

EXHIBIT C
DRAFT CITY CONTRACT AGREEMENT



Draft Agreement for FC-6260, Peachtree Creek South Fork Relief Storage and Pumping Station

Contractor: _____

Contract No.: FC-6260, Peachtree Creek South Fork Relief Storage and Pumping Station

Address: _____

(T) _____
(F) _____

Contact: _____

This Agreement is entered into the ____ day of _____, 201 , between the City of Atlanta, (the "City") and _____ ("Contractor")(the City and the Contractor may be referred to herein as the "Parties").

WHEREAS, Contractor has the necessary personnel and facilities to perform the Work; and

WHEREAS, the Department of Watershed Management has recommended Agreement award to Contractor; and

WHEREAS, the Georgia Security and Immigration Compliance Act of 2006 pursuant to O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-02 is effective as of July 1, 2007, and applies to contracts for services which are physically performed with a public entity. The Contractor is required to submit the attached Georgia Security and Immigration Compliance Act of 2006 Required Submittal, the Contractor Affidavit and the Subcontractor Affidavits as shown in Exhibit "C". Contractor's failure to comply with this requirement shall constitute a material default in the contract, which may result in termination of this Contract Agreement.

NOW, THEREFORE, for and in consideration ten dollars (\$10.00) and for other good and valuable consideration defined herein, the sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1.

The City hereby engages Contractor to perform, and Contractor agrees to perform for the City, all Work required by the Agreement Documents relative to the Project. Contractor

shall commence the Work within thirty (30) calendar days after receipt of Notice to Proceed and shall substantially complete within the time stated in the Bid Solicitation.

2.

- a) Contractor represents that it has, or will secure at its own expenses, all personnel required to perform all Work to be completed under this Agreement;
- b) All the Work required hereunder will be performed by Contractor or under the direct supervision of Contractor. All personnel engaged in the Work by Contractor shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such Work;
- c) None of the Work or services covered by this Agreement shall be transferred, assigned, or subcontracted by Contractor without the prior written consent of the City.

3.

The Agreement Documents relative to this Agreement consist of:

This City-Contractor Agreement;
General Conditions
Special Conditions
Scope of Services
Equal Business Opportunity Program (Appendix A)
Insurance and Bonding Requirements (Appendix B)
Local Bidder Preference Program (Appendix C)
Georgia Security Immigration Compliance Documents (Appendix D)
Bid Schedule (Exhibit A)
Required Submittals (Exhibit B)
Addenda (Exhibit C)
Legislation (Exhibit D)
Performance and Payment Bond and Insurance Certificate (Exhibit E)
Plans and Drawings

These collectively form the Agreement, and are all as fully a part of the Agreement as if attached to this Agreement or repeated herein.

4.

All reports, information, data, or other documents, given to, prepared by or assembled by Contractor under this Agreement shall be kept confidential and shall not be made available to any individual or organization by Contractor without the prior written approval of the City.

5.

[Intentionally Omitted]

6.

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor to solicit or secure this Agreement; and that it has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for Contractor any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the above warranty and upon a finding after notice and hearing, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

7.

During the performance of this Agreement, Contractor agrees to comply with all provisions of Part 2, Chapter 2, Article X, Division 11, including Section 2-1414 of the Code of Ordinances ("**Ordinance**"), City of Atlanta, and to warrant the following:

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

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

The Contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of the non-discrimination clause.

- b) The Contractor shall, in all solicitation or advertisement for employees, placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for the employment without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation.

- c) The Contractor shall send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of the Contractor commitments under the Equal Employment Opportunity Program of the City and under the Code of Ordinances and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor shall register all workers in the skilled trades, who are below the journeyman level, with the U.S. Bureau of Apprenticeship and Training.
- d) The Contractor shall furnish all information and reports required by the Contract Compliance Officer pursuant to the Code of Ordinances, and shall permit access to the books, records and accounts of the Contractor during the normal business hours by the contracting agency and the Contract Compliance Officer for the purpose of investigation so as to ascertain compliance with the program.
- e) The Contractor shall take such reasonable action with respect to any Subcontractor as the City may direct, as a means of enforcing the provisions of paragraphs (a) through (h) herein, including penalties and sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in or is threatened with litigation as may be necessary to protect the interest of the City and to effectuate the Equal Employment Opportunity Program of the City; and, in the case of contracts receiving federal assistance, the Contractor or the City may request the United States to enter into such litigation to protect the interest of the United States.
- f) The Contractor and its Subcontractors, if any, shall file compliance reports at reasonable times and intervals with the City in the form and to the extent prescribed by the Contract Compliance Officer of the City. Compliance reports filed at such time directed shall contain information as to employment practices, policies, programs and statistics of the Contractor and its Subcontractors.
- g) The Contractor shall include the provisions of paragraphs (a) through (h) of this Equal Employment Opportunity Clause in every subcontract or purchase order which materially affects the Project so that such provisions will be binding upon each such Subcontractor or vendor.
- h) A finding, as hereinafter provided, that a refusal by the Contractor or subcontractor to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:
 - (1) Withholding from the Contractor in violation all future payments under the involved public contract until it is

determined that the Contractor or Subcontractor is in compliance with the provisions of the Agreement.

- (2) Refusal of all future bids for any public contract with the City or any of its departments or divisions until such time as the Contractor or Subcontractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in this article.
- (3) Cancellation of the public Agreement.
- (4) In a case in which there is substantial or material violation, or the threat of substantial or material violation, of the compliance procedure therein set forth or as may be provided for by this Agreement, an appropriate proceeding may be brought to enforce these provisions, including the enjoining of Contractor, Subcontractor, or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.

8.

