

State Road and Tollway Authority
Purchase Order/Purchase Agreement Terms and Conditions

1. **Acceptance.** This purchase order is an offer by the State Road and Tollway Authority ("SRTA") for the purchase of the goods (the "Goods") or services (the "**Services**") specified, from the party to whom the purchase order is addressed (the "Seller") in accordance with and subject to these terms and conditions (the "Term(s)" and together with the terms and conditions on the face of the purchase order, the "Order"). SRTA and Seller may be referred to as "Parties." This Order will be deemed accepted by the Seller upon the first of the following to occur: (a) Seller making, signing, or delivering to SRTA any letter, form, or other writing or instrument acknowledging acceptance; or (b) any performance by Seller under the Order. This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the Order and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order, unless a subsequent contract stating it is overriding the Order has been entered into and signed by the Parties. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms expressly exclude any of Seller's terms and conditions of sale or any other document issued by Seller in connection with this Order.

2. **Delivery.** Seller shall deliver the Goods and/or perform the Services at the delivery point (the "**Deliver Location**"), and on the date(s) specified in this Order (the "Delivery Date"). If no delivery date is specified, Seller shall deliver in full within a reasonable time of receipt of the Order. If Seller fails to deliver the Goods or Services in full on the Delivery Date, SRTA may terminate the Order immediately and Seller shall indemnify SRTA against any losses, damages, and reasonable costs and expenses attributable to Seller's failure to deliver.

3. **Inspection.** SRTA reserves the right to inspect the Goods on or after the Delivery Date. SRTA, at its sole option, may reject all or any portion of the Goods if it determines the Goods are defective or nonconforming. If SRTA requires replacement of the Goods, pursuant to Section 3, Seller shall promptly replace the nonconforming Goods. If Seller fails to timely deliver replacement Goods, SRTA may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause. Any inspection or other action by SRTA under this Section shall not affect Seller's obligations under the Order nor relieve the Seller of responsibility for faulty Goods or Services, faulty workmanship, or omission of any Goods or Services, and SRTA shall have the right to further inspection after Seller takes remedial action.

4. **Cumulative Remedies.** The rights and remedies of SRTA under this Order are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise. If Seller is in breach of the warranties set out in Section 9, Seller will, at its sole cost, replace or repair the Goods or re-perform Services to SRTA's satisfaction.

5. **Price and Payment.** The price of the Goods or Services is the price stated on the face of this Order and shall be F.O.B. destination (the "**Price**"). Seller shall invoice SRTA for the Order within thirty (30) days of delivery. Unless otherwise stated in the Order, SRTA shall pay all properly invoiced amounts due to Seller within sixty (60) days after receipt of such invoice, except for any amounts disputed by SRTA. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute. Without prejudice to any other right or remedy, SRTA reserves the right to set off any amount owing to it by Seller against any amount payable by SRTA to Seller. Payment of an invoice is not evidence or admission that the Goods or Services meet the requirements of the Order. Payment or use of any Goods or Services or portions thereof by SRTA shall not constitute an acceptance of any Goods or Services not performed in accordance with the Order nor shall payment waive any preceding or then-existing breach or default by the Seller of any term of the Order.

6. **Change Order.** SRTA may, from time to time, initiate changes by issuing to Seller written notices (each, a "**Change Order**") that alter, add to, or deduct from the Goods or Services, but that are otherwise subject to the Terms of this Order. Seller will promptly comply with the terms of any Change Order.

7. **Termination.** SRTA may terminate this Order, in whole or in part, for any reason upon fifteen (15) days' prior written notice to Seller. In addition to any remedies provided herein, SRTA may terminate this Order with immediate effect, either before or after acceptance of Goods or Services, if Seller has breached any of the Terms. If the Seller becomes insolvent, commences or has commenced by it or against it bankruptcy proceedings, receivership, reorganization or assignment for the benefit of creditors, then the SRTA may terminate this Order. If SRTA terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods or Services received and accepted by SRTA and which comply with this Order prior to the termination.

8. **Warranties.** Seller warrants to SRTA that for a period of eighteen (18) months from the Delivery Date, all Goods, Services or Goods furnished in connection with Services will: (a) be new and free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance, payment or termination of the Order. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of SRTA's discovery of the noncompliance. If SRTA gives Seller notice of noncompliance, Seller shall, at its own cost and expense, promptly replace or repair the nonconforming Goods or Services.

9. **Indemnification.** Seller shall defend, indemnify, and hold harmless SRTA, its respective directors, officers, shareholders, and employees, and the State of Georgia (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") to the extent arising out of or occurring in connection with Seller's performance of its obligations or Seller's acts or omissions to act, negligence, willful misconduct or breach of the Terms of this Order or if SRTA's possession of the Goods or Seller's Services infringes on third party intellectual property rights of whatever nature, including but not limited to the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without SRTA's or Indemnitee's prior written consent.

10. **Confidential Information.** All non-public, confidential or proprietary information of SRTA, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by SRTA to Seller, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by SRTA in writing. Upon SRTA's request, Seller shall promptly return all documents and other materials received from SRTA. SRTA shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) rightfully and legally known to the Seller at the time of disclosure; (c) rightfully and legally obtained by the Seller on a non-confidential basis from a third party; or (iv) is required to be disclosed by law or court order.

