

**PROFESSIONAL SERVICES CONTRACT**

**BETWEEN**

**THE STATE ROAD AND TOLLWAY  
AUTHORITY**

**AND**

---

# DRAFT SAMPLE CONTRACT

## Contents

<u>1. Recitals</u>	6
<u>2. Definitions</u>	6
<u>3. Inclusion and Priority of Documents</u>	6
<u>4. Contract Term and Renewal</u>	6
<u>5. Consultant's responsibilities</u>	6
<u>5.1. General</u>	6
<u>5.2. Personnel</u>	7
<u>5.2.1. SRTA's Right to Remove</u>	7
<u>5.2.2. Consultant Program Manager</u>	7
<u>5.2.3. Key Personnel</u>	7
<u>5.3. Use of Seal</u>	7
<u>5.4. Accuracy of Work</u>	7
<u>5.5. Interpretation of Information</u>	7
<u>5.6. Safety</u>	7
<u>5.7. Quality Assurance</u>	7
<u>5.7.1. Quality Control (QC)</u>	8
<u>5.7.2. Quality Assurance (QA)</u>	8
<u>5.7.3. Quality Control Plan</u>	8
<u>6. Project Management</u>	8
<u>7. Subcontracting and Assignment</u>	8
<u>7.1. Assignment</u>	8
<u>7.2. Subcontracting</u>	8
<u>7.3. Consultant Remains Responsible</u>	8
<u>7.4. Mandatory Terms in Subcontracts</u>	9
<u>7.5. Payments to Sub consultants</u>	9
<u>7.6. Failure to Comply</u>	9
<u>8. Relationship of the Parties</u>	9
<u>8.1. Joint Venture/Partnership</u>	9
<u>9. Process</u>	9
<u>9.1. Task Order</u>	9
<u>9.2. Amended Task Order</u>	9
<u>9.3. Project Schedule</u>	10
<u>10. Payment</u>	10
<u>10.1. Methods of Compensation</u>	10
<u>10.1.1. Cost Plus Fixed Fee Pricing</u>	10
<u>10.1.2. Lump Sum Pricing</u>	11
<u>10.2. Trust Funds</u>	12
<u>10.3. Overpayment</u>	12
<u>10.4. Reduction of Payment for Non-Conforming Work</u>	12
<u>10.5. Withholding Payments</u>	12
<u>10.6. Payment not Acceptance</u>	12
<u>10.7. Net 30 Days</u>	12
<u>10.8. Invoicing</u>	12
<u>10.8.1. Cost Plus Fixed Fee Pricing</u>	13
<u>10.8.2. Fixed fee Pricing</u>	13
<u>10.9. Late Fees</u>	13
<u>10.10. Right of Set Off</u>	13

# DRAFT SAMPLE CONTRACT

<u>10.11 Full Compensation</u>	13
<u>10.12 Final Payment</u>	13
<u>10.13 Overtime</u>	14
<u>11. Indemnification</u>	14
<u>11.1 Professional Services Indemnity</u>	14
<u>11.1.1 Professional Services Defined</u>	14
<u>11.1.2 Negligent Professional Act</u>	14
<u>11.2 General Liability</u>	14
<u>11.3 General Indemnification</u>	14
<u>11.3.1 DOAS</u>	14
<u>11.3.2 Obligations not Mutually Exclusive</u>	15
<u>11.4 Limitation of Liability of SRTA</u>	15
<u>11.5 Disclaimer of Consequential Damages</u>	15
<u>12. Insurance</u>	15
<u>12.1 Insurance Certificates</u>	15
<u>12.2 Insurer Qualifications, Insurance Requirements</u>	15
<u>12.3 Required Insurance Coverages</u>	16
<u>12.3.1 Workers' Compensation and Employer's Liability</u>	16
<u>12.3.2 Commercial General Liability Insurance</u>	16
<u>12.3.3 Professional Liability (Errors and Omissions) Insurance</u>	16
<u>12.3.4 Commercial Umbrella Liability Insurance</u>	16
<u>12.4 Insurance Premiums and Deductibles</u>	16
<u>12.5 Termination of Obligation to Insure</u>	16
<u>12.6 Failure of Insurers</u>	16
<u>12.7 Ongoing Coverage</u>	16
<u>12.8 General</u>	16
<u>12.9 Waiver of Subrogation</u>	16
<u>12.10 Additional Insured Endorsement</u>	17
<u>13. Additional Consultant Responsibilities and Representations</u>	17
<u>13.1 Licenses</u>	17
<u>13.2 Organization</u>	17
<u>13.3 Authorization by Consultant</u>	17
<u>13.4 Authorization of Signer</u>	17
<u>13.5 Valid Contract</u>	17
<u>13.6 Cooperation</u>	17
<u>13.7 Laws</u>	17
<u>13.8 Work/Labor</u>	17
<u>13.9 Intellectual Property</u>	17
<u>13.10 Limited Design</u>	17
<u>13.10.1 Professional Standard of Care</u>	18
<u>14. Changes</u>	18
<u>14.1 Amended Task Order</u>	18
<u>14.2 Amended Task Order Process</u>	18
<u>14.3 Time Extensions</u>	18
<u>15. Cooperation</u>	19
<u>16. Review/Audits</u>	19
<u>16.1 Review of Work</u>	19
<u>16.2 Records Retention</u>	19

# DRAFT SAMPLE CONTRACT

<u>16.3 Audit</u>	19
<u>17. Ownership of Documents</u>	19
<u>18. Intellectual Property</u>	20
<u>18.1 Work Made for Hire</u>	20
<u>18.2 Patents</u>	20
<u>18.3 Ownership of Data/Security</u>	20
<u>19. Termination</u>	20
<u>19.1 Termination for Cause</u>	20
<u>19.2 Termination for Convenience</u>	21
<u>19.3 Termination in General</u>	21
<u>19.4 Termination for Lack of Funding</u>	21
<u>19.5 Compliance with Contract</u>	22
<u>20. Changes in Consultant Organization</u>	21
<u>21. Confidentiality</u>	21
<u>21.1 No Obligation of Confidentiality</u>	21
<u>21.2 Use of Confidential Information</u>	21
<u>21.3 Return of Confidential Information</u>	21
<u>22. Dispute Resolution</u>	22
<u>23. Event of Default; Damages/Remedies</u>	22
<u>23.1 Event of Default</u>	22
<u>23.2 SRTA's Damages/Remedies</u>	22
<u>24. Cooperation, Transition of Work, and End of Contract Responsibilities</u>	23
<u>24.1 Cooperation</u>	23
<u>24.2 Transition</u>	23
<u>24.3 End of Contract</u>	23
<u>24.4 Failure to Comply</u>	23
<u>25. Conflicts of Interest</u>	23
<u>26. Exhibits</u>	23
<u>27. Miscellaneous</u>	24
<u>27.1 Compliance with laws</u>	24
<u>27.2 Parties Bound</u>	24
<u>27.3 Time of the Essence; Force Majeure</u>	24
<u>27.4 Non-disparagement</u>	24
<u>27.5 Trading with State Employees</u>	24
<u>27.6 Federal Intellectual Property Bankruptcy Protection Act</u>	24
<u>27.7 Governing Law and Venue</u>	24
<u>27.8 Notices</u>	24
<u>27.9 Taxes</u>	25
<u>27.10 Safety and Health/No Discrimination</u>	25
<u>27.11 Publicity</u>	25
<u>27.12 Drug-Free Workplace</u>	25
<u>27.13 Remedies Cumulative</u>	25
<u>27.14 Waiver and Severability</u>	25
<u>27.15 No Third Party Beneficiaries</u>	25
<u>27.15 Interpretation</u>	25
<u>27.16 Counterparts</u>	26
<u>27.17 Construction of Contract</u>	26
<u>27.18 Survival</u>	26

# DRAFT SAMPLE CONTRACT

27.19 Non-exclusivity 26

27.20 Entire Contract; Amendment 26

27.21 Registered Lobbyists 26

# DRAFT SAMPLE CONTRACT

## PROFESSIONAL SERVICES CONTRACT

**THIS CONTRACT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2026 (“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 \_\_\_\_\_ corporation authorized to do business in the state of Georgia (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 professional services as more fully described in the Request for Qualifications to Provide General Engineering Consulting RFQ # \_\_\_\_\_ and any addenda thereto and any documents referenced therein (collectively, the “RFQ”); and

**WHEREAS**, the Consultant has represented to SRTA that it is experienced and qualified and willing to provide all of the labor and experience needed to successfully provide the work and services more fully described in the RFQ (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; and

