

## PROFESSIONAL SERVICES CONTRACT

**THIS CONTRACT** is made and entered into as of \_\_\_\_\_, \_\_\_\_ 2012 (“Effective Date”), by and between the STATE ROAD AND TOLLWAY AUTHORITY, a body corporate and politic and an instrumentality and public corporation of the State of Georgia (“SRTA”), and \_\_\_\_ (the “Consultant”). SRTA and Consultant may be referred to individually, as “Party” or collectively, as “Parties.”

**WHEREAS**, SRTA desires to secure a qualified and experienced firm to perform various marketing and communications tasks and related services as more fully described in the Marketing and Communications Consultant RFP#92700-13-160213 and any addenda thereto and any documents referenced therein, and the Consultant’s Consulting Plan (collectively, the “RFP”); and

**WHEREAS**, the Consultant has represented to SRTA that it is experienced and qualified and willing to provide all of the expertise needed to successfully provide the work and services required of the Consultant as more fully described in the Contract Documents (defined below) and the task orders issued pursuant to this Contract (collectively, “Work”),

**WHEREAS**, SRTA has relied upon such representations and selected the Consultant to furnish the Work;

**WHEREAS**, pursuant to OCGA §32-10-63(5), SRTA is authorized to contract for the Work.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

1. **RECITALS.** The recitals set forth above are true and correct and are incorporated into this Contract.
2. **DEFINITIONS.** Any capitalized term not specifically defined in this Contract will have the same meanings assigned in the RFP to that term.
3. **INCLUSION AND PRIORITY OF DOCUMENTS.** The RFP is incorporated herein by reference as **Exhibit A**. The Consultant’s proposal to the RFP, including the technical proposal and the cost proposal (and any documents referenced therein), and any other information submitted in response to the RFP, (collectively, the “Proposal”), which were submitted in response to the RFP, are incorporated herein by reference as **Exhibit B**. The RFP and the Proposal are integral parts of this Contract. This contract, including all amendments, documents, exhibits, Task Orders and Amended Task Orders referenced in the Contract (collectively, the “Contract”), the RFP and the Proposal shall be collectively referred to as the “Contract Documents.” In the event of a conflict among the Contract Documents, the Contract Documents herein shall govern the contractual relationship between the Consultant and SRTA, and shall control one over another in the following order: Any formally executed Amendments to the Contract, the Contract, the RFP, and the Proposal.
4. **CONTRACT TERM AND RENEWAL.** This Contract shall begin on the Effective Date and shall continue until June 30, 2015 (the “Initial Term”). SRTA may elect to renew this Contract on the same terms and conditions for up to two (2) additional renewal periods with a term of up to one year each (each a “Renewal Term”). The renewal of the Contract shall be at the sole discretion of SRTA. The Initial Term and each Renewal Term may be referred to collectively as the “Term.”
5. **CONSULTANT’S RESPONSIBILITIES.**
  - 5.1 **General.** In performing the Work, the Consultant shall use the highest degree of care and skill exercised by skilled professionals in the field under similar conditions. The Work to be performed by the Consultant shall encompass and include all detail work, services, materials, and supplies necessary to provide Work in accordance with the highest and best practices in the industry.
  - 5.2 **Personnel.** The Consultant shall employ only persons qualified as applicable in the appropriate category of Work to be performed. The Consultant shall use the key personnel set forth in **Section 3** of the Proposal and **Subsections 5.2.2** and **5.2.3** of this Contract (“Key Personnel”), unless changes to the Consultant’s staff are approved in writing by SRTA.
    - 5.2.1 *SRTA’s Right to Remove.* SRTA shall have the absolute right to require the Consultant to remove an employee from performing under the Contract Documents for any or no reason. In the event of such removal, Consultant will replace the employee with the appropriate personnel within the time specified by SRTA.
    - 5.2.2 *Consultant Program Manager.* Consultant shall assign a Consultant Program Manager who shall interface with SRTA, other State entities, and any person(s) or entity(ies) (other than State entities) authorized by SRTA to represent SRTA in some or all dealings with the Consultant (“SRTA-designated Representatives”).

5.2.3 *Key Personnel.* A significant factor in SRTA's decision to award this Contract to Consultant is the level of expertise, knowledge and experience possessed by employees of Consultant, particularly Key Personnel and Consultant's agreement to have employees possessing such expertise, knowledge and experience available at all times throughout the Initial Term and each Renewal Term, to assist in the provision of the Work. Throughout the Initial Term and each Renewal Term, Consultant shall employ individuals having significant training, expertise and experience in the areas or disciplines more particularly set forth in the Contract Documents, together with such other areas of expertise, knowledge and experience as may be designated by SRTA from time to time during the Initial Term and each Renewal Term. When SRTA designates an additional area for which expertise, knowledge and experience shall be required, Consultant shall use all reasonable and diligent efforts to promptly hire and retain one or more individuals possessing such expertise, knowledge and experience. Consultant shall not substitute Key Personnel without the prior written approval of SRTA. Any desired substitution shall be noticed to SRTA, accompanied by the names and references of Consultant's recommend substitute personnel.

**5.3 Accuracy of Work.** The Consultant shall be responsible for the accuracy of the Work and shall promptly correct its errors and omissions without additional compensation from SRTA. Acceptance of the Work by SRTA will not relieve the Consultant of the responsibility for subsequent correction of errors, the clarification of any ambiguities, or for the costs associated with any additional work.

**5.4 Interpretation of Information.** At any time during the performance of any Work, the Consultant shall confer with SRTA for the purpose of interpreting the information obtained and to correct any errors or omissions. These consultations, clarifications, or corrections shall be made without added compensation to the Consultant other than what has been provided for under the terms of this Contract. The Consultant shall give immediate attention to these changes so there will be minimum delay to others.

**5.5 Safety.** The Consultant shall take all reasonable precautions in the performance of the Work and shall cause its employees, agents and sub-consultants to do the same. The Consultant alone shall be responsible for the safety, efficiency, and adequacy of its Work, and employees, agents and sub consultants, and for any damage that may result from their actions or inactions.

**6. PROJECT MANAGEMENT.** SRTA shall identify a program manager ("SRTA Program Manager") who shall act as and be SRTA's representative between SRTA and the Consultant.

## **7. SUBCONTRACTING AND ASSIGNMENT.**

**7.1 Assignment.** Consultant shall not assign, delegate, sublet or transfer this Contract or any rights under or interest in this Contract without the prior written consent of SRTA, which may be withheld for any reason.

**7.2 Subcontracting.** Nothing contained herein shall prevent Consultant from employing independent professional associates, sub consultants as Consultant may deem appropriate to assist in the performance of Work hereunder. However, Consultant shall not subcontract Work to sub consultants that are different from those sub consultants listed in the Proposal, without obtaining SRTA's prior written approval, which approval is within SRTA's sole discretion. SRTA shall have the right to require the Consultant to remove a sub consultant of Consultant from performing under this Contract, if in SRTA's sole opinion, such sub consultant (a) is not performing its portion of the Work satisfactorily, (b) is failing to cooperate as required in the Contract Documents, (c) is posing a security risk to any project or to SRTA's business, (d) is otherwise breaching a term of the Contract Documents that is applicable to that portion of the Work being performed by the sub consultant, or (e) presence on a project is not in the best interest of SRTA. In the event of such removal, Consultant will replace the sub consultant with a suitable replacement within the time specified by SRTA.

**7.3 Consultant Remains Responsible.** If Consultant subcontracts any of the Work to be performed under this Contract, Consultant shall be as fully responsible to SRTA for the acts, errors, or omissions of Consultant's sub consultant and of the persons employed by them as Consultant is for the acts and omissions of persons directly employed by Consultant. Consultant shall be obligated to assist SRTA in the enforcement of any rights that SRTA has against such sub consultant. Notwithstanding any subcontract or agreement with any sub consultant, Consultant shall be fully responsible to SRTA for all of the Work required pursuant to the Contract Documents. Notwithstanding any provision to the contrary, Consultant shall be responsible to SRTA for all terms, conditions, liabilities, and responsibilities under the Contract Documents regardless of whether Consultant or its sub consultants, suppliers, independent contractors, agents or assigns perform any aspect of the Work.

