

ATTACHMENT E
AUDIT SERVICES CONTRACT
BETWEEN
THE STATE ROAD AND TOLLWAY AUTHORITY
AND

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AUDIT SERVICES CONTRACT

This contract ("Contract") is made and entered into as of _____, 2010 ("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 _____, a _____ ("Contractor"). SRTA and Contractor may be referred to collectively as "Parties" and individually as "Party."

WHEREAS, SRTA desires to engage and utilize the professional services of an auditor, in accordance with the needs, requirements, terms and conditions, as more fully described in the Audit Services RFP No. 927-10-00005 and any addenda thereto and any documents referenced therein (collectively, the "RFP");

WHEREAS, the Contractor has represented to SRTA that it is experienced and qualified and willing to provide all of the services and expertise needed to successfully provide the audit services as that work is more fully described in the RFP;

WHEREAS, SRTA has relied upon such representations and selected the Contractor to furnish the Services;

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

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the adequacy and sufficiency of which are hereby acknowledged, the Parties, 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 terms 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, which is incorporated herein by reference as **Exhibit A**, and the Contractor's Technical Proposal (and any documents referenced therein) submitted in response thereto, which is incorporated herein by reference as **Exhibit B** (collectively, the "Contractor's Proposal"), are integral parts of this Contract. The RFP, the Contractor's Proposal, this Contract (including all amendments, documents and exhibits referenced in this Contract) 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 Contractor 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 Contractor's Proposal.
4. **Contract Term and Renewal.** This Contract shall begin on the Effective Date and shall continue until June 30, 2012 11:59 pm (the "Term"). SRTA may elect to renew this Contract, by notice to the Contractor, on the same terms and conditions for up to two (2) additional renewal periods with a term of up to one (1) year each. The renewal of the Contract shall be at the sole discretion of SRTA.
5. **Time and Manner of Performance.**
 - A. **Services in General/Project Schedule.** Contractor agrees to provide and deliver all of the professional services set forth in the RFP (collectively, "Services"). All of the Services and each

component thereof shall conform to each and every standard, specification, provision, deadline, timeline, law, criteria and requirement as applicable and as set forth in the RFP and, in particular, with each and every standard, specification, provision, deadline, timeline, criteria and requirement of **Section III (Statement of Needs)** of the RFP. Contractor will supply all materials needed to perform the Services at no additional cost. Contractor shall perform the services involved in the Services in a workmanlike and professional manner, consistent with the highest level of care and skill exercised by other providers of similar services in the industry. All Services shall be performed by the Contractor within the times needed in order to meet any deadline imposed by a Governmental Authority. Unless an extension of time is granted by SRTA pursuant to **Section 12C (Delay and Extensions of Time)** of this Contract, Contractor will successfully, fully and entirely complete all Services by all applicable deadlines.

- B. Cooperation. SRTA shall be entitled to full and prompt cooperation of the Contractor in all aspects of the Services. The Contractor shall use best efforts to minimize any disruption to SRTA's normal business operations when Contractor is performing Services.
- C. SRTA's Treasurer. SRTA's Treasurer will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract. Decisions made by SRTA's Treasurer shall be binding.

6. **Contractor Personnel**.

- A. General. The Contractor shall provide sufficient professional personnel and staffing to provide the Services. Contractor warrants and represents that all persons assigned to perform under this Contract shall be employees of Contractor and shall be fully qualified and possess the necessary degrees to perform the Services. Personnel commitments made in Contractor's Proposal shall not be changed unless approved by SRTA. Contractor's failure to continuously provide adequate staffing may result in the termination of this Contract. All of Contractor's personnel shall comply with SRTA's confidentiality and security requirements while on SRTA's premises or otherwise performing the Services.
- B. SRTA's Right to Remove. SRTA shall have the absolute right to require the Contractor to remove an employee from performing under this Contract for any or no reason. In the event of such removal, Contractor will replace the employee with the appropriate personnel within the time specified by SRTA.
- C. Contractor Project Manager. Contractor shall assign a Project Manager who shall interface with SRTA during the performance of this Contract.
- D. Key Personnel. Contractor shall not substitute key personnel included in Attachment C of the Contractor's Proposal ("Key Personnel") without the prior written approval of SRTA. Any desired substitution shall be noticed to SRTA, accompanied by the names and references of Contractor's recommend substitute personnel. Notwithstanding any provision in the Contract Documents to the contrary, the Contractor's Project Manager shall be considered one of the Key Personnel.