**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 RFQ to that term.
3. **INCLUSION AND PRIORITY OF DOCUMENTS.** The RFQ is incorporated herein by reference as **Exhibit A**. The Consultant’s Statement of Qualification (and any documents referenced therein) and the Consultant’s Consulting Plan Proposal (and any documents referenced therein), which were submitted in response to the RFQ, are incorporated herein by reference as **Exhibit B**. The Consultant’s Statement of Qualification and the Consultant’s Consulting Plan Proposal shall be collectively referred to as the “Statement of Qualifications”. The RFQ and the Statement of Qualifications are integral parts of this Contract. The RFQ, the Statement of Qualifications, and this Contract (including all amendments, documents, exhibits, Task Orders and Amended Task Orders referenced in the Contract) shall be collectively referred to as the “Contract Documents” or the “Contract.” 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 RFQ, and the Statement of Qualifications.
4. **CONTRACT TERM AND RENEWAL.** This Contract shall begin on the Effective Date and shall continue for three years thereafter, ending at 11:59 pm (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 (1) year each (each a “Renewal Term”). The renewal of the Contract shall be at the sole discretion of SRTA.
5. **CONSULTANT’S RESPONSIBILITIES.**
  - 5.1 **General.** In performing the Work, the Consultant shall use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions and like circumstances. The Work to be performed by the Consultant under this Contract shall encompass and include all detail work,

# DRAFT SAMPLE CONTRACT

services, materials, equipment, and supplies necessary to provide professional engineering and related services on an "on call" basis to SRTA.

**5.2 Personnel.** The Consultant shall employ only persons qualified and duly registered as applicable in the appropriate category of Work to be performed. The Consultant shall use the Key Personnel set forth in the Statement of Qualifications ("Key Personnel"), unless changes to the Consultant's staff are approved in writing by SRTA. The Consultant shall endorse Work performed under this Contract, if applicable. Such endorsements shall be made by a person duly registered in the appropriate category by the Georgia State Board of Registration for Professional Engineers and Land Surveyors, being in the full employ of the Consultant and responsible for the Work prescribed by this Contract.

*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 this Contract 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 Program Manager who shall interface with SRTA ("Consultant Program Manager"), any person or persons authorized by SRTA to represent the SRTA in some or all dealings with the Consultant ("SRTA Representatives"), GDOT and/or GDOT's contractors during the performance of this Contract.

*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 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, and experience in the areas or disciplines more particularly set forth in the Contract Documents, together with such other areas of 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 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 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. Notwithstanding any provision in the Contract Documents to the contrary, the Consultant's Program Manager shall be considered one of the Key Personnel.

**5.3 Use of Seal.** All final plans, documents, reports, studies, and other data prepared by the Consultant shall bear the professional's seal and signature in accordance with the Official Code of Georgia or guidelines published by the State Board of Professional Engineers and Land Surveyors, where applicable.

**5.4 Completeness of Work.** The Consultant shall be responsible for the completeness 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, which may include construction costs caused by negligent errors in, or negligent omissions from, the plans prepared by the Consultant.

**5.5 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.

**5.6 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

# DRAFT SAMPLE CONTRACT

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. Consultant shall not be responsible for the safety precautions and programs incident to the work of the contractor that will perform the construction.

**5.7 Quality Assurance.** If required in a Task Order, the Consultant shall maintain a Quality Control/Quality Assurance Plan for all Work performed under the Contract Documents, including Work produced by sub-consultants. The Quality Control/Quality Assurance Plan shall be subject to review and acceptance by SRTA before it is implemented by the Consultant. SRTA reserves the right to inspect at any time all reports, data, and records pertaining to the Quality Control/Quality Assurance review processes in place for services provided under the Contract Documents.

*5.7.1 Quality Control (QC)* is defined as the operational activities put in place to control the quality of a product or service. These include such activities as providing clear decisions and directions, constant supervision by experienced individuals, immediate review of completed activities for accuracy and completeness, and accurate documentation of all decisions, assumptions, and recommendations. Quality control procedures, if followed, should verify that the Work is done correctly the first time.

*5.7.2 Quality Assurance (QA)* is defined as the certainty that products and services meet the requirements for quality. The objective of quality assurance is the continual improvement of the total delivery process to enhance quality, productivity, and customer satisfaction. Essentially, QA is what the project manager does to confirm that a QC program is effective and provides feedback upon which further development of the QC program can be made. When quality assurance is well-implemented, progressive improvement in terms of both reducing errors and omissions and increasing product usability and performance should be noted.

*5.7.3 Quality Control Plan* is defined as a comprehensive, well-defined, written set of procedures and activities aimed at delivering products and/or services that meet or exceed a customer's expectations, as expressed in contract documents and other published sources. A quality control plan will identify the organization or individuals responsible for quality control and the specific procedures used to ensure delivery of a quality product. A quality control plan will also detail quality assurance measures and the method of accountability and required documentation.

6. **PROJECT MANAGEMENT.** SRTA shall identify a program manager (“Program Manager”) who shall act as and be SRTA’s representative between the 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 the SRTA, which shall not be unreasonably withheld.

**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 Statement of Qualifications, without obtaining the SRTA’s prior written approval, which approval is within the 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 the 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

# DRAFT SAMPLE CONTRACT

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 Mandatory Terms in Subcontracts.** Nothing contained in this Contract shall create any contractual relationship between any sub consultant of Consultant and SRTA. Any subcontract entered into as a result of this Contract, shall contain all applicable provisions of the Contract Documents that in any way relate to an item of Work that any sub consultant will perform and/or furnish, as well as provisions pertaining to, records, and payment methods. The Consultant shall further ensure that all subcontracts entered into with its sub consultant grant SRTA all of the rights and privileges of such subcontract, including but not limited to (so long as SRTA is not in default of its obligations under this Contract) SRTA's right to secure materials or services from the sub consultant that might be a part of the sub consultant's Work, in the event Consultant defaults under the Contract Documents.

**7.5 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.

**7.6 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.

**8.1 Joint Venture/Partnership.** If Consultant is a joint venture or partnership then each member of the joint venture or partnership shall be jointly and severally liable to SRTA and to the State for any and all obligations, responsibilities, liabilities, damages, liquidated damages, warranties or otherwise arising under the Contract Documents.

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 that must be signed by both Parties. SRTA will order from the Consultant, all or a portion of the Work specified in the RFQ as such Work, in SRTA's sole opinion, is needed. SRTA is not required to purchase any Work from the Consultant.

# DRAFT SAMPLE CONTRACT

**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”) in the same form as set forth in **Exhibit D (Task Order and Fee Schedule)**. 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. The Consultant shall prepare and deliver plans, special studies, specifications, estimates, and reports in accordance with the terms and conditions of the Contract Documents. 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 reimbursement.

**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 reimbursement. All Work set forth in a Task Order or Amended Task Order shall be performed by the Consultant within the times specified in the Task Order or Amended Task Order, as applicable. 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.

**9.4 Mandatory FHWA Clauses.** Task Orders executed under this Contract that are financed, whether in part or in whole, by FHWA funds, shall include the mandatory FHWA clauses attached hereto as Exhibit G. For all task orders financed in part or in whole through the use of FHWA funds, in the event that terms in this Contract conflict with Mandatory FHWA Clauses as provided in Exhibit G, the Mandatory FHWA Clauses shall control.

10. **PAYMENT.** The maximum not to exceed amount for all Work performed during the Initial Term is \$                     , 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 Methods of Compensation.** Payment for Work performed under each Task Order will be agreed to by the Parties, and shall be based either on a Lump Sum, Loaded Hourly or Cost Plus Fixed Fee basis.

*10.1.1 Cost Plus Fixed Fee Pricing.* The maximum allowable cost to SRTA for Work completed pursuant to this method of payment is the sum of the estimated allowable costs and fixed fees for the completion of Work as set forth in the fee schedule attached to each Task Order (each a “Fee Schedule”). Allowable costs are the direct costs and overhead specified in **Sections 10.1.1.1 and 10.1.1.2**, which are listed in the Fee Schedule, and incurred by the Consultant during the performance of Work under the applicable Task Order.