- 7.4 Payments to Sub consultants.** Consultant represents and agrees that for the duration of the Initial Term and each Renewal Term it shall make timely payments for Work properly performed to any sub consultant hereunder and Consultant shall indemnify and hold harmless SRTA and the State for any liability for payment claimed by a sub consultant.
- 7.5 Failure to Comply.** Any assignments or subcontracts made in violation of **Sections 7.1 (Assignment) and/or 7.2 (Subcontracting)** shall be null and void.
- 8. RELATIONSHIP OF THE PARTIES.** Each Party, in the performance of this Contract, shall be acting in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other Party. The employees, agents, partners or contractors of one Party shall not be deemed or construed to be the employees, agents, partners or contractors of the other Party for any purposes. Neither Party shall assume any liability of any type on behalf of the other Party or any of such other Party's employees, agents, partners or contractors. The Parties expressly understand and agree that Consultant is an independent Consultant of SRTA in all manner and respect and that neither Party to this Contract is authorized to bind the other Party to any liability or obligation or to represent in any way that it has such authority. Consultant shall be solely responsible for all payments to its subcontractors, agents, consultants, suppliers, employees, partners or any other parties with which it does business including, but not limited to, paying all benefits, taxes and insurance, including workmen's compensation insurance, for Consultant's employees.
- 9. PROCESS.** This is an Indefinite Delivery, Indefinite Quantity Contract. Accordingly, there is no set amount of or frequency for the Work. The Consultant shall perform the required Work through issuance of a Task Order (defined below) that must be signed by both Parties. SRTA will order from the Consultant, all or a portion of the Work as such Work, in SRTA's sole opinion, is needed. SRTA is not required to purchase or otherwise issue another Task Order for any additional Work from the Consultant.
- 9.1 Task Order.** Each specific activity, task, or project performed by Consultant under this Contract shall be performed by written task order ("Task Order") on a form similar to that set forth in **Exhibit D (Form Task Order)**. All Task Orders and Amended Task Orders (defined in **Section 9.2/Amended Task Order**) are subject to the terms and conditions of the Contract Documents. In the event of a conflict among a Task Order, an Amended Task Orders and the Contract, the order of priority is: the Amended Task Order, the Task Order, and the Contract. SRTA may initiate the Task Order procedure by notice to the Consultant setting forth the proposed project and Work desired. Within five (5) business days thereafter, the Consultant shall provide a detailed proposal which includes, but not be limited to, a general description of the project involved and, with specificity, the various items of Work to be accomplished, including a detailed time schedule for completion of the Work, and the cost of the Work. If necessary, the Parties shall thereafter negotiate the details of the proposed Task Order. No payment for Work under this Contract will be made which is not authorized by a Task Order signed by both Parties.
- 9.2 Amended Task Order.** The terms of the Task Order shall not be modified unless evidenced by a written amended Task Order ("Amended Task Order") signed by the Parties. Any Work performed outside of the terms and conditions of a Task Order or an Amended Task Order will be ineligible for payment.
- 9.3 Project Schedule.** The performance time of each Task Order and Amended Task Order, as applicable, shall be set forth in each Task Order or Amended Task Order, as applicable. Any Work performed before or after the time set forth in the Task Order or Amended Task Order, as applicable, will be ineligible for payment. Unless an extension of time is granted by SRTA pursuant to **Section 14.3 (Time Extensions)** of this Contract, Consultant will successfully, fully and entirely complete and otherwise perform all Work as required in the Contract Documents.
- 10. PAYMENT.** The maximum not-to-exceed amount for all Work performed during the Initial Term is \$\_\_\_\_\_.00, unless otherwise agreed to in writing by SRTA. Compensation for Work performed shall be set forth in each Task Order or Amended Task Order, as applicable.
- 10.1 General.** Each Task Order will set forth the method of compensation as agreed to by the Parties, which shall be either hourly in accordance with the rates set forth in **Exhibit C** or a firm fixed price. In either case, SRTA will also reimburse the Consultant as set forth in **Section 10.13** for reasonable, actual and documented costs of necessary expenses associated with the performance of the Work provided such costs are preapproved in writing by SRTA.
- 10.2 Trust Funds.** All payments made by SRTA to Consultant for the Work under the Contract Documents shall be held in trust by the Consultant for the purpose of paying its employees, agents, assigns, subcontractors and suppliers who provided any part of the Work.

- 10.3 Overpayment.** In the event an overpayment is made to Consultant under this Contract, Consultant shall immediately refund to SRTA the full amount of any such erroneous payment or overpayment following Consultant's written notice of such erroneous payment or overpayment, as issued by SRTA. If Consultant fails to refund the erroneous payment or overpayment within a 30-day period, SRTA shall be entitled to interest at one percent per month on the amount not repaid from the date of overpayment.
- 10.4 Reduction of Payment for Non-Conforming Work.** If any defined action, duty or service or other item of Work required by the Contract Documents is not performed by the Consultant in accordance with the requirements of the Contract Documents, the value of such action, duty or service or other item of Work will be determined by SRTA and deducted from any invoice claiming such items for payment. If the Work or part thereof has been completed and is not in conformance with the Contract Documents, the Consultant will be notified and given the opportunity to correct any deficiencies within a time certain. Payment (for the non-conforming Work) will be withheld by SRTA from any invoice until such time as the Work is corrected in accordance with the Contract Documents.
- 10.5 Withholding Payments.** SRTA reserves the right to withhold payment or payments in whole or in part, and to continue to withhold any such payments for Work not completed or not completed in accordance with the Contract Documents. Any and all such payment previously withheld shall be released and paid to Consultant promptly when the Work is subsequently performed in accordance with the Contract Documents.
- 10.6 Payment not Acceptance.** Payment or use of any Work or portions thereof by SRTA shall not constitute an acceptance of any Work not performed in accordance with the Contract Documents.
- 10.7 Net 30 Days.** Provided all the conditions in **Section 10** have been met to SRTA's satisfaction, and Consultant is not otherwise in breach of this Contract, SRTA agrees to pay Consultant in accordance with SRTA's normal processes and procedures for all undisputed amounts within thirty (30) Days of the later of a review, if any, undertaken by SRTA pursuant to **Paragraph 16.1 (Review of Work)** or SRTA's receipt of a valid invoice.
- 10.8 Invoicing.** The Consultant shall deliver to SRTA an invoice on a monthly basis ("Invoice") by the tenth (10) Day of the month following the month in which Work was performed. The Consultant agrees to provide an accompanying monthly project progress report in a format acceptable to SRTA which will outline in written and, if requested, graphic form the various phases and the order of performance of the Work in sufficient detail so that the progress of the Work can easily be evaluated. Progress payments to the Consultant shall correspond to the progress of Work achieved for each open Task Order. SRTA will be entitled at all times to be advised at its request as to the status of Work being done by the Consultant and the details thereof.
- 10.9 Late Fees.** SRTA shall not be liable for late fees, collection fees, attorney's fees, interest, or other fees incurred by the Consultant as a result of non-payment or a delay in payment by SRTA.
- 10.10 Right of Set Off.** SRTA may retain or set off any amount owed to it by Consultant.
- 10.11 Full Compensation.** All Work performed by the Consultant in meeting the requirements of the Contract Documents shall be paid as set forth herein, which shall constitute full compensation for the Work, including but not limited to: (a) the cost of all insurance and bond premiums, home office, job site and other overhead, and profit relating to Consultant's performance of its obligations under this Contract; (b) the cost of performance of each and every portion of the Work (including all costs of all Work provided by subcontractors and suppliers); (c) the cost of obtaining all governmental approvals and all costs of compliance with and maintenance of such governmental approvals; (d) all risk of inflation, currency risk, interest and other costs of funds associated with the progress payment schedule for the Work as provided herein; and (e) payment of any taxes, duties, permits and other fees and/or royalties imposed with respect to the Work and any equipment, materials, supplies, documentation, labor or services included therein.
- 10.12 Overtime.** No premium pay or overtime will be paid by SRTA.
- 10.13 Expenses.** Consultant shall include in each Invoice and SRTA shall reimburse Consultant for reasonable, actual and documented out-of-pocket expenses that are pre-approved in writing by SRTA and incurred in connection with the performance of the Work, including air fare, meals, ground transportation, parking, communication, reproduction and other such incidental and actual costs which are reasonable and customary pursuant to industry standards for such expenses incurred during the time period covered by such Invoice. Consultant will be reimbursed for travel necessary to perform the Work requested in this Contract in accordance with the State and SRTA travel policies, procedures and prevailing per diem rates which may be found at: [http://www2.sao.georgia.gov/00/channel\\_createdate/0,2095.39779022\\_138756283.00.html](http://www2.sao.georgia.gov/00/channel_createdate/0,2095.39779022_138756283.00.html)

