractor to such extent necessary to protect City from loss on account of any of the following circumstances (regardless of when discovered):
- (a) Defective work not remedied.
 - (b) Claims filed or reasonable evidence indicating probable filing of claims.
 - (c) Failure of Contractor to make payments properly to Subcontractors or Suppliers.
 - (d) A reasonable doubt that the Project can be completed for the balance then unpaid under the GMP.
 - (e) Damage to another Contractor or to some third party.
 - (f) Failure to maintain an adequate rate of progress in accordance with the Project Schedule.
 - (g) Failure to supply enough skilled workmen or proper materials.
 - (h) Any material breach of this Contract.
 - (i) Any material failure to perform under this Contract.
 - (j) Any failure to provide information required to be provided by Contractor to City.

When any ground for non-payment by City is removed, payment shall be made for amounts withheld. No omission on the part of City to exercise the option to withhold payment shall be construed to be a waiver of any breach or

acquiescence to it, and City may exercise this option from time to time and as often as may be necessary.

8.7.8 By paying Contractor's Application for Payment or by making any other payments to Contractor (including the final payment of retainage), City shall not be deemed to have examined, inspected or reviewed in any way the quality or quantity of the Work or to have reviewed the construction means, methods, techniques, sequences or procedures, or to have made any examination to ascertain how or for what purpose Contractor has used the monies previously paid.

8.7.9 Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to City either by incorporation in the construction or upon the receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by Contractor, or by any other person performing work at the site or furnishing materials and equipment for the Project.

8.7.10 If City shall determine, by audit or otherwise, that it has made an overpayment to Contractor on the Contract and it makes written demand for repayment of the overpayment, Contractor shall, within five (5) days of receipt of such written demand for repayment, tender the amount of such overpayment to City or otherwise resolve the demand for repayment to City's satisfaction. At all times during the term of this Contract and for a period of six (6) years after the final acceptance of all of the Work, by City, or, if there is no such final acceptance, for six (6) years from the termination of this Contract, Contractor shall afford City, its auditors or its other authorized representatives access at reasonable times to any books, work papers, estimates, Subcontractor/Suppliers files, and accounting records of Contractor relative to the Work in order to verify compliance by Contractor with the Contract.

8.8 **Deductive Change Order for Contractor Liabilities** - If City incurs an actual loss or liability resulting from events stated in Subsection (7) of the Clause entitled "Payment Terms", in addition to withholding payment, City may issue a Unilateral Change Order reducing the lump sum amount or GMP by the amount of such loss or liability.

ARTICLE 9

TERMINATION OR SUSPENSION OF THE CONTRACT AND CITY'S RIGHT TO PERFORM CONTRACTOR'S OBLIGATIONS

9.1 **Termination by Contractor.** If the Project is stopped for a period of 90 days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of Contractor, Contractor may terminate the applicable Task Order upon seven (7) days prior written notice to City.

9.2 **Termination by the City for Convenience or for Default.** (See General Conditions)

9.4 **Suspension by City.** (See General Conditions)

ARTICLE 10

NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY

10.1 **General.** City's liability to Contractor for any claims or disputes arising out of or related to the subject matter of this Contract or any Task Order issued under it, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by City of the costs, damages, or losses because of changed conditions under which the Work was performed, for additional Work, or for any matter between the parties, including allegations of breach of contract, shall be governed by this Contract and the applicable Task Order.

ARTICLE 12

MISCELLANEOUS

12.1 **Contractor's Project Records.** Contractor's Project records shall be maintained in accordance with this Contract and shall be made available to City at all times.

12.2 **Electronic Mail Capabilities.** Contractor must have electronic mail capabilities through the World Wide Web. It is the intention of City to use electronic communication whenever possible. Contractor shall provide its electronic mail address and the name of a contact person responsible for its electronic communications prior to the issuance of any Task Order for a Project, which information will be included in the Task Order.

12.3 **Audits, Inspections and Testing.** Contractor shall permit (after notice and at reasonable times) audits, inspections, and testing desired by City relating to any matter which is the subject of this Contract. Such audits, inspections, and testing shall not relieve Contractor of any of its obligations under this Contract.

12.4 **Participation in Other Proceedings.** At City's request, Contractor shall allow itself to be joined as a party in any legal proceeding that involves City regarding the design, construction, installation, operation, or maintenance of any Project that is the subject of this Contract. This provision is for the benefit of City and not for the benefit of any other party.