10.1.1.1 Direct Costs. SRTA will pay to the Consultant an amount equal to actual direct costs as are incurred by the Consultant, up to the maximum cost attributable to the Work as specified in the applicable Task Order, which are allowable under generally accepted accounting principles, and are not otherwise prohibited by federal or State laws. SRTA and/or its authorized representatives may verify the validity of these direct costs from the records of the Consultant as the Work progresses, and in any event before

## DRAFT SAMPLE CONTRACT

final payment under the terms of the applicable Task Order and the Contract Documents. Allowable direct costs constitute:

- Tools/Instruments/Equipment. The cost of any nonexpendable tools, instruments, or equipment used in the execution and performance of the Work shall not be an allowable direct cost when such items are of the nature and kind of tools, instruments, or equipment normally and generally used by the Consultant. However, direct costs will include any special equipment, which is unique and essential to the performance of the Work under a Task Order, and usable only for purpose of the Task Order, provided that such special equipment is listed in the Fee Schedule, or prior written approval by SRTA is obtained. The Consultant guarantees that items of equipment included as part of the direct costs are not included in any manner in indirect costs as set forth in **Section 10.1.1.2**. Title to such special equipment purchased by SRTA shall vest in SRTA upon the completion or termination of the Task Order for which the special equipment was used.
- Salaries/Wages. Salaries and/or wages charged to SRTA on any Fee Schedule shall not exceed the actual salary and/or wage rate of such person that is applicable to that person's other activities for the Consultant and/or the sub consultant, as applicable, and not to exceed the rates as set forth in **Exhibit C (Consultant Rates)**. Exhibit C (Consultant Rates) may be updated as mutually agreed to by the Parties in writing. Exhibit C may be updated to add or remove Consultant employees upon written approval by SRTA. Charges for salaries and wages of individuals shall be supported, at SRTA's option, by either time and attendance and payroll distribution records or certification by the applicable Human Resources manager.
- Travel. Expense for travel outside the State shall not be an allowable direct cost under this Contract unless such travel is listed in the budget estimate in the Task Order or approved in writing in advance by SRTA. In addition, direct allowable costs for travel within the State shall be limited to the amount included in the Fee Schedule, unless prior written approval is obtained from SRTA for increasing such amount. This approval by SRTA shall not change the total estimated cost of a Task Order/and or Amended Task Order. Travel Expenses shall consist of air fare, lodging, meals, ground transportation, parking, communication, reproduction and other such incidental costs which are reasonable and customary pursuant to industry standards. Consultant will be reimbursed for travel necessary to perform the Work in accordance with the State 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 with each Invoice. Notwithstanding the above, SRTA will not reimburse Consultant for time spent or costs incurred for ground transportation traveling to and from the SRTA's offices. SRTA will, at the same rate as regular SRTA employees, reimburse Consultant the parking costs for employees working embedded at SRTA's main 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.

10.1.1.2 Overhead, For Consultant employees working embedded in SRTA's main office, the provisional field overhead rate as set by GDOT shall apply. For all other Consultant employees, SRTA shall reimburse the Consultant for overhead costs as are properly chargeable to the Work performed under a Task Order under generally accepted accounting principles and are not otherwise prohibited by State or federal laws. Overhead that may be listed in the budget estimate in the Fee Schedule shall be reimbursed at a provisional overhead rate applied to the amount paid as direct salaries and wages to persons employed by the Consultant on the Project as shown in the Fee

# DRAFT SAMPLE CONTRACT

Schedule. The Consultant shall invoice SRTA at the provisional overhead rate allowed with the understanding that this rate may be adjusted upon audit by SRTA pursuant to the provisions of this Section. The provisional overhead rate may be adjusted whenever an audit undertaken by SRTA shows this rate to be higher than the actual overhead rate incurred by the Consultant. SRTA, its designated representatives, and/or other state of Georgia entities may verify the validity of or otherwise determine the actual allowable overhead rate experienced during the period of performance of the applicable Task Order from the cost records and other accounts of the Consultant as the Work progresses, and in any event before final payment of each Task Order, pursuant to **Section 10.12** below. If the Consultant's actual allowable overhead rate during this period is less than the provisional overhead rate, the Consultant shall, within thirty Days of SRTA's request, reimburse the difference between the overhead computed on the basis of the provisional overhead rate and the actual allowable overhead computed on the basis of the actual allowable overhead rate established in accordance with the provisions of this Section. The Consultant further agrees that the decision of SRTA in the establishment of the actual allowable overhead rate for final payment of indirect costs shall be final.

**10.1.1.3 Fixed Fee.** The fixed fee to be charged by Consultant for Work performed pursuant to Task Orders paid on a Cost Plus Fixed Fee method shall be 10%. If a Task Order being paid for on a Cost Plus Fixed Fee method is terminated by SRTA, pursuant to the provisions of **Section 19 (Termination)**, then final payment shall be made based upon the percentage of Work completed at time of termination. The fixed fee in this case shall be adjusted as follows: Adjusted Fixed Fee = Fixed Fee x Percent Task Order completed on the date of termination.

**10.1.2 Lump Sum Pricing.** For full and complete compensation for all Work furnished under a Task Order paid for using a lump sum pricing method, the Consultant shall be paid a firm, fixed price amount. The firm, fixed price amount for each such Task Order shall not be exceeded unless SRTA determines that there is a substantial change in scope, character, or complexity of the Work from that originally included in a Task Order and such change and agreed upon adjustment to the firm, fixed price amount is included in an Amended Task Order. If a Task Order being paid for on a Lump Sum basis is terminated by SRTA pursuant to the provisions of **Section 19 (Termination)**, the Consultant shall be paid based upon the percentage of Work completed at the time of termination.

**10.1.3 Loaded Hourly Pricing.** The maximum allowable cost to SRTA for Work completed pursuant to this method of payment is the sum of the estimated allowable travel costs, if any, and the hourly rates multiplied by the estimated number of hours needed to perform the Work as set forth in the Fee Schedule. With this method of compensation, Consultant shall not charge a separate fee for overhead or for any other indirect costs or a fixed fee. If a Task Order being paid for on a Loaded Hourly Pricing basis is terminated by SRTA pursuant to the provisions of **Section 19 (Termination)**, the Consultant shall be paid based upon the actual amount of labor performed pursuant to the terms of the applicable Task Order, up to the time of termination.

**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.

# DRAFT SAMPLE CONTRACT

**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.** Notwithstanding any provision to the contrary, 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 Agreement, 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 or costs and expenses as allowed in the Contract Documents and the applicable Task Order were incurred. Should the Work begin within any one month, the first Invoice shall cover the partial period from the beginning date of the Work through the last date of the month in which Work began. The Invoices shall list the Task Order name and be numbered consecutively (beginning with #1) until the Work included in an applicable Task Order is completed. 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 being performed in sufficient detail so that the progress of the Work can easily be evaluated. 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. In addition to supporting documentation set forth in **Section 10** that is required to be submitted with each Invoice, Consultant shall also furnish any other supporting documentation as requested by SRTA. Progress payments shall be made as follows:

*10.8.1 Cost Plus Fixed Fee Pricing.* The Consultant shall submit to SRTA itemized Invoices, showing in detail the actual allowable costs incurred by the Consultant under each Task Order for the Invoice period. The Invoice shall also include a percentage of the fixed fee for each Invoice period. Said percentage shall be equal to the percent the Task Order is complete which shall be computed as follows:

$$\text{Percent Task Order Complete} = \frac{(\text{Labor Earned}) + (\text{Overhead Earned})}{(\text{Estimated Labor}) + (\text{Provisional Overhead})}$$

To the extent SRTA has approved any Invoice and has reviewed and verified the costs set forth in the Invoice, SRTA will make payment to the Consultant. Payment will be made in the amount of sums earned less previous partial payments.

# DRAFT SAMPLE CONTRACT

*10.8.2 Fixed fee Pricing.* Payments for each Task Order will be made monthly on the basis of calendar months, in proportion to the percent of Work performed, after SRTA's approval of a correct Invoice from the Consultant.

*10.8.3 Loaded Hourly Pricing.* Payments for each Task Order will be made monthly on the basis of calendar months for the actual allowable travel expenses incurred by the Consultant under each Task Order for the Invoice period and the actual time in which Work was performed during the Invoice period.