and are incorporated herein by reference and made a part of this Contract. Consultant shall provide receipts or other proof of actual cost incurred prior to receiving reimbursement. Notwithstanding the above, SRTA will not reimburse Consultant for time spent or costs incurred traveling to and from SRTA's office and Consultant's State office. SRTA will not withhold any taxes on amounts paid to Consultant, and all federal, state and local taxes will be Consultant's responsibility to pay. SRTA will not reimburse Consultant for any such taxes.

## **11. INDEMNIFICATION.**

- 11.1 General Liability.** The Consultant shall be responsible to SRTA from the Effective Date or the beginning of the first Work, whichever shall be earlier, for those costs, expenses, liabilities, allegations, claims, bodily injuries, including death, or damage to real or personal property, resulting from any wrongful and/or negligent act or omission, the breach of contract, the failure to perform, or other default regarding the Work by the Consultant, its employees, agents, or any of its subcontractors or others working at the direction of the Consultant or on its behalf.
- 11.2 General Indemnification.** Consultant hereby agrees to indemnify and hold harmless the SRTA, the state of Georgia and its departments, authorities, agencies and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, demands, liabilities, losses, costs or expenses, including reasonable attorneys' fees, liability to a third party or parties, and/or for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the negligent performance of the Contract Documents or any act or omission on the part of the Consultant, its agents, employees, subcontractors or others working at the direction of Consultant or on its behalf, or due to any breach of this Contract by the Consultant, or due to the application or violation of any pertinent Federal, State or local law, rule or regulation by the Consultant or its sub consultants. This indemnification extends to the successors and assigns of the Consultant. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by law, the bankruptcy of the Consultant. If and to the extent such damage or loss (including costs and expenses) as covered by this indemnification is paid by the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State of Georgia Department of Administrative Work Risk Management Division (hereinafter "DOAS") the Consultant agrees to reimburse the Funds for such monies paid out by the Funds. Risk Management will endeavor to notify affected insurers of claims made against the State that fall within this indemnity. In the event of litigation, SRTA will request the Attorney General to endeavor to keep the Consultant and its general liability insurer as named on the insurance certificate informed regarding the claims and settlement.
- 11.3 Intellectual Property Indemnification.** Contractor represents and warrants that all Work furnished by Contractor and that all Work, as a whole and each of its components shall not infringe any third party copyright, trademark, trade secret or other intellectual property right. In case the Work or any component of the Work is held to constitute an infringement of the copyrights or other intellectual property rights of a third party and its use is enjoined, the Contractor at the Contractor's sole cost and expense, shall promptly: (a) secure for SRTA, its representatives, agents, and designees the right to continue using the infringing item by suspension of the injunction or by procuring a perpetual, non-revocable, paid-up, royalty-free, assignable, non-exclusive license(s) to reproduce, publish, or otherwise use for SRTA's direct purposes; or (b) replace the infringing item with a non-infringing substitute that meets the requirements of the Contract Documents; or (c) modify the infringing item so that it becomes non-infringing provided the resulting Work meets the requirements of the Contract Documents. If the amount of time necessary to proceed with one of these options is deemed excessive by SRTA, SRTA may direct the Contractor to select another option or risk default. Nothing in this provision shall be deemed to limit or condition SRTA's rights otherwise set forth in the Contract, including termination. Contractor shall indemnify and hold harmless SRTA and the State from and against all suits or claims or loss for infringement of any intellectual property rights resulting from the use by SRTA or any of its employees or agents of Work performed pursuant to the Contract Documents. This intellectual property infringement provision shall not apply to any infringement or alleged infringement which is the result of or arises out of SRTA, its employees or agents modifying or altering any part or component of the Work, except as consented to by Contractor.
- 11.4 Limitation of Liability of SRTA.** SRTA's liability to Consultant, if any, shall be limited to direct damages and in such case, only to the extent of the amount SRTA has paid to Consultant under this Contract for the twelve (12) months immediately preceding Consultant's claim.
- 11.5 Disclaimer of Consequential Damages.** Notwithstanding any provision to the contrary, in no event shall either Party be liable to the other Party for any incidental, consequential, special, exemplary or indirect damages, lost business profits or lost data arising out of or in any way related to this Contract.

**11.6 Obligations Not Mutually Exclusive.** The Contractor's obligations under **Section 11** are in addition to Contractor's insurance obligations under **Section 12**.

## **12. INSURANCE.**

**12.1 Insurance Certificates.** The Consultant shall procure the insurance coverages identified below at the Consultant's expense and shall furnish SRTA an insurance certificate listing the SRTA as the certificate holder and an endorsement listing SRTA as an additional insured. Evidence of insurance coverages shall be provided on the form acceptable to SRTA and the Georgia Office of the Insurance Commissioner. The insurance certificate must provide the following:

- 12.1.1 Name and address of authorized agent
- 12.1.2 Name and address of insured
- 12.1.3 Name of insurance company(ies)
- 12.1.4 Description of policies
- 12.1.5 Policy Number(s)
- 12.1.6 Policy Period(s)
- 12.1.7 Limits of liability
- 12.1.8 Name and address of SRTA as certificate holder
- 12.1.9 Project Name and Number
- 12.1.10 Signature of authorized agent
- 12.1.11 Telephone number of authorized agent
- 12.1.12 Mandatory thirty Day notice of cancellation or non-renewal (except ten (10) Days for non payment).

**12.2 Insurer Qualifications, Insurance Requirements.** Each of the insurance coverages required below (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self-insureds or group self insureds, a specific excess insurer providing statutory limits) with a Best Policyholders Rating of "A-" or better. Each such policy shall contain the following provisions:

- 12.2.1 Consultant agrees that the policy shall not be canceled or allowed to lapse or allowed to expire until thirty (30) Days after the SRTA has received written notice thereof, as evidenced by return receipt of certified mail or statutory mail, or until such time as other insurance coverage providing protection equal to protection called for in this Contract shall have been received, accepted and acknowledged by the SRTA. The insurance company will notify SRTA upon the cancellation of any insurance affecting this Contract. Such notice shall be valid only as to the Project as shall have been designated by Project Number and Name in said notice. Consultant shall provide written notice of any changes to the policy to the SRTA within three (3) business days of Consultant's receipt of notice of any changes or proposed changes from the insurance company.
- 12.2.2 The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("Separation of Insureds").
- 12.2.3 Each Insurer is hereby notified that the statutory requirement that the Attorney General of Georgia shall represent and defend the Indemnities remains in full force and effect and is not waived by issuance of any policy of insurance. In the event of litigation, any settlement on behalf of the indemnities must be expressly approved by the Attorney General. The Consultant and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnities, in which case there will be mutual cooperation between the Attorney General and such counsel. See O.C.G.A. § 45-15-12.
- 12.2.4 All deductibles shall be paid for by the Consultant.