- 7. **Data Ownership/Security**. All data, records and operations history information in any way relating to SRTA, its customers and all work produced by Contractor under the Contract Documents shall remain the property of SRTA at all times during the Term of the Contract and after Contract termination for whatever reason. In addition to Contractor's obligations in **Section 14 (Confidentiality)**, Contractor shall ensure that no unauthorized personnel will have access to individual facilities, cabinets, data and records, payment histories, any personal information of existing or potential SRTA customers or security information regarding SRTA's operations.

8. **Subcontracting and Assignment.** This Contract is for personal services of Contractor. Contractor 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. Contractor shall not subcontract Services to subcontractors without the prior written consent of SRTA, which may be withheld for any reason. Any assignments or subcontracts made in violation of this **Section 8** shall be null and void.
9. **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 purpose. Neither Party shall assume any liability of any type on behalf of the other Party or any of such other Party's employees, agents, or partners. The Parties expressly understand and agree that Contractor is an independent contractor 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. Contractor shall be solely responsible for all payments to its 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 its employees.
10. **Safety Precautions.** The Contractor shall be solely and completely responsible for the safety of all persons and property in any way related to the Services and comply with the ordinances, rules and regulations of any applicable Governmental Authority.
11. **Payment Terms.**
 - A. **General.** For satisfactory performance of the Services, SRTA hereby agrees to compensate the Contractor in accordance with the prices set forth in **Exhibit C (Pricing Schedules)** attached hereto and incorporated herein.
 - B. **Trust Funds.** All payments made by SRTA to Contractor for the Services under the Contract Documents shall be held in trust by the Contractor for the purpose of paying its employees, agents, assigns, and any other parties who provided any part of the Services.
 - C. **Overpayment.** In the event an overpayment is made to Contractor under this Contract, Contractor shall immediately refund to SRTA the full amount of any such erroneous payment or overpayment following Contractor's written notice of such erroneous payment or overpayment. If Contractor 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.
 - D. **Reduction of Payment for Unsatisfactory Services:** If any action, duty or service or part thereof required by the Contract is not performed by the Contractor, the value of such action, duty or service or part thereof will be determined by SRTA and deducted from any invoice claiming such items for payment. If the action, duty or service or part thereof has been completed and is determined to be unsatisfactory by SRTA, the Contractor will be notified and given the opportunity to correct any deficiencies within a time certain. Payment (for unsatisfactory Services) will be withheld by SRTA from any invoice until such time as the Services are determined by SRTA to be acceptable.

- E. 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 Services not completed, completed unsatisfactorily, or Services that are otherwise performed in an inadequate or untimely fashion as determined by SRTA. Any and all such payment previously withheld shall be released and paid to Contractor promptly when the Services are subsequently satisfactorily performed.
- F. Payment not Acceptance. Payment or use of any Services or portions thereof by SRTA shall not constitute an acceptance of any Services not performed in accordance with the Contract Documents.
- G. Net 30 Days. SRTA agrees to pay Contractor in accordance with its normal processes and procedures for all undisputed amounts within thirty (30) days of receipt of a valid invoice, provided SRTA, as applicable, received and approved the particular component of Services.
- H. Invoicing. The Contractor shall deliver to SRTA an invoice for the firm fixed price proposed upon completion of all work for the annual period audited.
- I. No Late Fees. In no event shall the Contractor be entitled to charge SRTA late fees, collection fees, attorney's fees, interest, or other fees incurred by the Contractor as a result of non-payment or a delay in payment by SRTA.
- J. Right of Set Off. SRTA may retain or set off any amount owed to it by Contractor.
- K. Full Compensation. All Services performed by the Contractor in meeting the requirements of the Contract Documents shall be paid as set forth above, which shall constitute full compensation for the Services, including but not limited to: (a) the cost of all insurance, home office, job site and other overhead, and profit relating to Contractor's performance of its obligations under this Contract; (b) the cost of performance of each and every portion of the Services; (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 Services as provided herein; and (e) payment of any taxes, duties, permits and other fees and/or royalties imposed with respect to the Services and any materials, supplies, documentation, labor or services included therein.
- L. Firm Price Period. The prices set forth in **Exhibit C (Pricing Schedules)** shall be firm for the Term and any renewal thereof. If the Contractor wishes to increase the price of any line item listed in **Exhibit C (Pricing Schedules)** in the event SRTA elects to renew the Contract, then no later than eighteen months prior to conclusion of the Term, Contractor shall notify SRTA of such intent and the new pricing proposed by Contractor.