**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 Final Payment.** Final payment shall not be due to Consultant until SRTA accepts and each and every component of the Work specified in each Task Order and/or Amended Task Order, as applicable, and there are no outstanding claims against Consultant. Consultant shall submit a proposed final invoice to SRTA for each Task Order within thirty (30) Days of the completion date of the Task Order or Amended Task Order ("Proposed Final Invoice"). All prior invoices and payments shall be subject to correction in the Proposed Final Invoice. SRTA will review Consultant's Proposed Final Invoice and respond with a written request for additional information or documentation, changes or corrections within sixty (60) Days of SRTA's receipt, accompanied by any claims, if applicable. Based on SRTA's response, Consultant shall submit a final invoice ("Final Invoice") incorporating any changes or corrections made by SRTA, together with any additional requested information or documentation. If SRTA agrees with all requests for compensation in the Final Invoice, SRTA will pay the entire sum found due within thirty (30) Days of its receipt. If SRTA disputes any amounts submitted for compensation, SRTA shall notify Consultant within a thirty (30) day period, identifying those items in the Final Invoice that SRTA disputes, along with a written explanation of the basis of the dispute. If SRTA fails or refuses to act on a Final Invoice within the required time period, the amount submitted for compensation shall be deemed to have been accepted by SRTA on the last day of the period within which SRTA was required to respond. The provisions of **Section 10.7 (Net 30 Days)** shall not apply to the provisions of this **Section 10.12** and the Final Invoice. The Consultant agrees that acceptance of each final payment shall be in full and final settlement of all claims arising against SRTA for Work performed, materials furnished, costs incurred, or otherwise arising out of the corresponding Task Order and shall release SRTA from any and all further claims of whatever nature, whether known or unknown at the time for and on account of said Task Order, and for any and all Work done, and labor and materials furnished, in connection with the same.

**10.13 Overtime.** Unless otherwise authorized in writing by SRTA, no premium pay or overtime will be considered compensable by SRTA and will not be paid.

## 11. INDEMNIFICATION.

# DRAFT SAMPLE CONTRACT

**11.1 Professional Services Indemnity.** The Consultant shall indemnify, release, and hold harmless SRTA, its officers, members, employees, and agents, from and against all liability, damages, costs, expenses (including reasonable attorney's fees and expenses incurred by SRTA and any of the officers, m SRTA's members, employees or agents), claims, suits and judgments to the extent arising or resulting from the delivery of Professional Services (defined below) under this Contract, but such indemnity is limited to those liabilities arising from a Negligent Professional Act, as defined below.

*11.1.1 Professional Services Defined.* Professional Services means those services performed by a licensed professional employed by the Consultant.

*11.1.2 Negligent Professional Act* means a negligent act, error, or omission in the performance of Professional Services by Consultant (or by any person or entity, including joint ventures, for whom the Consultant is liable) that causes liability and fails to meet the applicable professional standard of care, skill and ability under similar conditions and like surrounding circumstances, as is ordinarily employed by others in their profession.

**11.2 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.

**11.3 General Indemnification.** Consultant hereby agrees to indemnify and hold harmless 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, 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 negligent performance of this Contract 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.

This indemnification does not extend beyond the scope of this Contract and the Work undertaken hereunder.

*11.3.1 DOAS.* 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.

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

**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.

# DRAFT SAMPLE CONTRACT

**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.

## 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 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:

1.
  - 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 and with a financial size rating of Class V or larger. 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 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 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 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

# DRAFT SAMPLE CONTRACT

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.

12.2.5 Self-insured retention, except for qualified self-insurers or group self-insurers, in any policy shall not exceed \$250,000.00.

**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 \$3,000,000 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 Sub consultant Engineers and Architects – \$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 shall be 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.

12.3.4 *Commercial Umbrella Liability Insurance.* The Consultant shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile 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:

\$3,000,000 per Occurrence/\$7,000,000 Aggregate

**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.

# DRAFT SAMPLE CONTRACT

**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's ongoing compliance with this **Section 12**.

**12.8 General.** 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 the Work; and

**13.2 Organization.** The Consultant is a duly organized (**insert name of state**) Corporation authorized to do business in the State of Georgia or, doing business through an enterprise that is authorized to do business in the state of Georgia;

**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 the SRTA, SRTA's 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 Laws and Polices.** The Work will not be in violation of any applicable law, rule or regulation, and Consultant will comply in all respects with all other laws, rules, regulations, and ordinances of any governing authority that impact or relate in any way to the Work. Consultant shall follow the current SRTA AI Policy, as amended. Notwithstanding the AI Policy, Consultant shall not use AI for the recording of meetings or use of taking meeting notes unless otherwise approved by SRTA in writing.

**13.8 Work/Labor.** All deliverables, documentation, Work, services and labor shall (a) conform to the performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, and functions required by the Contract Documents, and (b) be performed on time—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.

**13.9 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.

# DRAFT SAMPLE CONTRACT

**13.10 Limited Design.** Any of Consultant's or its sub consultants' designs provided pursuant to the Contract Documents reasonably meet the intent of the Task Order or Amended Task Order, as applicable, are consistent with sound design principles commonly used by professionals meeting the Standard of Care (defined below), and the resulting design is constructible by a qualified vendor using appropriate construction or other applicable methods. The Consultant further represents that the technical specifications of the equipment specified by the Consultant meet industry standards (such as approval by independent testing and quality assurance rating agencies) and the design permits installation in a useable configuration with appropriate utilities. The Consultant does not undertake to make any manufacturer's warranty, such as a warranty as to the materials, design, manufacture, or workmanship of the equipment. As between SRTA and the Consultant, the sole remedy for breach of this **Section 13.10** by the Consultant is that (i) if construction of the defectively designed component has not yet commenced, then the Consultant shall redesign the defective design, at no expense whatsoever to SRTA or (ii) if construction of the defectively designed component has commenced, to the extent remediation cost exceeds the cost that SRTA would have reasonably incurred without the breach of this provision, the Consultant shall indemnify SRTA for such additional cost. The Consultant's obligations under this **Section 13** are in addition to Consultant's obligations under **Section 12 (Insurance)** and this **Section 13.10** does not enlarge or diminish the Consultant's indemnity obligations as the result of a Negligent Professional Act in the performance of Professional Services.

*13.10.1 Professional Standard of Care.* For purposes of **Section 13.10**, *Professional Standard of Care* is defined as that degree of care, learning, skill, and ability which is ordinarily possessed by other members of the applicable profession, and in the performance of the duties herein set forth, the Consultant will exercise such degree of care, learning, skill, and ability as is ordinarily employed by licensed professionals under similar conditions and like circumstances and shall perform such duties without neglect.

## 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's 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.

# DRAFT SAMPLE CONTRACT

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)**, or (iii) 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, and other consultants and other 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's projects, as may be requested from time to time by SRTA to effect such cooperation, and compliance with all directives issued by SRTA. 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's 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's designated Representatives for inspection and review at all reasonable times in the SRTA's offices. Consultant shall, at its expense, correct errors in the Work discovered within four years following SRTA's acceptance. After four years, corrections may be performed subject to additional compensation, except as required by law or professional standard of care

**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

# DRAFT SAMPLE CONTRACT

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's designated Representatives.

All Consultant employees working embedded in SRTA's main office who are assigned a SRTA email shall use that email for communications when related to the Work, as directed by SRTA.

**16.3 Audit.** SRTA or SRTA's 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's designated Representatives in performing such audit.

**17. OWNERSHIP OF DOCUMENTS.** The Consultant agrees that all 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 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, nonexclusive, nontransferable 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, the 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. The 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 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, nonexclusive, nontransferable and royalty-free license to use such 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,

# DRAFT SAMPLE CONTRACT

nonexclusive, nontransferable 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 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 Termination for Lack of Funding.** Consultant acknowledges that institutions of the State of Georgia are prohibited from pledging the credit of the State so as to prevent incurring a financial obligation unless funds to honor the obligation have been lawfully appropriated. Consequently, as may be the case, if the sources of payment for the Contract no longer exist or are determined to be insufficient, STRA will

# DRAFT SAMPLE CONTRACT

notify Consultant promptly (and in any event within thirty (30) days) after SRTA becomes aware of such and may immediately terminate this Contract upon notice to Consultant without any further obligation, other than payment for services performed through the termination date. The determination of SRTA as to the occurrence of the events stated in this paragraph will be conclusive.

**19.5 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.

**21.1 No Obligation of Confidentiality.** 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.

**21.2 Use of Confidential Information.** 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 their Customers.

**21.3 Return of Confidential Information.** 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 SRTA's Program Manager or the Consultant Program Manager, as applicable. Within five (5) Days after the receipt of the notice by the receiving party, SRTA's Program Manager and the Consultant Program Manager shall meet in SRTA's offices to attempt to resolve the dispute. If SRTA's 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 Principal-in-Charge of the Consultant, the Executive Director of SRTA and the Principal-in-Charge shall meet in SRTA's offices to attempt to resolve the dispute. If the Executive Director of SRTA and the Principal-in-Charge 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.