**12.3 Required Insurance Coverages.** From insurers rated at least A- by Best's and registered to do business in the State of Georgia, the Consultant shall provide the following kinds of insurance in the minimum amount of coverage set forth below:

- 12.3.1 *Workers' Compensation and Employer's Liability.* Statutory coverage shall be maintained for Worker's Compensation as required by the laws of the State of Georgia.

12.3.2 *Commercial General Liability Insurance.* Commercial General Liability Insurance of at least \$1,000,000 per occurrence \$2,000,000 aggregate, including Automobile Comprehensive Liability Coverage with bodily injury in the minimum amount of \$1,000,000 combined single limits each occurrence; to cover vehicles, owned, leased or rented by the Consultant. The Consultant shall require its sub-consultants to maintain Commercial General Liability insurance with business automobile liability coverage with companies and limits as stated above.

12.3.3 *Professional Liability (Errors and Omissions) Insurance.* Limits shall not be less than the following:

- For Professionals – \$1,000,000 per claim and \$1,000,000 in aggregate coverage;
- For Other Consultants – \$1,000,000 per claim and \$1,000,000 in aggregate coverage.
- The Consultant shall maintain professional liability insurance that is either a practice policy or project-specific coverage. Professional liability insurance shall contain prior acts coverage for services performed by the Consultant for this Project. If project-specific coverage is used, these requirements shall be continued in effect for two years following issuance of the Certificate of Final Completion for the Project.

**12.4 Insurance Premiums and Deductibles.** The Consultant shall pay the insurance premiums and shall be responsible for payment of all deductibles and self-insured retention.

**12.5 Termination of Obligation to Insure.** Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the expiration or other termination of the Contract.

**12.6 Failure of Insurers.** The Consultant is responsible for any delay resulting from the failure of his insurance carriers to furnish proof of proper coverage in the prescribed form.

**12.7 Ongoing Coverage.** Consultant is responsible for tracking insurance coverages for itself and its subcontractors, for ensuring that coverages remain in force throughout the duration of the Contract, and for demonstrating to SRTA ongoing compliance with this **Section 12**.

**12.8 Obligations Not Mutually Exclusive.** The Consultant's obligations under this **Section 12** are in addition to Consultant's obligations under **Section 11 (Indemnification)**.

**12.9 Waiver of Subrogation.** There is no waiver of subrogation rights by either Party with respect to insurance.

**12.10 Additional Insured Endorsement.** SRTA shall be named as an additional insured on all required insurance except for Worker's Compensation and Professional Liability insurance and a copy of each policy endorsement shall be provided with each insurance certificate.

**13. ADDITIONAL CONSULTANT RESPONSIBILITIES AND REPRESENTATIONS.** The Consultant represents to SRTA and agrees that throughout the Initial Term and each Renewal Term that:

**13.1 Licenses.** The Consultant has and will maintain and keep in full force and effect during the Term of the Contract all required licenses, certifications, and permits necessary to perform all or part of the Work; and

**13.2 Organization.** The Consultant is authorized to do business in the State;

**13.3 Authorization by Consultant.** The Consultant has authorized the execution, delivery, and performance of this Contract;

**13.4 Authorization of Signer.** The person signing this Contract has been duly authorized by Consultant to execute and deliver same;

**13.5 Valid Contract.** This Contract is valid, enforceable, and legally binding obligation of the Consultant;

**13.6 Cooperation.** Consultant shall fully cooperate with SRTA, SRTA-designated Representatives, SRTA's other contractors and vendors, and any other governing authority, in furnishing all the Work required by the Contract Documents.

**13.7 Work/Labor.** All deliverables, documentation, Work, services and labor shall (a) conform to the performance, capabilities, accuracy, completeness, characteristics, specifications, and standards required by the Contract Documents, and (b) be performed on time, and in a workmanlike manner, and in accordance with the standard of care and skill exercised by other providers of similar labor and services under similar circumstances at the time the labor and services are provided.

**13.8 Intellectual Property.** As used in this Contract, “Intellectual Property” shall mean any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the forgoing, whether or not registered as of the Effective Date or at any later date. Consultant represents that Consultant, its agents, employees, contractors and assigns will neither violate nor in any way infringe upon the Intellectual Property rights of SRTA or of any other third party.

## **14. CHANGES.**

**14.1 Amended Task Order.** An Amended Task Order shall consist of only such additions, deletions or other revisions to the Work which represent a material change from the scope of Work as detailed in the related Task Order and do not arise from the actions or inactions of the Consultant, its agents, employees, suppliers or sub consultants, as reasonably determined by SRTA. Minor changes that do not involve increased compensation, extension of the time for performance as set forth in an applicable Task Order, or changes in the goals and objectives of the applicable Task Order may be made by written notification signed by SRTA Program Manager and the Consultant Program Manager. The Consultant shall perform at no additional cost to SRTA, all such additions, deletions and other revisions, the need for which arises from the actions or inactions of the Consultant, its agents, employees, sub consultants or suppliers, or any other entity or person with whom Consultant entered into an agreement to perform any portion of the Work required of Consultant under the Contract Documents (collectively, “Consultant Parties”). Compensation or a reduction in the amount due to Consultant pursuant to the Contract Documents for the Work and any approved schedule changes shall be forth in the Amended Task Order.

**14.2 Amended Task Order Process.** SRTA may initiate the Amended Task Order procedure by notice to the Consultant setting forth the proposed Amended Task Order (“Amended Task Order Proposal”). Within five (5) business days thereafter, the Consultant shall provide a more detailed proposal which includes proposed prices, if applicable, and/or a proposed schedule for performance, if applicable. SRTA may accept Consultant’s proposal or modify it or the Parties may negotiate further, whereupon a written Amended Task Order shall be executed by both Parties. If the Parties fail to reach agreement, then SRTA may nevertheless direct the Consultant to proceed with the Work included in the Amended Task Order Proposal (which for purposes of **Section 14 (Changes)** shall be hereinafter defined as “Disputed Work”) and the Consultant shall proceed to perform the Disputed Work pursuant to the Contract Documents. In the event of such Disputed Work, the Consultant shall be obligated to proceed immediately upon notice from SRTA to perform the Disputed Work and shall be compensated by SRTA in accordance with the rates in **Exhibit C** of this Contract. If there are no applicable rates for the Disputed Work in **Exhibit C**, then SRTA shall pay Consultant for the actual cost to obtain such labor at the rate charged Consultant, with seven (7%) percent markup.

The Consultant shall furnish weekly status reports regarding Disputed Work, including such documentation as SRTA may require in order to support all costs of the Disputed Work. The Consultant agrees to maintain and furnish SRTA with time and materials records that will substantiate the Consultant’s costs for Disputed Work.

**14.3 Time Extensions.** SRTA will only grant an extension of time if the Consultant is delayed in the progress of the Work by (i) any act or neglect of SRTA, (ii) an event listed in **Section 27.3 (Time of the Essence; Force Majeure)**, (iii) delay in the applicable project, or (iv) other governmental actions. If and when such event occurs, then the time of completion set forth in the Task Order or Amended Task Order, as applicable, shall be extended for such time equal to the time lost as a result of the delay. The Consultant expressly agrees that the Consultant’s sole and exclusive remedy for such delay shall be an extension of time within which to perform the affected Work and that the Consultant shall not be entitled to any damages and shall make no demand for any damages. No such extension shall be made for delay occurring more than ten (10) Days before claim thereof is made in writing to SRTA. In the case of a continuing cause of delay, only one claim is necessary, but no claim for a continuing delay shall be valid unless the Consultant, within ten (10) Days from the cessation of the delay, shall have given notice in writing to SRTA as to the amount of additional time claimed.

In the event time for performance of a Task Order or Amended Task Order, as applicable, expires and the Consultant has not requested or if SRTA has denied an extension of the completion date, Consultant must nevertheless continue Work until the same is complete. No payment shall be made for Work performed after the expiration of the Task Order schedule completion date except where a time extension has been executed by both Parties in accordance with **Section 14.2**.