12. Contract Changes.

- A. Allowable Changes. Contract changes will only be allowed to address (i) variances in the scope of Services for which there is no appropriate pay item or category (the Parties understanding that such additional work may be subject to a new competitive procurement as deemed to be in the best interest of SRTA), and (ii) an extension of time to the extent a delay is caused by events listed in **Section 12C (Delay and Extensions of Time)**. No change in or modification, termination or discharge of the Services or any component thereof, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by SRTA's Treasurer.

- B. Change Order. A Change Order shall consist of only such additions, deletions or other revisions to the Services which represent a substantial change from the scope of Services and do not arise from the actions or inactions of the Contractor, as reasonably determined by SRTA. The Contractor 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 Contractor, its agents, employees, independent contractors, or any other entity or person with whom Contractor entered into an agreement to perform Services required under the Contract Documents (collectively, "Contractor Parties"). Compensation or a reduction in the amount due to Contractor pursuant to the Contract Documents ("Contract Sum") for the work included in a Change Order shall be as set forth in the Change Order.

SRTA may initiate the Change Order procedure by a notice to the Contractor setting forth the proposed Change Order. Within five (5) Business Days thereafter, the Contractor shall provide a detailed proposal which includes proposed prices and a proposed schedule for performance ("Change Order Proposal"). The Change Order Proposal may be accepted by SRTA or modified by negotiations between the Contractor and SRTA, whereupon a written Change Order shall be executed by both Parties.

If the Parties fail to reach agreement with respect to the proposed Change Order, SRTA may nevertheless direct the Contractor to proceed with the work included in the proposed Change Order (which for purposes of **Section 12 (Contract Changes)** shall be hereinafter defined as "Disputed Services"). In the event of such Disputed Services, the Contractor shall be obligated to proceed immediately upon notice from SRTA to perform the Disputed Services and shall be compensated by SRTA in accordance with the firm fixed costs in **Exhibit C (Pricing Schedules)** of this Contract.

- C. Delay and Extensions of Time. SRTA will only grant an extension of time if the Contractor is delayed in the progress of the Services by (i) any act or neglect of SRTA or (ii) an event listed in **Section 36C (Time of the Essence; Force Majeure)**. If and when either event occurs, then the time of completion shall be extended equal to the time lost as a result of the delay. The Contractor expressly agrees that the Contractor's sole and exclusive remedy for such delay shall be an extension of contract time and that the Contractor 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 Contractor, within ten days from the cessation of the delay, shall have given notice in writing to SRTA, with copy to SRTA, as to the amount of additional time claimed.

13. Warranties.

- A. General. Contractor hereby expressly represents and warrants the following:

- i. Services/Labor. Contractor represents and warrants that all Services shall (1) conform to the performance, capabilities, accuracy, completeness, characteristics, specifications, standards, and needs required by the RFP, (2) the Services to be performed hereunder will be performed on time, and in a workmanlike manner, consistent with the highest level of care and skill exercised by other providers of similar labor and services under similar circumstances at the time the Services are provided, and (3) Contractor performed criminal background checks on each employee performing any Services or a component thereof and there were no negative or potentially negative results on any employee performing any Services or a component thereof.