During the performance of this Agreement, Contractor agrees to comply with Part 2, Chapter 2, Article X, Division 12, including Sections 2-1441 through 2-1460 of the Code of Ordinances of the City of Atlanta, the Equal Business Opportunity (“EBO”) Program and to warrant the following:

“The Contractor agrees to engage non-discriminatory practices in all efforts to meet the M/FBE availability sited in this Agreement by making available opportunities for Minority Business Enterprises (“MBE”), African American Business Enterprises (“AABE”), Hispanic Business Enterprises (“HBE”), Asian Business Enterprises (“ABE”) and Native American Business Enterprises (“NABE”) and Female Business Enterprises (“FBE”) for utilization in the work set forth within this Agreement and shall take the following action as part of their good faith efforts:

1. Notification to M/FBEs that the Contractor has subcontracting opportunities available and maintenance of records of the M/FBE responses.
2. Maintenance by the Contractor of a file of the names and addresses of each Subcontractor contracted and action taken with respect to each such contract.
3. Dissemination of the Contractor EBO policy externally by informing and discussing it with all management and technical assistance sources; by

advertising in news media and by notifying and discussing it with Subcontractor and Supplier.

4. Specific and continuing written and oral recruitment efforts directed at M/FBE Contractor organizations, M/FBE assistance organizations.
5. Sub-divisions for the contract economically feasible segments as practical to allow the greatest opportunity for participation by M/FBEs.
6. Increasing where possible the number of aggregate purchase items so as to eliminate the requirement of front-end purchases material for as many M/FBE Subcontractors as possible.
7. Adoption of the EBO Plan submitted in its response to the Invitation for Bids or Requests for Proposals obligations under this Agreement, as approved by the Office of Contract Compliance.
8. Submission of monthly reports on the forms and to the extent required by the Director of the Office of Contract Compliance, to be due on or before the 5th day of each month following the award of the Work set forth in this Agreement.
9. The Contractor further agrees that breach of the EBO provisions contained herein shall subject them to any or all of the following penalties:
 - a). Withholding of ten percent (10%) of all future payments under the involved eligible project until it is determined that the Contractor is in compliance.
 - b). Withholding of all future payments under the involved Project until it is determined that the Contractor is in compliance.
 - c). Refusal of all future bids or offers for any eligible project with the City of Atlanta or any of its department or divisions until such time as the Contractor demonstrates that there has been established and there shall be carried out all of the EBO provisions contained herein.
 - d). Cancellation of the eligible project.

9.

The City agrees to pay Contractor for the Work performed pursuant to this Agreement on an as needed basis per the unit price as stated in the Bid Schedule, hereinafter attached

as Exhibit B, for amount not to exceed _____ Dollars
(\$ _____).

10.

Contractor commence Work under this Agreement within ten (10) Days of issuance of the Notice to Proceed ("NTP") and shall achieve Substantial Completion of the Project within four hundred forty days from the date of NTP and shall achieve Final Completion, as defined in the General Conditions and Agreement Documents.

11.

Contractor, by the execution of this Agreement, acknowledges that it is possessed of that degree of care, learning, skill, and ability which is ordinarily possessed by other members of its profession and further contracts that in the performance of the duties herein set forth, it will exercise such degree of care, learning, skill and ability as is ordinarily employed by Contractor under similar conditions and like circumstances and shall perform such duties without neglect.

12.

Contractor agrees to obtain and maintain during the entire term of this Agreement all of the insurance called for in the Agreement Documents, with the City as an additional insured in each policy of public liability and property damage insurance, and shall furnish to the City a certificate of insurance showing required coverage. The cancellation of any policy of insurance required by this Agreement shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Georgia Code.

13.

In addition to its agreement to obtain and maintain the insurance as set forth herein above, the Contractor agrees that to the fullest extent permitted by law, the Contractor shall at his sole cost and expense indemnify, defend, satisfy all judgments and hold harmless the City, the Designer, the Engineer, and their agents and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, action, judgment, cost, penalty, liability, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom; and (2) is caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in Appendix B, Insurance and Bonding Requirements, Paragraph F.

In any and all claims against the City, the Engineer or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation in Appendix B, Insurance and Bonding Requirements, Paragraph F, shall not be limited in any way, including, but not limited by, the limits of the liability insurance required under this Agreement and the Agreement Documents, nor limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmens' compensation acts, disability benefit acts or other employee benefit acts.

14.

The Contractor shall obtain, at its own expense, all permits and licenses required by all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the performance of the work called for by this Agreement. The Agreement Documents, including this Agreement, constitute the entire and integrated Agreement between the City and the Contractor and may be amended only by written instrument approved by both parties. The parties agree that this Agreement shall not become binding on the City, and the City shall incur no liability upon the same, until this Agreement has been executed by the Mayor, officially sealed by the Municipal Clerk and delivered to Contractor.

15.

The Georgia Security and Immigration Compliance Act of 2006 pursuant to O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-02 is effective as of July 1, 2007, and applies to contracts for services which are physically performed with a public entity. The Contractor is required to submit the attached Georgia Security and Immigration Compliance Act of 2006 Required Contractor Submittal, the Contractor Affidavit and the Subcontractor Affidavits as shown in Exhibit "C". Contractor's failure to comply with this requirement shall constitute a material default in the contract, which may result in termination of this Original Agreement.

IN WITNESS WHEREOF, the City and Contractor have executed this Agreement by their duly authorized officers, as of the date first above written.

CITY OF ATLANTA:

CONTRACTOR:

[TO BE INSERTED POST AWARD]

Mayor

ATTEST:

Municipal Clerk (SEAL)

RECOMMENDED:

Commissioner, Department of
Watershed Management

APPROVED:

Chief Procurement Officer

APPROVED AS TO FORM:

City Attorney