**15. COOPERATION.** SRTA shall be entitled to full and prompt cooperation of the Consultant in all aspects of the Work. Consultant shall also fully and promptly cooperate with SRTA’s contractors, vendors, SRTA-designated Representatives, and other consultants and governmental entities, all as directed by SRTA. Such cooperation shall include attendance at meetings,

discussions, and hearings, as may be requested by SRTA, furnishing plans and other data produced in the course of Work for SRTA, as may be requested from time to time by SRTA to effect such cooperation, and compliance will all directives issued by SRTA. Consultant shall provide monthly status reports for work in progress and/or completed for duration of the contract. More frequent status reports will be required upon SRTA's request. In the event the Consultant deems that any other of SRTA's contractors/vendors or other third parties is delaying the Work or otherwise interfering with the Work, Consultant shall immediately notify SRTA in writing of this matter, including a detailed explanation of such delay so that SRTA may investigate the issue and assist with a resolution. Consultant's failure to furnish a detailed written notification within seven (7) business days after any contractor, vendor, and/or other third party first failed to cooperate with Consultant or otherwise improperly performed their work, shall result in SRTA's denial of any future claim by Consultant that such third party failed to properly perform their work or failed to cooperate with Consultant and Consultant shall be deemed to have waived such claim and Consultant shall be held to any applicable requirement under the Contract Documents that Consultant alleges is affected thereby.

## **16. REVIEW/AUDITS.**

**16.1 Review of Work.** SRTA and SRTA-designated Representatives, may at all reasonable times have access to review and inspect the Consultant's activities and data collected under the terms of the Contract Documents. All books, documents, plans, papers, records, reports, drawings, studies, specifications, estimates, maps and computations, prepared by or for the Consultant under the terms of the Contract Documents, shall be available to SRTA and SRTA-designated Representatives for inspection and review at all reasonable times in SRTA's offices. Acceptance of any Work by SRTA shall not relieve the Consultant of its obligation to correct, at its expense, any of its errors in the Work.

**16.2 Records Retention.** The Consultant and any sub consultants shall keep available for inspection and maintain all books, documents, papers, accounting records, and evidence pertaining to costs incurred as a result of the performance of Work under the Contract Documents and make available at all reasonable times to SRTA and the State, for a period of five years after receipt of final payment. Notwithstanding the preceding sentence, if any litigation, claim, or audit arising out of, in connection with, or related to this Contract is initiated before the expiration of the five-year period, the cost records and accounts shall be retained until such litigation, claim or audit involving the records is completed. Copies of these documents and records will be furnished to SRTA upon request and may be audited by SRTA-designated Representatives.

**16.3 Audit.** SRTA or SRTA-designated Representatives may audit Consultant's books and records and perform any other review necessary in order to determine the accuracy of any Consultant Invoice upon reasonable prior notice and during business hours. In the event such an audit reveals that SRTA was overcharged by five (5%) percent or more during the time period covered by the audit, then Consultant shall pay for all costs and expenses incurred by SRTA or SRTA-designated Representatives in performing such audit.

**17. OWNERSHIP OF DOCUMENTS.** The Consultant agrees that all reports, drawings, studies, specifications, estimates, maps, computations, computer files and other data, prepared pursuant to the Contract Documents shall be delivered to, become and remain in the property of SRTA upon the earlier of termination or completion of the Work. SRTA shall have the right to use same without restriction or limitation and without compensation to the Consultant other than that provided for in this Contract. Any use of these documents by SRTA on any project other than the project which was the subject of the applicable Task Order under which the documents were prepared shall be done without liability by the Consultant. Notwithstanding the above, if any of this Work is based on Intellectual Property owned by Consultant prior to the Effective Date ("Consultant Intellectual Property"), then all such reports, drawings, studies, specifications, survey notes, estimates, maps, computations, computer files and other data, prepared pursuant to the Contract Documents shall be delivered to, become and remain in the property of SRTA with the exception of such Consultant Intellectual Property, for which Consultant hereby grants SRTA an irrevocable, non-exclusive, non-transferable and royalty-free license to use such Consultant Intellectual Property.

## **18. INTELLECTUAL PROPERTY**

**18.1 Work Made for Hire.** To the extent possible, any papers, interim reports, forms, and other material which are a part of the Work specifically developed and created by Consultant pursuant to the Contract Documents shall be deemed a "work made for hire" for SRTA, with SRTA being deemed the author thereof with all rights, title and interest in all such Work and other work product owned by SRTA (collectively, "Work Product"). In the event that any such Work Product is deemed not to be a work made for hire for SRTA, then with the exception of any pre-existing Intellectual Property rights owned by Consultant that were used in performing the Services, Consultant hereby irrevocably assigns to SRTA all right, title and interest in all such work including, without limitation, all Intellectual Property rights with respect thereto, and further agrees to execute and deliver such other and further assignments, certificates of originality and other documents and instruments as reasonably requested by SRTA in order for SRTA to evidence and perfect its ownership of all rights with respect thereto. Consultant acknowledges and agrees that the provisions of this Section apply regardless of any disputes,

payment issues or other claims that may exist between the Parties, and that SRTA's ownership of all rights with respect to such Work Product is unconditional. Such Work Product shall include any and all modifications, improvements, adaptations, revisions, updates, releases, new versions, derivative works, and documentation (including any specifications, copies, notes, summaries or analyses) comprising, based on, derived from, or related to any work made for hire, including any of the foregoing that is conceived, discovered, invented, created, developed or made by Consultant or its subcontractors (Consultant and its subcontractors shall be referred to as "Consultant Parties"). None of the Consultant Parties shall have any proprietary interest in such Work Product. The Consultant Parties shall not assert any ownership interest or conditions to executing assignments and other documents to evidence and perfect SRTA's ownership of all rights in and to same, and any claims that the Consultant Parties may have against SRTA shall exclude claims challenging SRTA's ownership of same. In the event this Contract is terminated, all Work Product whether completed or not shall be delivered to SRTA within ten (10) Days from the date of termination. To the extent any Consultant Intellectual Property is incorporated into any Work, then Consultant agrees to and does hereby grant to SRTA and to the State an irrevocable, non-exclusive, non-transferable and royalty-free license to use such Consultant Intellectual Property.

**18.2 Patents.** If patentable discoveries or inventions should result from Work described herein, all rights accruing from such discoveries or inventions will be the sole property of the Consultant. However, the Consultant agrees to and does hereby grant to SRTA and to the State an irrevocable, non-exclusive, non-transferable and royalty-free license to practice each invention in the manufacture, use and disposition according to law of any article or material and in use of any method that may be developed as a part of the Work under this Contract.

**18.3 Ownership of Data/Security.** All data, records and operations history information in any way relating to SRTA, its customers or a Task Order, and/or Amended Task Order shall remain the property of SRTA at all times during the Term of the Contract and after Contract termination for whatever reason.

## **19. TERMINATION.**

**19.1 Termination for Cause.** Upon an Event of Default as defined in **Section 23.1 (Event of Default)**, SRTA may, in its sole discretion, terminate this Contract, any Task Order and/or Amended Task Order, in whole or in part. Termination shall take effect on the date set forth in SRTA's notice to Consultant, which shall be no less than fifteen (15) Days after the date of such notice, except in the case of financial improprieties, fraud or other criminal activity on Consultant's part in which case, termination shall be effective immediately upon notification. Upon such termination, SRTA will have the right to appropriate or use any or all Work (whether or not complete) as SRTA determines. Upon such termination SRTA shall not be required to pay Consultant any amounts for Work performed prior to the date of termination for which payment may be due and owing but not yet paid ("Remaining Payment"). In the event SRTA's expenses incurred or anticipated to be incurred as a result of Consultant's breach are less than the Remaining Payment, SRTA shall remit such differential to the Consultant. In the event SRTA's expenses incurred or anticipated to be incurred as a result of Consultant's breach exceed the Remaining Payment, including any costs of SRTA incurred by any delay (or from any reason attributable to the delay) then Consultant shall within five (5) Days written notice from SRTA, make payment of the differential to SRTA. In addition to the rights and remedies in this **Section 19.1**, SRTA shall have all other rights and remedies against Consultant which are available at law or in equity. The Consultant acknowledges that the remedy set forth in this **Section 19.1** is the Consultant's sole and exclusive remedy against SRTA for termination for cause and Consultant hereby waives all other rights and remedies it may have against SRTA, whether at law or in equity.