- ii. Cooperation. Contractor represents and warrants that Contractor shall fully cooperate with SRTA in furnishing all the Services required by the Contract.
 - iii. Compliance with Laws, Rules and Regulations. Contractor represents and warrants that (1) the Services will not be in violation of any applicable law, code, standard, best practices for the industry, rule or regulation, (2) the Contractor is registered with the Secretary of State and authorized to perform the Services in the State of Georgia, and (3) Contractor will comply in all respects with all other laws, rules, regulations, ordinances of any governing authority that impact or relate in any way to the Services.
 - iv. No-waiver. No failure of SRTA to exercise any right or power given to SRTA under this Contract, or to insist upon strict compliance by the Contractor with the provisions of this Contract, and no custom or practice of SRTA or the Contractor at variance with the terms and conditions of this Contract, shall constitute a waiver of SRTA's right to demand exact and strict compliance with the terms and conditions of this Contract.
- B. Inducement. To induce SRTA to enter into this Contract, SRTA shall be entitled to rely upon the representations and certifications made by the Contractor in the Contractor's Proposal, without independent investigation and verification, and each such representation or certification shall be deemed to be material to this Contract. The person negotiating and executing this Contract on behalf of the Contractor has the full right, power, and authority to enter into, execute and perform this Contract in accordance with the terms hereof, and when executed and delivered, this Contract will constitute a valid and binding obligation of the Contractor and will be enforceable in accordance with the terms thereof.
- C. Contractor duty to Remedy. Contractor shall, within the time periods designated in this Contract, correct, remedy, replace, re-execute, supply omitted or defective Services and pay for the same, without expense to SRTA. The Contractor shall replace any defective Service, no later than five (5) business days after the date of SRTA's written notification thereof.
- D. Other Remedies. The remedies stated in this **Section 13** are in addition to the remedies otherwise available to SRTA, do not exclude such other remedies, and are without prejudice to any other remedies.

14. Confidentiality

- A. Obligation of Confidentiality. In order for Contractor to perform the Services called for in this Contract, it may be necessary to review certain of SRTA's confidential information, including but not limited to information related to SRTA's customer data and other confidential information ("Confidential Information"). Contractor agrees that it shall use the same efforts to maintain SRTA's Confidential Information that Contractor uses to maintain the confidentiality of its own confidential information, but in no event shall Contractor use less than commercially reasonable efforts. Further, Contractor 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 Contractor to perform the Services, and who have executed a nondisclosure agreement consistent with the provisions hereof.
- B. Exceptions. Contractor shall not have any obligation of confidentiality with respect to any information that: (i) can be demonstrated by Contractor to have been in its possession or known by Contractor prior to the receipt under this Contract; (ii) is rightfully disclosed to the Contractor

by a third party without restriction; (iii) is disclosed by the Contractor with the written approval of SRTA; 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.

- C. Use of Confidential Information. Contractor and its representatives shall only use the Confidential Information solely for the purpose of providing the Services required under the Contract Documents.
- D. Return of Confidential Information. The Contractor shall return to SRTA any Confidential Information immediately on request but no later than upon the termination for whatever reason of this Contract.

15. **Incorrectly Performed Services.** The Services or a component thereof may be unacceptable because the same fails to conform to the specifications of the Contract Documents or is furnished in breach of the Contract Documents. SRTA may provide written notice to the Contractor of any Service that is not acceptable. If the Contractor fails to cure the defect within the time set forth in any written notice then, in addition to SRTA's other rights and remedies under the Contract and by law, SRTA may cancel the Contract, contract with a different contractor and invoice Contractor for any differential in price over the original Contract Sum shown in **Exhibit C (Pricing Schedules)** of this agreement.

16. **Indemnification.**

- A. General Liability. The Contractor shall be responsible to SRTA during the Term and any renewal thereof, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the Services by the Contractor, or any of its agents, employees or others working at the direction of the Contractor or on its behalf.
- B. Indemnification. Contractor hereby agrees to indemnify and hold harmless the SRTA, the State of Georgia and its departments, 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 attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this Contract or any act or omission on the part of the Contractor, its agents, employees or others working at the direction of Contractor or on its behalf, or due to any breach of this Contract by the Contractor, or due to the application or violation of any pertinent Federal, State or local law, rule or regulation. This indemnification extends to the successors and assigns of the Contractor. This indemnification obligation survives the termination of the Contract and the dissolution or, to the extent allowed by law, the bankruptcy of the Contractor. 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 Services Risk Management Division (hereinafter "DOAS") the Contractor agrees to reimburse the Funds for such monies paid out by the Funds.