# DRAFT SAMPLE 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 SRТА, 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 SRТА;
- 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 SRТА;
- 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 SRТА;
- 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 SRТА's notice, when, in the opinion of SRТА, 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 SRТА;
- 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 SRТА;
- 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 SRТА.

**23.2 SRТА's Damages/Remedies.** Upon the occurrence of an Event of Default, SRТА 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 SRТА upon demand any amount paid or incurred by SRТА 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

# DRAFT SAMPLE CONTRACT

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. 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 SRTA upon the expiration or earlier termination of this Contract.

**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 SRTA and result in monetary loss to SRTA. SRTA shall assess, audit, and certify to the Consultant SRTA's monetary losses resulting from the Consultant's failure to comply with the provisions of this **Section 24**. If Consultant disagrees with SRTA's determination the Parties will pursue the process set forth in **Section 22 (Dispute Resolution)**.

**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 SRTA's Program Manager no later than five (5) Days after such conflict arises.

**26. EXHIBITS.** The following Exhibits are incorporated by reference into and made a part of the Contract Documents:

**Exhibit A-** RFQ

**Exhibit B-** Statement of Qualifications

The following Exhibit is attached hereto and incorporated into the Contract Documents:

**Exhibit C-** Consultant Rates

**Exhibit D-** Task Order and Fee Schedule

**Exhibit E-** Definitions

**Exhibit F-** Compensation and Payment

**Exhibit G-** Mandatory FHWA Clauses

**Exhibit H-** SRTA Disadvantaged Business Enterprise Forms

# DRAFT SAMPLE 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, and auditing and reporting provisions, now or hereafter in effect, and any rules required by any federal grant funding payment by SRTA.

**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, severe 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 Federal Intellectual Property Bankruptcy Protection Act.** SRTA shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n) and any amendments thereto.

**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.

# DRAFT SAMPLE CONTRACT

*For SRTA:*

State Road and Tollway Authority  
Attn: Annie Gillespie, Chief Engineer  
245 Peachtree Center Ave NE, Suite 2200  
Atlanta, Georgia 30303  
Phone: (404) 893-6123  
Fax:  
Email: agillespie@sрта.ga.gov

*For the Consultant:*

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**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 Chief Communications Officer.

**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 50243." 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. § 50243.

**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.**

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

27.15.2 "Days" shall mean calendar days unless otherwise specified in the Contract.

27.15.3 "State" shall mean the state of Georgia.

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

# DRAFT SAMPLE CONTRACT

**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 7 (Subcontracting and Assignment), 10 (Payment), 11 (Indemnification), 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), 25 (Conflicts of Interest), 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. Consultant makes no warranties, express or implied, regarding its Work and to the extent that warranties for professional services exist under applicable law. They are expressly waived and disclaimed.

**27.21 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.

*Signatures commence on following page.*

# DRAFT SAMPLE CONTRACT

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed effective as of the Effective Date.

State Road and Tollway Authority

CONSULTANT

By: \_\_\_\_\_  
Jannine Miller  
Executive Director

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

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

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

# DRAFT SAMPLE CONTRACT

Exhibit A  
RFQ

Incorporated Herein by Reference

# DRAFT SAMPLE CONTRACT

Exhibit B  
Statement of Qualifications

Incorporated Herein by Reference

# DRAFT SAMPLE CONTRACT

## Exhibit C Consultant Rates

List only those rates/employees who will be working embedded in the SRTA main office on the Work. All other payments shall be based on a not to exceed Task Order basis and shall not require rate adjustments described in 10.1.1.1.

Consultant rates commence on following page.

# DRAFT SAMPLE CONTRACT

Exhibit D  
Task Order and Fee Schedule

## ***STATE ROAD AND TOLLWAY AUTHORITY***

*State of Georgia*

*GEC Task Order Title*

*Task Order ID:*

*Task Order Number:*

*Date Submitted:*

*SRTA Contact for this Task Order:*

*Not to Exceed Amount:*

*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.)*

*VII. DBE Participation*

(Attached to Task Orders Based on Cost Plus Fixed Fee Method of Payment)

### **CONSULTANT'S FEE SCHEDULE**

Maximum Allowable Cost: \$ \_\_\_\_\_

Provisional Overhead Rate: \_\_%

Compensation and Payment: Detail

Fixed Fee Percentage: 10%

Itemized Direct Costs: Detail

# DRAFT SAMPLE CONTRACT

## Exhibit E Definitions

**Amended Task Orders** shall have the same meaning assigned to it in **Section 9.2 (Amended Task Order)** of the Contract.

**Amended Task Order Proposal** shall have the same meaning assigned to it in **Section 9.2 (Amended Task Order Process)** of the Contract.

**Amendment** shall mean a document that is properly signed by both Parties that changes the terms and conditions of this Contract.

**Business Day(s)** means Monday through Friday excluding State recognized holidays.

**Compensation for Work** means the monetary compensation paid for the Work performed under each Task Order as more specifically described in **Section 10 (Payment)** of the Contract.

**Consultant** shall have the same meaning assigned to it in the preamble of the Contract.

**Consultant Intellectual Property** shall have the same meaning assigned to it in **Section 17 (Ownership of Documents)** of the Contract.

**Consultant Parties** shall have the same meaning assigned to it in **Section 18.1 (Work Made for Hire)** of the Contract.

**Consultant Program Manager** shall have the same meaning assigned to it in **Section 5.2.2. (Consultant Program Manager)** of the Contract.

**Consultant's Consulting Plan Proposal** shall mean the proposal submitted in response to this Solicitation as more fully described in the RFQ.

**Consultant's Statement of Qualification** shall mean the Statement of Qualifications in response to this Solicitation as more fully described in the RFQ.

**Contract Documents** shall have the same meaning assigned to it in **Section 3 (Inclusion and Priority of Documents)** of the Contract.

**Contract** shall have the same meaning assigned to it in **Section 3 (Inclusion and Priority of Documents)** of the Contract.

**Day(s)** shall mean calendar days unless otherwise specified in the Contract as a Business Day.

**Default Rate** shall have the same meaning assigned to it in **Section 23.2.2 (SRTA Damages/Remedies)** of the Contract.

**Disputed Work** shall have the same meaning assigned to it in **Section 14 (Changes)** of the Contract.

**DOAS** shall have the same meaning assigned to it in **Section 11.3 (General Indemnification)** of the Contract.

**Effective Date** shall mean the date set forth in the preamble of the Contract.

**Event of Default** shall have the meaning assigned to it in **Section 23.1 (Event of Default; Damages/Remedies)** of the Contract.

**FHWA** shall mean Federal Highway Administration.

# DRAFT SAMPLE CONTRACT

**Fee Schedule** shall have the same meaning assigned to it in **Section 10.1.1 (Cost Plus Fixed Fee Pricing)** of the Contract.

**Funds** shall have the same meaning assigned to it in **Section 11.3 (General Indemnification)** of the Contract.

**GDOT** shall mean the Georgia Department of Transportation.

**General Engineering Consulting (GEC)** shall have the same meaning assigned to it in the RFQ.

**Georgia Open Records Act** shall refer to O.C.G.A § 50-18-70.

**Indemnitees** shall have the same meaning assigned to it in **Section 11.3 (General Indemnification)** of the Contract.

**Initial Term** shall have the meaning assigned to it in **Section 4 (Contract Term and Renewal)** of the Contract.

**\*Insurer** shall have the same meaning assigned to it in **Section 12.2 (Insurer Qualification, Insurance Requirements)** of the Contract. (\* this capitalized word may be an error. Only used once but in lower case in every other part)

**Intellectual Property** shall have the same meaning assigned to it in **Section 13.9 (Intellectual Property)** of the Contract.

**Key Personnel** means employees of the consultant, or any sub consultant(s), affiliates, joint venture partners, or team members, and consultants engaged by any of those entities, whose work is considered by SRTA to be essential to the Services being performed under the Contract Documents. The following personnel are considered at a minimum to be Key Personnel: all primary subject matter experts and any staff billing more than 20 hours a week under this contract.

**Negligent Professional Act** shall have the same meaning assigned to it in **Section 11.1.2 (Negligent Professional Act)** of the Contract.

**O.C.G.A** shall mean the Official Code of Georgia Annotated.

**Party/Parties** shall have the same meaning assigned to it in the preamble of the Contract.

**Professional Services** shall have the same meaning assigned to it in **Section 11.1.1 (Professional Services)** of the Contract.