**19.2 Termination for Convenience.** SRTA may terminate this Contract, any Task Order and/or Amended Task Order, in whole or in part, for convenience upon thirty (30) Days written notice. Consultant will be paid for all satisfactory Work performed prior to termination, less amounts due SRTA pursuant to the Contract Documents. All Work performed shall remain the property of SRTA. SRTA shall not be responsible to Consultant for, and Consultant hereby waives any right to any other costs, fees and expenses of any nature whatsoever including, but not limited to, administrative fees, legal fees, costs to set up or shut down operations, salary, overhead, or any other cost or expense, whether direct or indirect, whether foreseen or unforeseen. The Consultant acknowledges that the remedy set forth in this **Section 19.2** is the Consultant's sole and exclusive remedy against SRTA for termination for convenience and Consultant hereby waives all other rights and remedies it may have against SRTA, whether at law or in equity.

**19.3 Termination in General.** Under no circumstances shall a proper termination by SRTA (with or without cause) constitute a default by SRTA. In the event of a termination for convenience or for cause SRTA shall notify Consultant of such action and with instructions as to the effective date of termination or suspension, in accordance with the time frames set forth in this **Section 19**. In the event of a termination for convenience or for cause, Consultant shall comply with the terms and conditions of **Section 24.2 (Transition)**. Consultant shall not be paid for, and Consultant hereby waives any claim to special, indirect, consequential or undocumented expenses, lost profit, overhead or any other type of payment (except

payment for satisfactory Work according to applicable Task Orders actually performed) regardless of the reason for termination.

**19.4 Compliance with Contract.** Consultant shall comply with all of the terms and conditions of the Contract Documents including, but not limited to, the provisions of **Section 24 (Cooperation, Transition of Work, and End of Contract Responsibilities)**, in the event SRTA exercises any of its rights under this **Section 19**.

**20. CHANGES IN CONSULTANT ORGANIZATION.** The Consultant shall notify SRTA in writing within five (5) business days upon any action that changes Consultant's corporate structure, including company mergers, company acquisitions, changes in corporate names, changes in corporate officers, changes in corporate governing structure, and similar relevant information. Such notification shall identify how the change in corporate business structure will impact SRTA, including payments to the Consultant, and Consultant shall identify how these impacts to SRTA will be mitigated. Consultant shall immediately notify SRTA of any material adverse change since the Effective Date in Consultant's financial condition, business, affairs or operations, or of the existence of any material impairment of rights or ability of Consultant to carry on as its business and operations as are currently conducted.

**21. CONFIDENTIALITY.** Consultant acknowledges that in order to perform the Work called for in this Contract, it will be necessary for SRTA to disclose to Consultant certain trade secrets, and confidential information concerning the Work, SRTA's customers, operations, projects, procurements and any confidential and/or proprietary information of any of SRTA's vendors (collectively, "Confidential Information"). Consultant agrees that it shall use its best efforts to keep the Confidential Information strictly confidential and shall not disclose, transfer, use, copy, or allow access to any such Confidential Information to any employees or to any third parties excepting those who have a need to know such Confidential Information in order to allow Consultant to perform the Work, and who have executed a nondisclosure agreement with either Consultant or SRTA consistent with the provisions hereof.

Consultant shall not have any obligation of confidentiality with respect to any Confidential Information which: (i) can be conclusively demonstrated by the Consultant to have been in its possession or known by it prior to receipt of the Confidential Information under this Contract; (ii) is disclosed by the Consultant with the written approval of SRTA; (iii) is developed independently by the Consultant without reference in any way to the Confidential Information provided under this Contract; or (iv) is obligated to be disclosed by order of a court of competent jurisdiction or is subject to disclosure under the Georgia Open Records Act.

Consultant and its representatives shall use the Confidential Information solely for the purpose of providing the Work required under the Contract Documents and shall not in any way use the Confidential Information to the detriment of SRTA or its Customers. The Consultant shall return to SRTA any Confidential Information immediately on request but no later than upon the termination for whatever reason of this Contract.

**22. DISPUTE RESOLUTION.** In the event of any dispute whatsoever arising out of or relating to the Contract Documents, the Work or any Task Order or Amended Task Order, the disputing Party must furnish a written notice to the other Party, setting forth in detail the dispute. Such notice must be addressed to the SRTA Program Manager and SRTA's Procurement Director or the Consultant Program Manager, as applicable. Within five (5) Days after the receipt of the notice by the receiving Party, the SRTA Program Manager and the Consultant Program Manager shall meet in SRTA's offices to attempt to resolve the dispute. If the SRTA Program Manager and the Consultant Program Manager cannot resolve the dispute or otherwise agree to extend the time within which to attempt to resolve the dispute then, within five (5) Days after the date of written notice by either individual to the Executive Director of SRTA and \_\_\_\_\_ of the Consultant, the Executive Director of SRTA and the \_\_\_\_\_ shall meet in SRTA's offices to attempt to resolve the dispute. If the Executive Director of SRTA and the \_\_\_\_\_ cannot resolve the dispute or otherwise agree to extend the time within which to attempt to resolve the dispute, then either Party may pursue those remedies only as allowed under this Contract.

**23. EVENT OF DEFAULT; DAMAGES/REMEDIES.**

**23.1 Event of Default.** The following shall constitute an Event of Default on the part of the Consultant:

23.1.1 The Consultant withheld, disrupted or delayed Work due to non-payment by SRTA, if such withholding of payment is allowed under **Section 10 (Payment)** and the continuance thereof for a period of three (3) business days after notice is given to the Consultant by SRTA;

23.1.2 The Consultant has failed to deliver the Work or a component thereof on a timely basis, except to the extent of an excusable delay in accordance with **Section 14.3 (Time Extensions)** and the continuance thereof for a period of five (5) business days after notice is given to the Consultant by SRTA;

- 23.1.3 The performance of the Consultant is not satisfactory, and the continuance thereof for a period of ten (10) Days after notice is given to the Consultant by SRTA;
- 23.1.4 The Consultant becomes insolvent (other than pursuant to a case, proceeding, or other action pursuant to subparagraph (a)(xii)), or has assigned the proceeds of the Contract for the benefit of the Consultant's creditors (except any assignment of proceeds as collateral for any loan), or the Consultant has taken advantage of any insolvency statute or debtor/creditor law or the Consultant's property or affairs have voluntarily been put in the hands of a receiver; or any case, proceeding or other action against the Consultant is commenced in bankruptcy, or seeking reorganization, liquidation or any relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution or other similar act or law of any jurisdiction, which case, proceeding or other action remains undismissed, undischarged or unbonded for a period of thirty (30) Days;
- 23.1.5 The Consultant failed to provide "adequate assurances" within five (5) Days of SRTA's notice, when, in the opinion of SRTA, reasonable grounds for uncertainty exist with respect to the Consultant's ability to perform any of its obligations under this Contract;
- 23.1.6 The suspension or revocation of any license, permit, or registration necessary for the performance of the Consultant's obligations under this Contract and the continuance thereof for a period of ten (10) Days after notice is given to the Consultant by SRTA;
- 23.1.7 The Consultant suspended or failed to proceed with any part of the Work and the continuance thereof for a period of seven (7) Days after notice is given to the Consultant by SRTA;
- 23.1.8 The default in the performance or observance of any of the Consultant's other obligations under the Contract Documents and the continuance thereof for a period of ten (10) Days after notice is given to the Consultant by SRTA.