DOAS 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 will endeavor to keep the Contractor and its general liability insurer as named on the insurance certificate informed regarding the claims and settlement.

The Contractor's obligations under this Section are in addition to Contractor's obligations under **Section 20 (Insurance)**.

17. **Limitation of Liability of SRTA.** In no event shall SRTA be liable for any incidental, consequential, special, exemplary or indirect damages, lost business profits or the like arising out of this Contract. SRTA's liability to Contractor, if any, shall be limited to direct damages and in such case, only to the extent of the amount SRTA has paid to Contractor under this Contract for the twelve months immediately preceding Contractor's claim.

18. **Default; Damages/Remedies.**

A. **Event of Default.** The following shall constitute an Event of Default on the part of the Contractor:

- i. The Contractor has failed to deliver the Services or a component thereof on a timely basis except to the extent of an excusable delay in accordance with **Section 12C (Delays and Extension of Time)** and the continuance thereof for a period of ten (10) Days after notice is given to the Contractor by SRTA;
- ii. The Contractor has failed to remedy defective Services and the continuance thereof for a period of ten (10) Days after notice is given to the Contractor by SRTA;
- iii. The Contractor has failed to provide proof of insurance or copies of insurance policies, as required by **Sections 20 (Insurance)** and the continuance thereof for a period of ten (10) Days after notice is given to the Contractor by SRTA;
- iv. The Contractor 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 Contractor's creditors (except any assignment of proceeds as collateral for any loan), or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or the Contractor's property or affairs have voluntarily been put in the hands of a receiver; or any case, proceeding or other action against the Contractor 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;
- v. The Contractor has failed to provide "adequate assurances" within five days of SRTA's notice, when, in the opinion of SRTA, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform any of its obligations under this Contract;
- vi. The suspension or revocation of any license or registration necessary for the performance of the Contractor's obligations under this Contract and the continuance thereof for a period of ten (10) Days after notice is given to the Contractor by SRTA;
- vii. The Contractor has suspended or failed to proceed with any part of the Services and the continuance thereof for a period of ten (10) Days after notice is given to the Contractor by SRTA;
- viii. The default in the performance or observance of any of the Contractor's other obligations under the Contract Documents and the continuance thereof for a period of ten (10) Days after notice is given to the Contractor by SRTA.

- B. 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:
- i. Withhold any money then due and/or thereafter due to Contractor;
 - ii. Perform or cause to be performed for the account of Contractor any contractual covenant in the performance of which the Contractor is in default or make any payment for which the Contractor is in default. The Contractor shall pay to SRTA upon demand any amount paid or incurred by SRTA in the performance of such covenant. Any amounts which have been paid or incurred by reason of failure of the Contractor to comply with any covenant 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 Contractor; and
 - iii. Obtain the Services, or a portion thereof, from a third party under substantially similar terms of this Contract, and recover from Contractor all additional costs and expenses paid or incurred by SRTA as a direct result of the Event of Default, plus all additional costs paid or incurred by SRTA to obtain the replacement Services as set forth in this **Section 18B (SRTA Damages/Remedies)**.

19. Termination.

- A. Termination for Cause. Upon an Event of Default, SRTA may, in its sole discretion, terminate this Contract in whole or in part. Termination shall take effect on the date set forth in SRTA's notice to Contractor. Upon such termination SRTA shall not be required to pay Contractor any amounts for Services 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 Contractor's breach are less than the Remaining Payment, SRTA shall remit such differential to the Contractor. In the event SRTA's expenses incurred or anticipated to be incurred as a result of Contractor's breach exceed the Remaining Payment, then Contractor 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 19A**, SRTA shall have all other rights and remedies against Contractor which are available at law or in equity. The Contractor acknowledges that the remedy set forth in this **Section 19A** is the Contractor's sole and exclusive remedy against SRTA for termination for cause and Contractor hereby waives all other rights and remedies it may have against SRTA.
- B. Termination for Convenience. SRTA may terminate this Contract for convenience upon 30 days written notice, which shall commence upon the date of said notice. In the event of a termination for convenience, SRTA shall only pay the Contractor for Services performed through the termination date. SRTA shall not be responsible for any other costs, fees and expenses of any nature whatsoever, including but not limited to administrative fees, legal fees, salary, or any other cost or expense, whether direct or indirect, whether foreseen or unforeseen. The Contractor acknowledges that the remedy set forth in this **Section 19B** is the Contractor's sole and exclusive remedy against SRTA for termination for convenience and Contractor hereby waives all other rights and remedies it may have against SRTA.
- C. Compliance with Contract. Contractor shall comply with all of the terms and conditions of the Contract Documents, including but not limited to the provisions of **Section 22 (Cooperation, Transition, and End of Contract Responsibilities)**, in the event SRTA exercises any of its rights under this **Section 19**.