**Professional Standard of Care** shall have the same meaning assigned to it in **Section 13.10.1 (Professional Standard of Care)** of the Contract.

**Program Manager** shall have the same meaning assigned to it in **Section 6 (Project Management)** of the Contract.

**Project Number** shall mean the project number assigned to it in the RFP.

**Quality Assurance (QA)** shall have the same meaning assigned to it in **Section 5.7.2 (Quality Assurance)** of the Contract.

**Quality Control (QC)** shall have the same meaning assigned to it in **Section 5.7.1 (Quality Control)** of the Contract.

**Quality Control Plan** shall have the same meaning assigned to it in **Section 5.7.3 (Quality Control Plan)** of the Contract.

# DRAFT SAMPLE CONTRACT

**Remaining Payment** shall have the same meaning assigned to it in **Section 19.1 (Termination for Cause)** of the Contract

**Renewal Term** shall have the meaning assigned to it in **Section 4 (Contract Term and Renewal)** of the Contract.

**RFQ** shall have the same meaning assigned to it in the preamble of the Contract.

**SRTA** means the State Road and Tollway Authority.

**State** shall mean the State of Georgia.

**Statement of Qualifications (SOQ)** shall have the same meaning assigned to it in the RFQ.

**Task Order** shall have the same meaning assigned to it in **Section 9.1 (Task Order)** of the Contract and shall include the term Work Order.

**Travel Expenses** shall have the same meaning assigned to it in **Section 10.1.1.1 (Direct Costs)** of the Contract.

**Work** shall have the same meaning assigned to it in the preamble to the Contract.

**Work Product** shall have the same meaning assigned to it in **Section 18.1 (Work Made for Hire)** of the Contract.

**Worker's Compensation** shall have the same meaning assigned to it in **Section 12.3.1 (Workers Compensation and Employer's Liability)** of the Contract.

# DRAFT SAMPLE CONTRACT

## **Exhibit F** Compensation and Payment

### **Total Compensation**

Compensation for the Consultant under this Contract will be negotiated as needed through Project Work Orders. Consultant shall not be authorized to proceed with any work under the Contract except by issuance of a Project Work Order.

It is understood by the parties that the maximum compensation under this Contract is [REDACTED]. No Project Work Order or combination of Project Work Orders shall be valid if this amount is exceeded.

SRTA's financial obligation under the Contract shall be contingent upon the availability of funds from which payment for contract purposes can be made. It is understood by the parties that although the maximum compensation under this Contract is \$ [REDACTED] that amount is not necessarily currently appropriated, nor is it necessarily currently available for expenditure or obligation.

Compensation for Project Work Orders performed under this Contract shall be made on either a "cost plus fixed fee" or "lump sum" basis. The compensation amount and method to be used will be determined by SRTA and included on each Project Work Order. The compensation method chosen for each Project Work Order will be dependent upon the estimated dollar amount of the Project Work Order, how well the Scope of Services for the Project Work Order can be defined and other factors. The methods of compensation are described in more detail below.

### **Project Work Order Compensation – Cost Plus Fixed Fee Method**

#### *General Terms and Conditions*

The total compensation and reimbursement, if any for a Project Work Order shall not exceed the maximum allowable cost identified in the Project Work Order. The maximum allowable cost to SRTA is the summation of the estimated allowable costs and a Fixed Fee as negotiated in the Project Work Order and as further described in this Exhibit E. The Consultant expressly agrees that he shall do, perform and carry out in a satisfactory and proper manner, as determined by SRTA, all of the work and services described in the Project Work Order.

However, if the sum of the Consultant's allowable costs should be less than this estimated amount, it is further agreed that SRTA shall be obligated to pay only the actual amount. The Fixed Fee shall remain fixed regardless of the differences between the estimated cost and the actual cost to the Consultant, except as otherwise stipulated in this Exhibit E.

For full and complete compensation for all work, materials, and services furnished under the terms of this Agreement, the Consultant shall be paid fees in the amounts of the Consultant's actual costs plus an applicable Fixed Fee amount. Consultant's actual costs shall include payments to any sub-consultants. The estimated actual costs and Fixed Fee will be shown on each Project Work Order as separate dollar amounts and will be itemized in an Attachment to each Project Work Order.

The maximum amount payable will be shown on each Project Work Order. The maximum amounts payable on each Project Work Order cannot be exceeded except by a written Project Work Order Amendment. If at any time it is determined that the maximum amount payable will be exceeded, the Consultant shall immediately so notify SRTA in writing. If the Consultant establishes and SRTA's Project Manager agrees that the original estimates of anticipated staff hours were inaccurate or that there is a justifiable change in the salary rates, payroll additives, overhead rates, or other supported costs from what was estimated, a written Project Work Order Amendment may be entered into at that time. The Consultant shall not exceed the estimated actual costs without the prior written approval of SRTA. SRTA reserves the right to audit the Consultant's cost records prior to making a decision whether or not to enter into a written Project Work Order Amendment to increase the maximum amount payable.

# DRAFT SAMPLE CONTRACT

The Consultant shall establish a procedure for comparing the actual costs incurred during the performance of a Project Work Order to the estimated costs. The purpose is to monitor these two elements and thus provide for early identification of any potential for the actual costs exceeding the estimated costs. If the Consultant exceeds the estimated costs for any reason before SRTA is notified in writing, SRTA will have the right, at its discretion, to deny the use of a Project Work Order Amendment.

The fixed fee amounts will not be changed unless there is a substantial change in scope, character, or complexity of the Services covered by this Contract or the Term of Contract is changed by SRTA. Any change in the fixed fee amount will be made by a written Project Work Order Amendment.

Should the work under a Project Work Order be terminated for convenience by SRTA, pursuant to **Paragraph 20** of the Contract, the Consultant shall be paid based upon the percentage of work completed at the point of termination. The fixed fee in this case shall be adjusted as follows:

$$\text{Adjusted Fixed Fee} = \text{Fixed Fee} \times \text{Percentage of Contract Complete}$$

## *Direct Costs*

Direct costs are the actual costs incurred by the Consultant which are attributable to the specific work covered by this Agreement, allowable under Subparts 31.105 and 31.2 of the Federal Acquisition Regulations and not prohibited by the laws of the State of Georgia. These include the following:

Salaries and wages, and the cost of materials and supplies, travel, and other miscellaneous direct costs incurred by the Consultant. As specified in **Paragraph 10** of this Contract, the validity of these direct costs may be verified from the cost records of the Consultant by authorized representatives of SRTA as the work progresses, and in any event before final settlement of the Consultant's cost under the terms of this Contract or any amendments hereto.

The cost of any nonexpendable tools, instruments, or equipment used in the execution and performance of the work shall not be an allowable direct cost when such items are of the nature and kind of tools, instruments, or equipment normally and generally used by the Consultant. However, SRTA agrees to reimburse the Consultant for the direct costs of any special equipment which is essential to the work and usable only on the project, provided such special equipment is listed in the Consultant's Cost Proposal for the Project Work Order and prior written approval by SRTA is obtained. The Consultant warrants that items of equipment included as a part of the direct costs are not included in any manner in indirect costs as hereinafter provided. It is further understood and agreed by the parties hereto that title to such special equipment shall vest in the Consultant until the completion or termination of the terms of the Contract, at which time title shall vest in SRTA.

The rate of compensation for work performed during the Term of Contract by a professional staff member or employee of the Consultant shall not exceed the salary rate that is applicable to that persons other activities for the Consultant. Charges for salaries and wages of individuals shall be supported by time and attendance and payroll distribution records.

No expense for travel outside the State of Georgia shall be an allowable direct cost under this Agreement unless such travel is listed in the Consultant's Cost Proposal for the Project Work Order and is approved in writing in advance by SRTA. In addition, direct allowable costs for travel within the State of Georgia shall be limited to the amount included in the Consultant's Cost Proposal for the Project Work Order unless prior written approval is obtained from SRTA for increasing such amount. This approval by SRTA shall not change the total estimated cost.

## *Indirect Costs*

SRTA shall reimburse the Consultant for such indirect costs as are properly chargeable to the Services covered by this Contract under generally accepted accounting principles, allowable under Subparts 31.105 and 31.2 of the Federal Acquisition Regulations and not prohibited by the laws of the State of Georgia. Such indirect costs, denoted as "Overhead" in the Consultant's Cost Proposal for the Project Work Order, shall be reimbursed at a

## DRAFT SAMPLE CONTRACT

provisional overhead rate of [REDACTED] % of the amount paid as direct salaries and wages to persons employed by the Consultant on the Project Work Order.