12.5 **No Waiver.** The failure of Contractor or City to insist upon the strict performance of the terms and conditions of this Contract shall not constitute or be construed as a waiver or relinquishment of any other provision or of either Party's right to later enforce the provision in accordance with this Contract in the event of a continuing or subsequent default on the part of Contractor or City.

12.6 **Trade Secrets and Confidential Information.** Contractor acknowledges and agrees that: (i) all Construction Documents and other plans, data, documentation and information which Contractor may obtain from City, from the Architect or Engineer, or from City's, employees or consultants or agents, or on City's premises, with respect to the Work, City's inventions, designs, improvements, trade secrets and other private matters, whether or not patentable, trademarkable or copyrightable, and all work product and other information resulting from Contractor's services, which are not generally publicly known (collectively, the "Trade Secrets") are the trade secret property of City and may be classified as Sensitive Security Information pursuant to 49 CFR § 1520.7; and (ii) all of City's information, plans, processes, methods, techniques and other intellectual properties of value to City, whether or not patentable, trademarkable or copyrightable (collectively, the "Confidential Information") are, together with the Trade Secrets, owned, as between Contractor and City, exclusively by City. The terms "Trade Secrets" and "Confidential Information" do not include information that City identifies in writing as not confidential, that rightly is or becomes publicly known, or that Contractor otherwise knows or receives without obligation of confidence.

Contractor further acknowledges and agrees that the Trade Secrets and Confidential Information represent a substantial investment by City, and shall, until Substantial Completion of all of the Work under this Contract and for a period of three (3) years after expiration of this Contract or the last Task Order issued under this Contract, whichever later occurs, or longer if required by Applicable Law, for all purposes be regarded by Contractor and its employees, agents and consultants as strictly confidential and trade secret properties of City, whether or not all or any portion of such Trade Secrets or Confidential Information is or may be validly copyrighted or patented. Contractor also acknowledges and agrees that any disclosure or use of such Trade Secrets or Confidential Information, except as otherwise authorized by City in writing, or any other violation of the confidentiality provisions of this Contract, would be wrongful and cause immediate and irreparable injury to City.







Contractor agrees to exercise its best efforts to insure the continued confidentiality and exclusive ownership by City of all Trade Secrets, Confidential Information and all of City's proprietary information known, disclosed or made available to it, or to any of its employees or agents or consultants, as a result of this Contract or its relationship with City. Except as required in performance of the Work pursuant to the terms and conditions of this Contract and any Task Order issued under it, neither Contractor nor its employees or agents or consultants or Subcontractors or Suppliers shall, until the termination or expiration of this Contract or the last Task Order issued under it, whichever later occurs and for a period of three (3) years thereafter, or longer if required by Applicable Law, without the express prior written consent of City, redistribute, market, publish, disclose or divulge to any other person, firm or corporation, or use or modify for use, directly or indirectly in any way for anyone, any Trade Secrets or Confidential Information of City. Contractor further agrees to cooperate with City's reasonable confidentiality and other requirements which may be

established from time to time, and immediately notify City of any unauthorized disclosure or use of any Trade Secrets or Confidential Information of which Contractor becomes aware or should, by reasonable diligence, be aware.


Contractor shall have the right to disclose: (i) for purposes of soliciting bids from Subcontractors or Suppliers, Contract Documents that normally are disclosed for bidding purposes; and (ii) Trade Secrets or Confidential Information pursuant to the order of a governmental authority or court having appropriate jurisdiction, provided that in the event of such an order, City shall be notified and provided with a copy of the order at least five (5) days prior to Contractor's disclosure of information pursuant to the order.

All work product of Contractor, its agents, employees, Subcontractors or Suppliers performed pursuant to this Contract (collectively, the "Work Product") shall be deemed, to the greatest extent possible, "works made for hire" (as defined in the Copyright Act, as amended 17 U.S.C.A. § 101 et seq.) and owned exclusively by City. Contractor unconditionally and irrevocably transfers and assigns to City all right, title and interest in and to any Work Product, including, without limitation, all patents, copyrights, trademarks, service marks and other intellectual property rights, upon payment to Contractor of amounts owed under this Contract. Contractor agrees to execute and deliver, and cause his employees and agents and all Subcontractors and Suppliers to execute and deliver, to City any transfers, assignments, documents or other instruments which City may deem necessary or appropriate to vest complete title and ownership of any Work Product, and all rights in it, exclusively in City.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Contract on the respective dates under each signature. This Contract is executed under seal.