D. Termination in the Event of a Successful Protest. The Parties agree that SRTA may terminate this Contract in the event of a successful protest without penalty or cost. Contractor shall have no recourse against SRTA in the event SRTA terminates the Contract pursuant to this **Section 19D** and Contractor hereby waives all rights and remedies it may have against SRTA for termination in the event of a successful protest, whether under this Contract, at law or in equity.

20. Insurance.

A. Obligation to Insure. The Contractor shall procure the insurance coverages identified below at the Contractor'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:

- i. Name and address of authorized agent, Signature of authorized agent.
- ii. Name and address of insured.
- iii. Name of insurance company(ies).
- iv. Description of policies, Policy Number(s), Policy Period(s).
- v. Limits of liability.
- vi. Name and address of SRTA as certificate holder.
- vii. Project Name and Number.
- viii. Telephone number of authorized agent.
- ix. Mandatory 30 day notice of cancellation or non-renewal (10 days for non-payment).

B. Insurer Qualifications, Insurance Requirements. Each of the insurance coverages required below (i) shall be issued by a company licensed by the State Insurance Commissioner to transact the business of insurance in the State 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 and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions:

- i. The insurance company agrees that the policy shall not be canceled or allowed to lapse or allowed to expire until thirty 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. Such notice shall be valid only as to the Project as shall have been designated by Project Number and Name in said notice. Contractor shall provide written notice of any changes to the policy to the SRTA within three business days of Contractor's receipt of notice of any changes or proposed changes from the insurance company.
- ii. 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").
- iii. 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 Contractor 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.

iv. All deductibles shall be paid for by the Contractor. Self-insured retention, except for qualified self-insurers or group self-insurers, in any policy, shall not exceed \$100,000.00.

C. Required Insurance Coverages. The Contractor also agrees to purchase insurance and have the authorized agent state on the insurance certificate that the Contractor has purchased the following types of insurance coverages, consistent with the policies and requirements of O.C.G.A. §50-21-37. The minimum required coverages and liability limits are as follows:

i. Workers' Compensation Insurance. The Contractor shall provide at a minimum Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the Contractor qualifies to pay its own workers' compensation claims.

ii. Employers' Liability Insurance. The Contractor shall also maintain Employer's Liability Insurance Coverage with limits of at least:

- Bodily Injury by Accident \$1,000,000 each accident; and
- Bodily Injury by Disease \$1,000,000 each employee.

iii. Commercial General Liability Insurance. The Contractor shall provide Commercial General Liability Insurance (2001 ISO Occurrence Form or equivalent) that shall include, but need not be limited to personal injury liability and contractual liability. The CGL policy must include separate aggregate limits per Project and shall provide at a minimum the following limits:

- Personal Injury \$ 1,000,000.00 per Occurrence
- Contractual \$ 1,000,000.00 per Occurrence
- General Aggregate \$ 2,000,000.00 per Project

iv. Professional Liability Policy. The Contractor shall provide a Professional Liability Policy covering the Services provided by Contractor during the Term and any renewal of the Contract. The insurance shall be provided on an "occurrence" basis and not on a "claims-made" basis. The professional liability coverage shall provide a minimum policy limit of:

- \$3,000,000.00 per annual audit

v. Commercial Umbrella Liability Insurance. The Contractor shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, and the Workers' Compensation and Employers' Liability to satisfy the minimum limits set forth herein. The umbrella coverage shall follow form with the Umbrella limits required as follows:

- \$2,000,000 per Occurrence
- \$10,000,000 Aggregate

D. Additional Requirements. The insurance policies provided in **Section 20C** shall also name as additional insureds the officers, members, and employees of Lessor and shall also be on an "occurrence" basis.

