



**STATE OF GEORGIA
DEPARTMENT OF TRANSPORTATION
Open Agency Service Contract**

eRFP#: 48400-DOT0000472
Solicitation Name: Roadside Assistance and Maintenance Program - RAM

In accordance with the direction provided on page 7 of the Event Details concerning exceptions to the Sample Open Agency Service Contract attached to the eRFP as Attachment D, AECOM Technical Services, Inc. ("AECOM") requests consideration of the following alternative language to the Sample Open Agency Service Contract ("Contract"). While AECOM believes it has captured the most significant issues, final review and negotiations may identify other terms and/or provisions that require modification to properly interface with the terms negotiated below, or otherwise. Accordingly, AECOM reserves the right, and looks forward working with the Department, to negotiate mutually acceptable terms and conditions to the Contract in the event of an award.

Contract #: 48400-194-DOT0000472

Federal Obligation: \$ _____

CDFA Code: N/A

State Obligation: \$ 0.00

O.C.G.A. Title #: 32

AGREEMENT BETWEEN:

The Georgia Department of Transportation's location identified in Paragraph 101A below, hereinafter referred to as the Department or GDOT, and;

Vendor: _____
Address: _____
City, State Zip: _____,

hereinafter referred to as the Contractor, enter into an agreement for the **Roadside Assistance and Maintenance Program - RAM Services**, effective the _____ day of _____, **2016** and which terminates on the _____ day of _____, **2019** unless terminated earlier under other provisions of this agreement.

PARAGRAPH 101 - DEPARTMENT AND CONTRACTOR CONTACT INFORMATION:

The mailing addresses, telephone numbers, and contact persons listed below for the Department and the Contractor may be changed during the term of this Agreement by written notification to the other party by the Department's division or office representatives or by the Contractor.

A. The Department's mailing address and telephone number for correspondence, reports, and other matters relative to this contract, except as otherwise indicated, are:

Department's Project Manager:

Department of Transportation
Office of Human Resources
Attn: _____
Address: _____
Phone: _____
Email: _____

Department's Contract Administrator:

Department of Transportation
Office of Operational Purchasing
Attn: _____
Address: _____
Phone: _____
Email: _____

- B. The Contractor's mailing address and telephone number for correspondence, reports, and other matters relative to this contract are:

Vendor: _____
Attn: _____
Address: _____
City, State Zip: _____
Phone: _____
Email: _____

- C. The Contractor's mailing address and telephone number for payments relative to this contract are:

Vendor: _____
Address: _____
City, State Zip: _____
Phone: _____
Email: _____

PARAGRAPH 102 - CONTRACTOR AND DEPARTMENT AGREEMENTS:

- A. The Contractor shall provide services, products and equipment required for services as described in the **Scope of Work contained in the eRFP, the terms of the Contract, and as further described in the Contractor's response to the eRFP. The Contractor shall perform the Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in the same location under comparable circumstances and as expeditiously as is consistent with professional skill and the orderly progress of the Program. The Contractor makes no warranty or guarantee, either express or implied, under this Contract, the eRFP or otherwise, in connection with the Contractor's Services.**
- B. The Department will have the right at any time to require the Contractor to put an immediate stop to any procedure, or the use of any equipment (chemical, material, etc., if applicable) considered by the Department to be hazardous (or toxic) to persons, buildings, or surfaces. The Contractor will utilize acceptable substitutes as quickly as possible.
- C. The Department has the right to require the Contractor to remove any employee from the premises temporarily or permanently when in the Departments sole opinion the employee is not suitable. The Contractor will remove this employee immediately and replace as quickly as possible.
- D. Contractor hereby ~~waives, releases, relinquishes, discharges and~~ agrees to indemnify, protect, save harmless, the State of Georgia (including the State Tort Claims Trust Fund and other self-insured funds) and all of its State entities, and all respective officers, employees, ~~and directors and agents~~ of and from any and all ~~claims, demands, liabilities, losses, costs or expenses claimed by third parties, for any loss~~ including but not limited to bodily injury (including death), personal injury, property damage, expenses, and ~~reasonable attorney's fees, caused by, growing out of, or otherwise happening in connection with this contract, to the proportionate extent such liabilities, losses, costs or expenses arise from the negligent or intentional wrongful conduct due to any act or omission (whether intentional or negligent)~~ on the part of the ~~C~~ contractor, its agents, employees or others working at the direction of ~~C~~ contractor, or on its behalf ~~in connection with the performance of the Services under this Contractor due to any breach of this contract by the Contractor, or due to the application or violation of any pertinent Federal, State or local law, rule or regulation by the contractor.~~ This indemnification applies whether: (a) the activities involve third parties ~~for whom the Contractor is legally responsible~~ or employees or agents of the ~~C~~ contractor or of the State entity; (b) the State is partially responsible for the situation giving rise to the claim; provided, however, this indemnification does not apply to the extent of the ~~sole negligence or intentional wrongful conduct~~ of the State of Georgia and its officers or employees ~~or other contractors.~~ This indemnification extends to the successors and assigns of the ~~C~~ contractor, and this indemnification survives the termination of the contract and the dissolution or, to the extent allowed by law, the bankruptcy of the ~~C~~ contractor. If and to the extent such damage or loss as covered by this indemnification is covered by the State Tort Claims Fund (the "Fund") established and maintained by the State of Georgia Department of Administrative Services (DOAS), the ~~C~~ contractor agrees to reimburse the Fund for such monies paid out by the Fund ~~to the proportionate extent such damage or loss arises from the negligent or intentional wrongful conduct of the Contractor.~~ To the full extent permitted by the Constitution and the laws of the State of Georgia and the terms of the Fund, the ~~C~~ contractor and its insurers waive any right of subrogation against the State of Georgia, its officers, employees and agents, the Fund and insurers participating thereunder, to the full extent of this indemnification.
- E. Contractor shall ~~provide the following kinds of insurance in the amount of coverage set forth below, to cover costs and liabilities on account of bodily injury, including death therefrom, and injury or destruction of property keep the Department harmless against any and all loss, cost, damage, claim, expense of liability whatsoever because of accident or injury to persons or property of others~~

occurring in connection with the performance of services under this Contract. The following Insurance Coverages are required and a Certificate of Insurance certifying this coverage must be received by the Department prior to any work being performed at the Owner's site:

1. Commercial General Liability Insurance Policy (CGL):

All contractors shall procure and maintain a primary Commercial General Liability Insurance Policy, including products and completed operations liability, and contractual liability coverage covering bodily injury, property damage liability and personal injury. The policy or policies shall name the officers, agents and employees of the State of Georgia as "additional insured", but only with respect to claims which are not covered by the Georgia Tort Claims Act O.C.G.A 50-21-20 et seq. (Supp 1992). The CGL policy must provide primary limits over any other liability policy provided by the State for any claims not covered by the Georgia Tort Claims Act. However, the CGL policy must indemnify the State for any claims covered by the Georgia Tort Claim Act. The policy or policies must be on an "occurrence"* basis unless waived by the State. The CGL policy shall include contractual liability coverage, which shall be endorsed to state that indemnity obligations specified in this Agreement is insured by the carrier. The CGL policy purchased by the contractor must be issued by a company authorized to conduct business in the State of Georgia or by a company acceptable to the State if the company is an alien insurer. The CGL policy must be endorsed to include separate aggregate limits per project.