CITY OF ATLANTA  MAYOR	MANHATTAN/RFB, A JOINT VENTURE BY ITS JOINT VENTURE PARTNERS
ATTEST:  MUNICIPAL CLERK	MANHATTAN CONSTRUCTION COMPANY BY:  NAME: <u>BARTON PLUNKETT</u> TITLE: <u>Senior Vice President</u>
APPROVED:  AVIATION GENERAL MANAGER	 SECRETARY/ASSISTANT SECRETARY (SEAL)
  ASSISTANT AVIATION GENERAL MANAGER	RFB CONSTRUCTION, LLC BY:  NAME: <u>RON MARTIN</u> TITLE: <u>CEO</u>
 CHIEF PROCUREMENT OFFICER 	 NOTARY PUBLIC (SEAL)
APPROVED AS TO FORM:  CITY ATTORNEY	MY COMMISSION EXPIRES: <u>December 23, 2013</u> 

IN WITNESS WHEREOF, the Parties hereto have made and executed this Contract on the respective dates under each signature. This Contract is executed under seal.

CITY OF ATLANTA	MANHATTAN/RFB, A JOINT VENTURE
MAYOR	BY ITS JOINT VENTURE PARTNERS
ATTEST:	MANHATTAN CONSTRUCTION COMPANY
	BY: <u><i>Barton Plunkett</i></u>
	NAME: <u>BARTON PLUNKETT</u>
	TITLE: <u>Senior Vice President</u>
MUNICIPAL CLERK	<u><i>Emilia King</i></u>
APPROVED:	SECRETARY/ASSISTANT SECRETARY
	(SEAL)
AVIATION GENERAL MANAGER	RFB CONSTRUCTION, LLC
<u><i>James L. Daniel</i></u>	BY: <u><i>Ron Martin</i></u>
ASSISTANT AVIATION GENERAL MANAGER	NAME: <u>RON MARTIN</u>
	TITLE: <u>CEO</u>
CHIEF PROCUREMENT OFFICER	<u><i>Rebecca J. Hass</i></u>
APPROVED AS TO FORM:	NOTARY PUBLIC (SEAL)
	MY COMMISSION EXPIRES: <u>December 23, 2013</u>
CITY ATTORNEY	

APPENDIX A

EQUAL BUSINESS OPPORTUNITY CONTRACTOR PROJECT PLAN
SUBCONTRACTOR/SUPPLIER UTILIZATION

List all Majority, Minority and Female Business Enterprise subcontractors/suppliers, including lower tiers, to be used on this project.

Total Bid Amount _____

Name of Sub-contractor/Supplier	City of Atlanta Supplier ID Number	Company Name, Address and Phone Number	City of Atlanta Business License? (yes or no)	NAICS Code(s)	Type of Work to be Performed	Ethnicity of Ownership Business (see code below)	Certification No. and Expiration Date	Dollar (\$ Value of Work & Scope of Work	Percenta of Total Bid Amount
								Total MBE% 25	Total FBE% 10

Code: AABE - African American Business Enterprise, HABE - Hispanic American Business Enterprise, FBE - Female Business Enterprise.
 APABE - Asian (Pacific Islander) American Business Enterprise

FC#/Project Name: FC-6311 Managing Contractors Proponent's Co. Name: Manhattan Construction Company

Proponent's Contact Number: 404.351.0007 Contact's Name: Bart Plunkett

Date: 5.10.13

(Please Print)

EQUAL BUSINESS OPPORTUNITY SUBCONTRACTOR PROJECT PLAN
SUBCONTRACTOR/SUPPLIER UTILIZATION

List all Majority, Minority and Female Business Enterprise subcontractors/suppliers, including lower tiers, to be used on this project.

Total Bid Amount _____

Name of Sub-contractor/Supplier	City of Atlanta Supplier ID Number	Company Name, Address and Phone Number	City Of Atlanta Business License? (yes or no)	NAICS Code(s)	Type of Work to be Performed	Ethnicity of Ownership Business (see code below)	Certification No. and Expiration Date	Dollar (\$) Value of Work & Scope of Work	Percentage of Total Bid Amount
RFB Contractors LLC		133 Peachtree Street NE Suite 4900 Atlanta, Georgia 30303	yes			AABE			
Total MBE% <u>25</u> Total FBE% <u>10</u>									

Code: AABE - African American Business Enterprise, HABE - Hispanic American Business Enterprise, FBE - Female Business Enterprise.
 APABE - Asian (Pacific Islander) American Business Enterprise

FC#/Project Name: 6311 Managing General Contractors Services

RFB Contractors LLC

Proponent's Co. Name:

Proponent's Contact Number: 404-856-4491

Ron Martin

Contact's Name:

Date: June 3, 2013

(Please Print)