E. General. One original certificate of insurance with all endorsements attached must be deposited with SRTA for each insurance policy required. 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. The Contractor is responsible for any delay resulting from the failure of his insurance carriers to furnish proof of proper coverage in the prescribed form. Contractor is responsible for tracking insurance coverages, for ensuring that coverages remain in force throughout the duration of the Contract, and for demonstrating to SRTA ongoing compliance with this **Section 20**. The Contractor's obligations under this **Section 20** are in addition to Contractor's obligations under **Section 16 (Indemnification)**.

21. Records Retention and Audit Rights. In addition to audit obligations as set forth in the RFP, Contractor shall maintain accurate books, records, documents and other evidence concerning Contractor's performance of Services under this Contract (hereinafter referred to as the "Records") for five (5) years after termination of the Contract. Contractor agrees to make available, at all reasonable times during which this Contract is in effect the Records for inspection or audit by any authorized representative of SRTA or the Georgia State Auditor. The Contractor further agrees to comply with the AICPA's Statement on Auditing Standards No. 103, which requires the auditor to adopt reasonable procedures to retain and access audit documentation for a period of time sufficient to meet the needs of his or her practice and to satisfy any applicable legal or regulatory requirements for records retention. Such retention period, however, should not be shorter than five years from the report release date. The government entity, its authorized agents, and federal and state regulatory and grantor agencies, including the Georgia Department of Audits and Accounts, shall have full access to and the right to examine any of said materials during said period at no cost to either the government entity or any other entity authorized to examine said materials.

22. Cooperation, Transition, End of Contract Responsibilities.

- A. Cooperation. This Contract is entered into solely for the convenience of SRTA, and it in no way precludes SRTA from obtaining like Services from other vendors. In the event that SRTA enters into any agreement at any time with any other vendor(s) for additional work related to the Services, Contractor agrees to cooperate fully with such other vendors in order to facilitate the provision of Services by such other vendors and to refrain from any activity which would interfere with performance of the Services by such other vendor.
- B. Transition. Upon expiration or earlier termination of this Contract, Contractor shall accomplish a complete transition of the Services from Contractor to SRTA, or to any replacement provider designated by SRTA, without any interruption of, or adverse impact on the Services or any component thereof. Contractor shall cooperate fully with SRTA or such replacement contractor and promptly take all steps required to assist in effecting a complete transition. All Services related to such transition shall be performed at no additional cost beyond what would be paid for the Services hereunder.
- C. End of Contract. The Contractor shall perform the end of Contract responsibilities as specified by SRTA upon the expiration or earlier termination of this Contract.
- D. Failure to Comply. The Parties acknowledge and understand that Contractor's failure to comply with the terms and conditions as stated hereinabove shall adversely affect SRTA and result in monetary loss to SRTA. SRTA shall assess, audit, and certify to the Contractor monetary losses resulting from the Contractor's failure to comply with the provisions of this **Section 22**. SRTA's reasonable determination as to the amount of the monetary loss suffered shall be conclusive and Contractor shall compensate SRTA for said loss within thirty (30) days of such a determination.

23. **Conflicts of Interest.** The Contractor represents and warrants that it, its principals, its employees, and all others in close association with it, have no conflict of interest or of time, directly or indirectly, that would prevent timely performance of the Services in a manner that is free of appearance or fact of impropriety. The Contractor promises to allow no such conflict to arise and promises to disclose such a conflict in the event that, nevertheless, one develops.
24. **Miscellaneous Provisions.**
- A. **Compliance with laws.** The Contractor shall perform its obligations hereunder in accordance with all applicable federal, state, and local government laws, rules, regulations, orders 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, and auditing and reporting provisions, now or hereafter in effect.
 - B. **Parties Bound.** This Contract will bind the respective heirs, executors, administrators, legal representatives, successors, and assigns of each Party.
 - C. **Time of the Essence; Force Majeure.** Time is of the Essence for this Contract. *Force Majeure* means any cause beyond the control of Contractor, including but not limited to: (i) a tornado, flood or unusual weather occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage; or act of God provided that the Contractor shall not be required to settle any strike or labor disturbance in which it may be involved or (ii) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Contractor and the Contractor does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Contractor. Contractor's exclusive remedies for force majeure are set forth in **Section 12C (Delays and Extension of Time)**.
 - D. **Trading with State Employees.** The Contractor warrants 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.
 - E. **Governing Law and Venue.** 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. Any action related to this agreement 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 24F (Notices)**.
 - F. **Notices.** All notices, notifications, requests, or other communications (excluding invoices) hereunder shall be in writing and transmitted via hand delivery, overnight courier, or certified mail (return receipt requested), 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 (return receipt requested), to the Parties at the respective addresses set forth below.