The most current provisional overhead percentage rates shall be used on each Project Work Order in order to more accurately reflect the cost of work during subsequent years. Any actual fiscal year or fiscal year's indirect cost rates known by the Consultant as a result of audits shall be used in computing the final invoice statement on each Project Work Order assignment. All indirect cost rates shall be reviewed by SRTA and adjusted to actual rates through the most recently completed fiscal year during which the work was actually performed.

In the event the Consultant's actual allowable overhead rate during this period is less than the provisional overhead rate established herein, the Consultant shall reimburse SRTA the difference between the indirect cost computed on the basis of the actual allowable overhead rate established in accordance with the provisions of this Exhibit E and the indirect cost computed on the basis of the provisional overhead rate.

In the event the Consultant's actual allowable overhead rate during this period is greater than the provisional overhead rate established herein, SRTA shall reimburse the Consultant the difference between the indirect cost computed on the basis of the actual allowable overhead rate established in accordance with the provisions of this Exhibit E and the indirect cost computed on the basis of the provisional overhead rate.

The Consultant shall invoice SRTA at the provisional overhead rate allowed with the understanding that this rate may be adjusted upon audit by SRTA pursuant to the provisions of this Exhibit E. It is understood by the Consultant that any adjustment to the overhead rate shall not result in the maximum allowable cost of this Contract being exceeded by the Consultant.

The Consultant further agrees that the decision of SRTA in the establishment of the actual allowable overhead rate for final payment of indirect costs shall be final.

As specified in **Paragraph 10** of this Agreement, the validity of these indirect costs may be verified from the indirect cost records of the Consultant by authorized representatives of SRTA and the Federal Government as the work progresses, and in any event before final settlement of the Consultant's costs under the terms of this Contract, or amendments hereto.

### *Fixed Fee*

The Fixed Fee shall be **10** % of the total direct labor plus overhead for each Project Work Order, unless otherwise negotiated. An adjustment to this fee may be justified only after SRTA has required substantial changes in the scope, objectives, complexity, or character of work to be performed.

The Fixed Fee for each Project Work Order shall be computed as follows:

Fixed Fee = **10% x** (Estimated Direct Labor + Overhead)

The Fixed Fee for each Project Work Order shall be stated in the Project Work Order as a dollar amount not to be exceeded except by a written Project Work Order Amendment.

The cumulative Fixed Fee amount for all Project Work Orders under the Contract shall not exceed \$ [REDACTED] unless authorized in advance by both parties through a Contract Amendment.

### *Partial Payment – Cost Plus Fixed Fee Method*

The Consultant shall submit to SRTA itemized invoices showing, in detail, the actual allowable costs incurred by the Consultant on the Project Work Order for the invoice period and such percentage and dollar amount of the Fixed Fee as these actual allowable costs bear. On the basis of its review of such invoices, SRTA will, at the request of the Consultant, make payment to the Consultant as the work progresses, but not more often than once

# DRAFT SAMPLE CONTRACT

a month. Should the work begin within any one month, the first invoice shall cover the partial period from the beginning date of the work through the last date of the month in which it began. The invoices shall be numbered consecutively for each Project Work Order and subsequent invoices shall be submitted each month until the work is completed.

Payment will be made in the amount of sums earned less previous partial payments. Determination of monthly compensation may be based on the results of monthly progress review meetings.

## *Final Payment – Cost Plus Fixed Fee Method*

Upon completion of a Project Work Order by the Consultant and acceptance of the work by SRTA, including the receipt of any final written submission of the Consultant and the approval thereof by SRTA, SRTA will pay the Consultant its actual allowable cost plus a Fixed Fee cost, if applicable, less the total of all previous partial payments, paid or in the process of payment. Actual cost shall be determined after SRTA's establishment of the actual allowable overhead rate by a final audit, the actual direct costs, the actual indirect costs and the Fixed Fee, if applicable.

The Consultant agrees that acceptance of this final payment for the applicable Project Work Order shall be full and final settlement of all claims arising against SRTA for work done, materials furnished, costs incurred, or otherwise arising out of this Agreement and shall release SRTA from any and all further claims of whatever nature, whether known or unknown, for and on account of said Agreement, and for any and all work done, and labor and materials furnished, in connection with same.

## **Project Work Order Compensation – Lump Sum by Task Method**

### *General Terms and Conditions*

For full and complete compensation for all work, materials, and services furnished under the terms of this Agreement, the Consultant shall be paid a lump sum amount for each Project Work Order. The lump sum amount for the Project Work Order shall be based on Consultant's estimate of labor costs, direct expenses, overhead costs, sub-contractor costs and profit.

The lump sum amount for each Project Work Order shall not be exceeded unless SRTA determines that there is a requirement for a substantial change in the scope, character, or complexity of the work from that originally negotiated for the Project Work Order and issues a Project Work Order amendment.

The Consultant expressly agrees that he shall do, perform and carry out in a satisfactory and proper manner, as determined by SRTA, all of the work and services described in the Project Work Order.

Should the work under a Project Work Order be terminated for convenience by SRTA, pursuant to **Paragraph 20** of the Contract, the Consultant shall be paid based upon the percentage of work completed at the point of termination.

### *Costs*

Appropriate costs to use as a guide in determining the lump sum amount for each Project Work Order are the costs estimated to be incurred by the Consultant during performance of the work, attributable to the specific work covered by this Contract and allowable under the provisions of Parts 31.105 and 31.2 of the Federal Acquisition Regulations. These costs include the following:

Salaries of employees for time directly chargeable to work covered by the Contract and salaries of principals for time they are productively engaged in work necessary to fulfill the terms of the Contract.

Direct non-salary costs incurred in fulfilling the terms of this Agreement. The Consultant will be required to submit a detailed listing of estimated direct non-salary costs and certify that such costs are not included in the

## DRAFT SAMPLE CONTRACT

overhead expenses pool. These costs may include travel and subsistence, reproductions, computer charges, and material and supplies.

Indirect costs (salary-related expenses and general overhead costs) to the extent that they are properly attributable to the work covered by this Agreement. The most current provisional overhead percentage rates shall be used on each Project Work Order in order to more accurately reflect the cost of work during subsequent years.

No expense for travel outside the State of Georgia shall be an allowable direct cost under this Contract unless such travel is listed in the Consultant's Cost Proposal for the Project Work Order and is approved in writing in advance by SRTA. In addition, direct allowable costs for travel within the State of Georgia shall be limited to the amount included in the Consultant's Cost Proposal for the Project Work Order unless prior written approval is obtained from SRTA for increasing such amount. This approval by SRTA shall not change the total estimated cost.

### *Partial Payment – Lump Sum Method*

Payment for each Project Work Order shall be made based on the percentage of work completed and substantiated by progress reports. Such progress reports will be verified by SRTA, and payment will be made by SRTA to the Consultant in the full amount of the proportion of work completed, less the total of all previous payments, up to the total lump sum amount.

### *Final Payment – Lump Sum Method*

Upon completion, delivery and acceptance of all work contemplated under a Project Work Order, the Consultant shall submit one (1) final invoice statement for the balance of the lump sum amount. At such time, payment of 100% of the lump sum amount, less the total of all previous payments, shall be paid by SRTA to the Consultant.

The Consultant agrees that acceptance of this final payment for the applicable Project Work Order shall be full and final settlement of all claims arising against SRTA for work done, materials furnished, costs incurred, or otherwise arising out of this Agreement and shall release SRTA from any and all further claims of whatever nature, whether known or unknown, for and on account of said Contract, and for any and all work done, and labor and materials furnished, in connection with same.