11. **Insurance.** Seller shall, at its own expense, maintain, and carry insurance in full force and effect with financially sound and reputable insurers, which includes: (a) commercial general liability (including product liability) in a sum no less than \$2,000,000 for each occurrence and \$4,000,000 in the aggregate; (b) workers' compensation insurance in compliance with applicable laws; (c) if the Seller will use or provide for use of motor vehicles in providing and/or performing the Order, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of no less than \$1,000,000. Upon SRTA's request, Seller shall provide SRTA with a certificate of insurance evidencing the coverage specified in this Order.

12. **Compliance with Law.** Seller warrants and represents to SRTA that it is in compliance with and shall remain in compliance during performance of this Order and ensure that its employees, agents, contractors and subcontractors (the "Personnel") comply with all applicable federal, state and local laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under the Order. If Seller fails to comply with the laws, orders, rules, ordinances and regulations and as a result SRTA is fined, Seller shall pay the fine and costs incident thereto or reimburse SRTA for payment. To the extent that Seller's Personnel are required to enter onto SRTA's site or property, Seller shall ensure that Personnel comply with SRTA's safety policies.

13. **Shipping Terms.** Delivery shall be made in accordance with the Terms of this Order. Seller shall not substitute material or ship more than the quantity ordered. Supplier shall be solely responsible for and pay, all costs of delivering the Goods to the Delivery Location, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports/exports of the Goods.

14. **Taxes.** Unless specified otherwise on the face of the Order, the prices are inclusive of, and Seller shall be solely responsible for and pay, all federal, state, and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax. No sales or use tax shall be added when a valid tax exemption is expressly indicated on the face of this Order by the SRTA.

15. **Title and Risk of Loss.** (a) Unless otherwise specified in the Order, risk of loss of the Goods remains with Seller and title will not pass to SRTA until the Goods are delivered to and accepted by SRTA. (b) Any and all cuts, negatives, positives, artwork, plates, engravings, and other materials provided by SRTA is the property of SRTA and shall remain the property of SRTA.

16. **Force Majeure.** Neither party shall be liable to the other party for any delay due to the occurrence of the following events that materially and adversely affects performance of a party's obligations, provided that such events could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by the affected party (a) war; (b) fire, explosion, flood, earthquake, hurricane, or tornado, in each case that causes direct physical damage to the Goods or prevents the Services from being performed; or (c) national or statewide strike that has a direct adverse impact on the Seller's ability to obtain materials or labor for the Order. Seller shall use all diligent efforts to end the delay of its performance, ensure that the effects of any Force Majeure event are minimized and resume performance under the Order. If Seller is prevented from performance for a continuous period of more than fifteen (15) business days, SRTA may terminate this Order, without penalty or liability, immediately by giving written notice to Seller.

17. **Relationship of the Parties.** The Seller is an independent contractor of SRTA. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.

18. **Notices.** All notices, approvals, consents, claims, demands, waivers and communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (all fees pre-paid), facsimile (with confirmation of transmission) or certified mail (return receipt requested/postage prepaid). A Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements of this Section 18.

19. **Services.** Any Seller performing Services represents itself as qualified and able to perform. Seller shall perform Services pursuant to the industry standard of care. SRTA will furnish materials, equipment and machinery only if and to the extent set forth in the Order. Seller will report immediately to SRTA any event or circumstance which Seller knows or reasonably suspects is, or results from, a violation of SRTA's policies or law. Seller will, at its sole cost and expense, repair or replace any real or personal property belonging to SRTA that Seller, its employees or agents may damage, destroy or remove while performing or result from performing this Order.

20. **Miscellaneous.** Timely is of the essence of this Order. Provisions of this Order which by their nature should survive the termination of this Order will survive any termination of this Order. If any Term of the Order is found invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other Term of this Order or invalidate or render unenforceable such term in any other jurisdiction. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without SRTA's prior written consent. Any purported assignment or subcontract in violation of this Section shall be null and void. No assignment shall relieve the Seller of any of its obligations hereunder. No modification, alteration or amendment of the Order shall be binding unless agreed to in writing and signed by SRTA. No waiver by any party of any of the provisions of the Order shall be effective unless in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order by SRTA shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or privilege hereunder preclude any other exercise of any additional right, remedy, or privilege. Except to the extent provisions of the Order are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted by the State of Georgia shall govern this Order. To the extent the Order entails both the supply of Goods and Services such shall be deemed goods within the meaning of the Uniform Commercial Code, except when deeming such services as goods would result in a clearly unreasonable interpretation. This Contract 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. In the event the Terms must be interpreted by a court of competent jurisdiction, the Parties expressly agree that this is a negotiated Order that will not be construed against one party over the other because such party drafted the Terms. Seller represents and warrants that the Seller and its lobbyists, if any, are in compliance with the Lobbyist Registration Requirements in accordance with the Georgia Vendor Manual, which is incorporated herein by reference. Vendor shall comply with the terms of the Georgia Drug-free Workplace Act (O.C.G.A. Section 50-24-1 et seq.). The terms found on the face of this Order shall govern over the Terms in the event of a conflict. In the event that this Order is issued pursuant to an Agreement already executed by the Parties, the terms and conditions of such latter document shall govern in the event of any conflict with these terms and conditions.