**23.2 SRTA Damages/Remedies.** Upon the occurrence of an Event of Default, SRTA may, in addition to and without prejudice to all other contractual remedies and/or remedies allowed at law or in equity, proceed to take any or all of the following actions:

- 23.2.1 Withhold any money then due and/or thereafter due to Consultant;
- 23.2.2 Perform or cause to be performed for the account of Consultant any contractual obligation, the performance of which the Consultant is in default, or make any payment for which the Consultant is in default. The Consultant shall pay to SRTA upon demand any amount paid or incurred by SRTA in the performance of such obligation. Any amounts which have been paid or incurred by reason of failure of the Consultant to comply with any obligation or provision of this Contract shall bear interest at the Default Rate, which shall be defined as the Prime Rate plus five (5) percent, but in no case higher than the highest rate permitted by law, from the date of payment by SRTA until paid by the Consultant; and
- 23.2.3 Obtain the Work, or a portion thereof, from a third party under substantially similar terms of this Contract, and recover from Consultant all additional costs and expenses paid or incurred by SRTA as a result of the Event of Default, plus all additional costs paid or incurred by SRTA to obtain the replacement Work as set forth in this **Section 23.2.**

## **24. COOPERATION, TRANSITION OF WORK, AND END OF CONTRACT RESPONSIBILITIES.**

- 24.1 Cooperation.** In the event that SRTA enters into any agreement at any time with any other consultant(s) for work related to the Work, Consultant agrees to cooperate fully with such other consultant(s) in order to facilitate the performance of the Work and/or provision of work by such other consultant(s) and to refrain from any activity which would interfere with performance of the Work and/or provision of work by such other consultant(s).
- 24.2 Transition.** Upon expiration or earlier termination of this Contract, Consultant shall accomplish a complete transition of the Work from Consultant to SRTA, to a SRTA-designated Representative or to any replacement provider designated by SRTA, without any interruption of, or adverse impact on the Work any component thereof or any other Work provided by third parties. Consultant shall cooperate fully with SRTA, a SRTA-designated Representative, or such replacement

provider and promptly take all steps required to assist in effecting a complete transition. All Work related to such transition shall be performed at no additional cost beyond what would be paid for the Work hereunder and any other work for which there are no labor or equipment rates set forth in **Exhibit C (Consultant Rates)** shall be subject to a Task Order.

**24.3 End of Contract.** The Consultant shall perform the end of Contract responsibilities as reasonably specified by SRТА upon the expiration or earlier termination of this Contract. The Consultant will be required to submit a Final Report at the end of the contract term or when the contract is terminated which outlines all planning, creative and design documents with outcomes developed for SRТА.

**24.4 Failure to Comply.** The Parties acknowledge and understand that Consultant's failure to comply with the terms and conditions as stated hereinabove shall adversely affect SRТА and result in monetary loss to SRТА. SRТА shall assess, audit, and certify to the Consultant SRТА's monetary losses resulting from the Consultant's failure to comply with the provisions of this **Section 24**.

**25. CONFLICTS OF INTEREST.** The Consultant represents and warrants that it, its principals, its employees, and all others in close association or otherwise affiliated with it, have no conflict of interest or of time, directly or indirectly, that would prevent timely performance of the Work in a manner that is free of appearance or fact of impropriety. The Consultant promises to allow no such conflict to arise and promises to disclose such a conflict in the event that, nevertheless, one develops. Such disclosure must be made in writing to the SRТА Program Manager no later than five (5) Days after such conflict arises.

**26. EXHIBITS.** **Exhibit A (RFP)** and **Exhibit B (Proposal)** are incorporated by reference into and made a part of the Contract. **Exhibit C (Consultant Hourly Rates)**, **Exhibit D (Form Task Order)** and **Exhibit E (Definitions)** are attached hereto and incorporated into the Contract.

## **27. MISCELLANEOUS.**

**27.1 Compliance with laws.** The Consultant shall perform its obligations hereunder in accordance with all applicable federal, state, and local government laws, rules, regulations, orders, ordinances and approvals, including but not limited to procedures and requirements relating to labor standards, equal employment opportunity, nondiscrimination, compliance with Americans with Disabilities Act, anti-solicitation, O.C.G.A. §50-5-82, O.C.G.A. §13-10-91, immigration (O.C.G.A. §13-10-91 et seq.), and auditing and reporting provisions, now or hereafter in effect, and any rules required by any federal grant funding payment by SRТА.

**27.2 Parties Bound.** This Contract will bind the respective heirs, executors, administrators, legal representatives, successors, and assigns of each Party.

**27.3 Time of the Essence; Force Majeure.** Time is of the essence for all Work performed pursuant to the Contract Documents. The Consultant shall perform its responsibilities for each Task Order and/or Amended Task Order in accordance with the schedule set forth therein. However, neither Party shall be liable to the other Party for any delay or failure of performance due to fires or other casualties, acts of God, unusual weather conditions, strikes or labor disputes, or war. Consultant's exclusive remedies for force majeure are set forth in **Section 14.3 (Time Extensions)**.

**27.4 Non-disparagement.** Each Party agrees not to make any statement, written or oral, to any third party which disparages or criticizes the other Party or the other Party's respective officers, directors, employees, agents or management and business practices, in each case in connection with the performance or administration of the Work, this Contract, any other work/relationship between the other Parties under separate agreement, or any matter related thereto. The provisions of this **Section 27.4** shall not apply to any truthful statement required to be made by either Party, or such Party's officers, directors or agents, as the case may be, in any legal proceeding or governmental or regulatory investigation or to any internal discussions or communications between the Parties.

**27.5 Trading with State Employees.** The Consultant represents that the provisions of O.C.G.A. §§45-10-20 *et seq.* have not and will not be violated under the terms of this Contract.

**27.6 Registered Lobbyists.** Consultant represents and warrants that the Consultant and its lobbyists, if any, are in compliance with the Lobbyist Registration Requirements in accordance with the Georgia Vendor Manual, incorporated herein by reference.

**27.7 Governing Law and Venue.** This Contract is a Georgia agreement made under the laws of the State. It will be enforced according to Georgia law without regard to its conflict of laws rules or any other rules directing referral to foreign law or forums. Any action related to this Contract in any way shall be brought exclusively in the Superior Court of Fulton County, Georgia, and each Party hereby consents to the jurisdiction and venue of such Court and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum. Each Party hereby agrees to execute an acknowledgment of service of process at the request of the other Party in any litigation related to this agreement. In the event that a Party does not provide an acknowledgment of service as agreed, each Party consents to service of process at that Party's address set forth in **Section 27.8 (Notices)**.

**27.8 Notices.** All notices, notifications, approvals, acceptances, requests, permission, waivers or other communications (excluding invoices that will be handled as set forth in **Section 10 (Payment Terms)** hereunder shall be in writing and transmitted via hand delivery, overnight courier, or certified mail to the Parties at the respective addresses set forth below. Invoices may also be sent by U.S. Mail, postage prepaid. Notices will be deemed to have been given when received, unless otherwise noted in the Contract. If a Party refuses to accept delivery or fails to take delivery, notice shall be deemed given on the day delivery is first attempted. Notice may also be given by email, provided a hard copy of the notice is also transmitted via hand delivery, overnight courier, or certified mail to the Parties at the respective addresses set forth below.

*For SRTA:*

Attn: Executive Director  
47 Trinity Avenue, 4<sup>th</sup> Floor  
Atlanta, Georgia 30334  
Phone: (404) 893-6141  
Email: [ctomlinson@georgiatolls.com](mailto:ctomlinson@georgiatolls.com)

*For the Consultant:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**27.9 Taxes.** The Consultant will pay all taxes lawfully imposed upon it that may arise with respect to this Contract.