# DRAFT SAMPLE CONTRACT

## EXHIBIT G – MANDATORY TERMS FOR FEDERAL AID SERVICE CONTRACTS (FHWA)

The following terms apply to all contracts in which the services involve the expenditure of federal funds from the Federal Highway Administration: During the performance of this Contract, the Consultant, for itself, its assignees and successors in interest agrees as follows:

- 1. Compliance with Regulations:** The Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation under Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- 2. Compliance with Nondiscrimination Statutes and Authorities:** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability), Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FHWA may issue.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- 4. Information and Reports:** The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the SRTA or the Federal Highway Administration, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the SRTA or the Federal Highway Administration and shall set forth what efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Contract, SRTA shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - 5.1. withholding of payments to the Consultant under the contract until the Consultant complies and/or
  - 5.2. cancellation, termination or suspension of the contract, in whole or in part.
- 6. Incorporation or Provisions:** The Consultant will include the provisions of Paragraph 1 through Paragraph 6 in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the SRTA, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the SRTA to enter into such litigation to protect the interests of SRTA, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

# DRAFT SAMPLE CONTRACT

## 7. Participation by Disadvantaged Business Enterprises.

- 7.1. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. SRTA's overall goal for DBE participation in federally funded contracts awarded during FFY'18-FFY'20 (October 1, 2018 and September 30, 2020) is 8%. SRTA has not established a separate DBE goal for this Project.
- 7.2. Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as SRTA deems appropriate. Each subcontract Consultant signs with a subconsultant must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- 7.3. During the term of this contract, the Consultant will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform under the contract, and that the Consultant meets its DBE commitment as set forth in its bid.
  - 7.3.1. If Consultant requests substitution of a DBE subcontractor or supplier listed in its Offer Document 13-Subcontractors and DBEs Information and Certifications form, the Contract shall exert good faith efforts to replace the DBE firm with another DBE firm subject to approval of SRTA.
  - 7.3.2. Consultant shall not terminate for convenience any DBE subcontractor or supplier listed in its Offer Document 13-Subcontractors and DBEs (or an approved substitute DBE firm) and then perform the work itself or with its affiliates without prior written of SRTA.
  - 7.3.3. If a DBE subcontractor or supplier is terminated or fails to complete its work on the contract for any reason, Consultant shall make good faith efforts to find another DBE firm to substitute for the original DBE firm.
- 7.4. Consultant will be required to report its DBE participation obtained through race-neutral means throughout the Term of Contract.
- 7.5. Consultant is required to pay its DBE subcontractor(s) performing work related to this Contract for satisfactory performance of that work no later than fifteen (15) calendar days after Consultant's receipt of payment for that work from SRTA. In addition, Consultant may not hold retainage from its DBE subcontractors.
- 7.6. Consultant must promptly notify SRTA whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Consultant may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SRTA.

## 8. Lobbying.

- 8.1. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Consultants who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying" with their bid. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the

# DRAFT SAMPLE CONTRACT

recipient.

## **9. Suspension and Debarment.**

- 9.1. This Contract is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 1200. As such, SRTA is required to assure that Consultant, its subconsultants, and other participants at any tier of the Project are not excluded or disqualified as defined in 2 CFR Part 180 Subpart I.
- 9.2. Consultant is required to comply with 2 CFR Part 180 and 2 CFR Part 1200 and must include the requirement to comply with Subpart C of 2 CFR 180 as supplemented by 2 CFR Part 1200 in any lower tier covered transaction.

# DRAFT SAMPLE CONTRACT

Exhibit H  
SRTA Disadvantaged Business Enterprise Reporting Forms

## DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (DBE)/SMALL BUSINESS ENTERPRISE PARTICIPATION (SBE) SUBCONTRACTOR PAYMENT REPORT

To be completed by Subcontractor and included in Prime Contractor's Payment Request

Project Number: _____
SBE Subcontract Amount: _____
DBE Subcontract Amount: _____
Contract Begin Date: _____
Contract End Date: _____
Service Provided: _____

Subcontractor's Name \_\_\_\_\_

Report: Month \_\_\_\_\_ Year \_\_\_\_\_

DBE/Small Business Subcontractor Name: \_\_\_\_\_

DBE/SBE Certification #: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Subcontractor Services Provided \_\_\_\_\_

List all payments received from Prime  
Contractor in the preceding 30 days: invoices:

List dates and amounts of any outstanding

1. \_\_\_\_\_ 1. \_\_\_\_\_

2. \_\_\_\_\_ 2. \_\_\_\_\_

3. \_\_\_\_\_ 3. \_\_\_\_\_

Total Amount Paid \$ \_\_\_\_\_ Total Dollars Unpaid \$ \_\_\_\_\_

Prime Contractor Name \_\_\_\_\_ Contact Person \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

# DRAFT SAMPLE CONTRACT

Phone \_\_\_\_\_ Fax \_\_\_\_\_

RETURN COMPLETED FORM AND ANY ADDITIONAL INFORMATION AS REQUIRED TO:

**Issuing Officer**

**State Road and Tollway Authority**

**245 Peachtree Center Avenue, NE, Suite 2200**

**Atlanta, Georgia 30303**

**Telephone: (404) 893-6177**

**[cgesick@ATLtransit.ga.gov](mailto:cgesick@ATLtransit.ga.gov)**

**Signature of DBE/SBE: \_\_\_\_\_ DATE: \_\_\_\_\_**

# DRAFT SAMPLE CONTRACT

## **Disadvantaged Business Enterprise NOTICE OF INTENT TO PERFORM AS A SUBCONTRACTOR AND/OR MATERIAL SUPPLIER**

NAME OF PROJECT \_\_\_\_\_  
CONTRACT/SOLICITATION NUMBER \_\_\_\_\_

CHECK ONE:

Subcontractor  Subcontractor with Lower-Tier Subcontractors (Fully complete Parts I and III)  
(Fully complete Parts I, II and III)

### PART I: SUBCONTRACTOR PARTICIPATION

1. TO: \_\_\_\_\_  
(Name of Prime Contractor)

FROM: \_\_\_\_\_  
(Name of Subcontractor)

2. The undersigned Subcontractor/Supplier intends to perform work with the above project as (check one):

an individual / sole proprietorship  a partnership  
 a corporation  a joint venture

3. The undersigned Subcontractor/Supplier (check applicable statements):

NOTE: Pursuant to SRTA's policies, DBE firms participating in the Disadvantaged Business Enterprises (DBE) Program must have "current" certification status through the Georgia Uniform Certification Program (GUCP) prior to contract award. DBE Firms must be fully certified through our Georgia Department of Transportation (GDOT) to be counted towards the DBE goals on this project. Evidence of DBE certification must be attached to this form.

is a Non-DBE.

has been certified as a DBE by with GDOT or MARTA.

has been certified as a SBE.

4. The undersigned Subcontractor/Supplier is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) and at the following price \$ \_\_\_\_\_.

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

### PART II: LOWER-TIER SUBCONTRACTOR PARTICIPATION

With respect to the proposed subcontract described above, the following lower-tier subcontract(s) will be sublet and/or awarded to lower-tier subcontractor(s):

Name of Firm Receiving Lower-Tier Subcontract

# DRAFT SAMPLE CONTRACT

\_\_\_\_\_  
Work to Be Perform

\_\_\_\_\_

Contract Amount \_\_\_\_\_

(List DBE and Non-DBE Firms) DBE (Y/N)

Subcontract \_\_\_\_\_ ( ) \_\_\_\_\_ \$ \_\_\_\_\_

Company \_\_\_\_\_

Address: \_\_\_\_\_ DUNS \_\_\_\_\_ CCR \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone No.: \_\_\_\_\_ Insurance  $\theta$

Subcontract \_\_\_\_\_ ( ) \_\_\_\_\_ \$ \_\_\_\_\_

Company \_\_\_\_\_

Address: \_\_\_\_\_ DUNS \_\_\_\_\_ CCR \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone No.: \_\_\_\_\_ Insurance  $\theta$

Subcontract \_\_\_\_\_ ( ) \_\_\_\_\_ \$ \_\_\_\_\_

Company \_\_\_\_\_

Address: \_\_\_\_\_ DUNS \_\_\_\_\_ CCR \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone No.: \_\_\_\_\_ Insurance  $\theta$

Total amount to be subcontracted out to DBE: \$ \_\_\_\_\_

Total amount to be subcontracted out to non-DBE/SBE: \$ \_\_\_\_\_

## **PART III: SIGNATURES**

\_\_\_\_\_ BY: \_\_\_\_\_ PHONE: \_\_\_\_\_

DATE: \_\_\_/\_\_\_/\_\_\_

(Name of Prime Contractor)

(Signature of Authorized Representative)

\_\_\_\_\_ BY: \_\_\_\_\_ PHONE: \_\_\_\_\_

DATE: \_\_\_/\_\_\_/\_\_\_

(Subcontractor)

(Signature of Authorized Representative)

## **PART IV: DBE PARTICIPATION VERIFICATION**

\_\_\_\_\_ Date \_\_\_\_\_

# DRAFT SAMPLE CONTRACT

To be completed by GRTA DBE Representative:

Total DBE participation amount: \$ \_\_\_\_\_ Overall \_\_\_\_\_ %  
DBE participation

Reviewed for Content and Completeness:

\_\_\_\_\_  
\_\_\_\_ Compliance Manager/DBE Liaison Officer