For SRTA:

Attn: Acting Accounting Manager
47 Trinity Avenue, 4th Floor
Atlanta, Georgia 30334
Phone: (404) 893-6100
Fax: (404) 893-6144
Email: linda.mcleroy@georgiatolls.com

For the Contractor:

- G. Compliance with Laws; Taxes. The Contractor will pay all taxes lawfully imposed upon it that may arise with respect to this Contract.
- H. Publicity. Contractor shall not issue a press release or otherwise publicize the Services or this Contract without the prior written permission of SRTA.
- I. Drug-Free Workplace. Contractor hereby certifies that (a) a drug free workplace will be provided for the Contractor's employees during the performance of this Contract, and (b) it will secure from any subcontractor hired to work in a drug free workplace the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name), certifies to the Contractor 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." Contractor may be suspended, terminated, or debarred if it is determined that (a) the Contractor has made false certification hereinabove, or (b) the Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. § 50-24-3.
- J. 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.
- K. Waiver and Severability. The waiver by either Party 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.
- L. 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.
- M. Headings. The captions in this Contract are solely for convenience, and will not affect the interpretation of any terms of this Contract.
- N. Counterparts. The Parties may execute this Contract in counterparts.
- O. Construction of Contract. In the event this Contract must be interpreted by a court of competent jurisdiction, 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.

- P. Survival. In addition to those provisions, which by their terms would naturally survive termination of the Contract, **Sections 7 (Data Ownership/Security), 11 (Payment Terms), 13 (Warranties), 14 (Confidentiality), 16 (Indemnification), 17 (Limitation of Liability of SRTA), 18 (Default; Damages/Remedies), 20 (Insurance), 21 (Records Retention and Audit Rights), and 24 (Miscellaneous Provisions)** shall survive the termination for whatever reason of this Contract.
- Q. 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 invoice, catalog, brochure, or other document prepared by the Contractor 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.
- R. Days. *Days* shall mean calendar days unless otherwise specified in the Contract.
- S. State. *State* means the State of Georgia.
- T. Governmental Authority. *Governmental Authority* means any federal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America, including, without limitation, the State of Georgia and its respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.
- U. Audit Rights. SRTA and the State Contractor shall have the right, exercisable at any reasonable time during normal business hours, to inspect and audit any books and records of the Contractor concerning its performance of the Services.
- V. Registered Lobbyists. Contractor represents and warrants that Contractor and its lobbyists, if any, are in compliance with the Lobbyist Registration Requirements set forth in the Georgia Vendor Manual.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed effective as of the day and year first above mentioned.

State Road and Tollway Authority

Contractor (SEAL)

By: _____
 Gena L. Evans, Ph.D.
 Executive Director

By: _____
 Name:
 Title:

Attest: _____
 Christopher Tomlinson
 Director of Legal Services

Attest: _____
 Name:
 Title:

Exhibit A

The RFP is incorporated herein by reference.

Exhibit B

The Contractor's Proposal is incorporated herein by reference.

EXHIBIT C
PRICING SCHEDULES

METHOD OF COMPENSATION

Contractor shall invoice for the firm fixed price in the month following the month in which such item was delivered, installed and accepted, as determined by SRTA. Invoicing for services that is priced on a unit price basis, will be made to the Contractor for the units of work completed, delivered and accepted, as determined by SRTA, multiplied by the Contract unit price for the items.