**27.10 Safety and Health/No Discrimination.** Consultant shall at all times comply with and require that all of its subcontractors performing Work under this Contract comply with all applicable federal and State occupational safety and health standards, rules, regulations and federal and State orders. Consultant shall not and shall cause any subcontractor to not discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the Work under the Contract Documents. Consultant shall carry out and shall cause its subcontractors to carry out, applicable requirements of 49 CFR Part 26. Consultant shall include this provision in every subcontract pertaining to the Work.

**27.11 Publicity.** Consultant shall not issue a press release or otherwise publicize the Work or this Contract without the prior written permission of SRTA's Director of Marketing and Communications.

**27.12 Drug-Free Workplace.** Consultant certifies that (i) a drug free workplace will be provided for the Consultant's employees during the performance of this Contract, and (ii) it will secure from any subcontractor, agent or assign hired to work in a drug free workplace the following written certification: "As part of the subcontracting agreement with (Consultant's Name), (Subcontractor's Name), certifies to the Consultant that a drug free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection B of Code Section 50-24-3." Consultant may be suspended, terminated, or debarred if it is determined that (i) the Consultant has made false certification hereinabove, or (ii) the Consultant has violated such certification by failure to carry out the requirements of O.C.G.A. § 50-24-3.

**27.13 Remedies Cumulative.** The rights and remedies of SRTA under this Contract are cumulative of one another and with those otherwise provided by law or in equity.

**27.14 Waiver and Severability.** The waiver by SRTA of a breach of any provision of this Contract shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision of this Contract. Any such waiver must be in writing in order to be effective, and no such waiver shall establish a course of performance between the Parties contradictory to the terms hereof. All provisions of this Contract are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed so as to carry out the full intention of the Parties.

**27.15 No Third Party Beneficiaries.** Nothing contained in the Contract Documents shall be construed as conferring upon or giving to any person, other than the Parties hereto, any rights or benefits under or by reason of this Contract.

**27.15 Interpretation.** The captions in this Contract are solely for convenience, and will not affect the interpretation of any terms of this Contract.

27.15.1 Wherever the word “including” “includes” or “include” is used in this Contract, it shall be deemed to be followed by the words “without limitation.”

**27.16 Counterparts.** The Parties may execute this Contract in counterparts.

**27.17 Construction of Contract.** In the event this Contract must be interpreted by a court of competent jurisdiction as defined in Section 27.7 (Governing Law and Venue), the Parties expressly agree that this is a negotiated Contract that will not be construed against one Party over the other because such Party drafted the Contract.

**27.18 Survival.** In addition to those provisions, which by their terms would naturally survive termination of the Contract, Sections 3 (Inclusion and Priority of Documents), 7 (Subcontracting and Assignment), 10 (Payment), 11 (Indemnification), 12 (Insurance), 13 (Additional Consultant Responsibilities and Representations), 16 (Review/Audits), 17 (Ownership of Documents), 18 (Intellectual Property), 19 (Termination), 21 (Confidentiality), 23 (Event of Default; Damages/Remedies), 24 (Cooperation, Transition of Work and End of Contract Responsibilities), and 27 (Miscellaneous) shall survive the termination for whatever reason of this Contract.

**27.19 Non-exclusivity.** This Contract is entered into solely for the convenience of SRTA and the State, and in no way precludes SRTA from obtaining like goods or services from other consultants at SRTA’s sole discretion.

**27.20 Entire Contract; Amendment.** This Contract contains the entire agreement between the Parties with respect to its subject matter and supersedes all other prior and contemporaneous contracts and understandings between the Parties, whether oral or written. SRTA shall not be bound by any terms and conditions included in any packaging, invoice, catalog, brochure, technical data sheet, or other document prepared by the Consultant which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein. No amendment to this Contract shall be valid unless made in writing and signed by both Parties.

**IN WITNESS WHEREOF,** the Parties have signed, sealed and delivered this Contract as of the Effective Date.

State Road and Tollway Authority

\_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
Christopher Tomlinson, Executive Director

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

Attest: \_\_\_\_\_  
Bert Brantley, Deputy  
Executive Director

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_ Title: \_\_\_\_\_

Exhibit A  
RFP

Incorporated herein by reference.

Exhibit B  
Proposal

Incorporated Herein by Reference

Exhibit C  
Consultant Rates

*(insert from cost proposal)*

Exhibit D  
Form Task Order

**STATE ROAD AND TOLLWAY AUTHORITY**

*SRTA ERP Task Order*

*Task Order Name:*

*Task Order Number:*

*Date:*

*SRTA Contact for this Task Order: Malika Reed Wilkins*

***I. Introduction (Statement of Purpose and Need)***

***II. Scope of Work***

***III. Task Inputs by SRTA***

***IV. Task Outputs by Consultant***

***V. Work Schedule***

***VI. Compensation*** (NOTE: This section will vary depending upon the method of payment (hourly/fixed fee).

***VII. Task Order Maximum-not-to-Exceed Amount*** (If applicable).

***VIII. Governing Terms***

*This Task Order #\_ will be governed by the terms and conditions of the Professional Services Contract between the State Road and Tollway Authority and \_\_\_\_\_ dated \_\_\_\_\_, 2012 ("Contract"), which is incorporated herein by reference. Any capitalized terms not defined in this Task Order #\_ shall have the definitions ascribed to them in the Contract.*

*The Parties have signed, sealed and delivered this Task Order #\_ effective as of \_\_\_\_\_, 201\_.*

*State Road and Tollway Authority \_\_\_\_\_ (SEAL)*

By: \_\_\_\_\_  
*Gena L. Evans, Ph.D.*  
*Executive Director*

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

## **Exhibit E**

### **Definitions**

Terms defined in this Agreement have the following meanings assigned to them unless the context clearly requires otherwise:

1. **Amended Task Order** has the meaning assigned to it in Section 9.2.
2. **Amended Task Order Proposal** has the meaning assigned to it in Section 14.2.
3. **Confidential Information** means certain trade secrets, and confidential information concerning the Work, SRTA's customers, operations, projects, procurements, and any confidential and/or proprietary information of any of SRTA's vendors.
4. **Consultant Intellectual Property** means Intellectual Property owned by the Consultant prior to the Effective Date.
5. **Consultant Parties** means the Consultant and its subcontractors.
6. **Consultant Program Manager** means a program manager assigned by the Consultant, and shall interface with SRTA, other state entities, and SRTA-designated Representatives.
7. **Contract** has the meaning assigned to it in Section 3.
8. **Contract Documents** means collectively this Contract, the RFP and the Proposal.
9. **Days** mean calendar days unless otherwise specified in the Contract.
10. **Default Rate** has the meaning assigned to it in Section 23.2.2.
11. **Disputed Work** has the meaning assigned to it in Section 14.2.
12. **Effective Date** means the date upon which the final required signature of this agreement is granted.
13. **Event of Default** has the meaning assigned to it in Section 23.
14. **Initial Term** means 12:00 AM prevailing Atlanta, Georgia time on the Effective Date until 11:59 PM prevailing Atlanta, Georgia time on June 30, 2015.
15. **Intellectual Property** means any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the foregoing, whether or not registered as of the Effective Date or at any later date.
16. **Key Personnel** has the meaning assigned to it in Section 5.2.
17. **Proposal** means collectively the Consultant's proposal to the RFP, including the technical proposal and the cost proposal (and any documents referenced therein), and any other information submitted in response to the RFP.
18. **Renewal Term** has the meaning assigned to it in Section 4.
19. **SRTA Program Manager** means a person identified by SRTA to act as and be SRTA's representative between SRTA and the Consultant.
20. **SRTA-designated Representatives** means any person(s) or entity(ies) (other than State entities) authorized by SRTA to represent SRTA in some or all dealings with the Consultant.
21. **State** means the State of Georgia.
22. **Task Order** has the meaning defined to it in section 9.1.
23. **Term** means collectively the Initial Term and each Renewal Term.
24. **Work** means collectively the work and services required of the Consultant as more fully described in the Contract Documents and the Task Orders issued pursuant to this Contract.