Each Occurrence Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
General Aggregate Limit	\$3,000,000
Products/Completed Ops Aggregate Limit	\$2,000,000

2. Business Automobile Liability Insurance Policy (BAP):

Business Auto Policy to include but not be limited to liability coverage on any owned, non-owned and hired vehicle used by the contractor or the contractor's personnel in the performance of this contract. The Business Automobile Policy shall have a per occurrence limit of \$1,000,000. **Excess liability coverage may be used in combination with the base policy to obtain these limits.**

3. Workers' Compensation Insurance (Required for all Contracts – NO EXEMPTIONS):

To insure the statutory limits as established by the General Assembly of the State of Georgia (NOTE: A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the Contractor qualifies to pay its own workers' compensation claims.) The worker's compensation policy must include Coverage B - Employer's Liability limits of:

- Bodily Injury by Accident - \$500,000 each employee
- Bodily Injury by Disease - \$500,000 each employee
- Bodily Injury by Disease - \$500,000 policy limit

The contractor shall require all contractors and subcontractors performing work under this contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage.

4. Insurance Certificates and General Requirements:

The Contractor shall procure the insurance policies at the contractor's own expense and shall furnish the State Agency an insurance certificate listing the agency as the certificate holder. The insurance certificate must be submitted with this services contract.

The insurance certificate must document that the liability coverage purchased by the contractor includes contractual liability coverage to insure the indemnity agreement as stated. In addition, the insurance certificate must provide the following:

- a. Name, address, signature and telephone number of authorized agents.
- b. Name and address of insured.
- c. Name of Insurance Company.
- d. Description of coverage in standard terminology.
- e. Policy number, policy period and limits of liability.
- f. Name and address of State Agency as certificate holder.
- g. Name of Issuing Officer in the certificate name and address block
- h. Thirty (30) day notice of cancellation.
- i. Details of any special policy exclusions.

Excess liability coverage may be used in combination with the base policy to obtain these limits. The contractor shall require all contractors and subcontractors performing work under this contract to obtain an insurance certificate showing proof of Worker's Compensation Coverage.

F. Department will pay the Contractor for services as prescribed in **PARAGRAPH 108 - DEPARTMENT PAYMENT TO CONTRACTOR.**

PARAGRAPH 103 - DRUG-FREE WORKPLACE:

- A. If Contractor is an individual he or she hereby certifies that he or she will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Contract.
- B. If Contractor is an entity other than an individual, it hereby certifies that:
 - 1. A drug-free workplace will be provided for the Contractor's employees during the performance of this contract; and
 - 2. It will secure from any subcontractor hired to work in a drug-free workplace the following written certification: "As a part of the subcontracting agreement with (contractor's name, subcontractor's name) certifies to the contractor that a drug-free workplace will be provided for the subcontractors employees during the performance of this contract pursuant to Paragraph 7 of subsection B of Code Section 50-24-3.
- C. Contractor may be suspended, terminated, or debarred if it is determined that:
 - 1. The Contractor has made false certification hereinabove; or
 - 2. The Contractor has violated such certification by failure to carry out the requirements of Official Code of Georgia Section 50-24-

PARAGRAPH 104 - CONTRACT MODIFICATION OR ALTERATION:

- A. If during the period of this Contract the Department is impacted with new requirements due to changes in state or federal regulations or organizational changes, the Department reserves the right to renegotiate with Contractor if increase or decrease of services is affected. The circumstances and specific contract changes will be stated in writing by the Department Contract Administrator to the Contractor's Agent designated in PARAGRAPH 101B.
- B. If during the period of the Contract the Contractor makes a survey or otherwise prescribes modifications or improvements, he should recommend in writing the proposed modifications, if any, to the Department Contract Administrator designated in PARAGRAPH 101A.
- C. No changes, modifications or alterations of this Contract will be valid or effective unless made in writing and signed by both parties and affixed to this Contract as an amendment indicating appropriate information and properly executed.

PARAGRAPH 105 - TERMINATION PROVISIONS:

- A. This Contract may be terminated for any reason by either party upon 30 days prior written notice to the other party. This Contract may also be terminated immediately by the Department for non-performance of material terms and conditions of Contract through no fault of the Department.
- B. Notwithstanding any other provisions of this Contract, in the event that any of the fund sources of reimbursement for services or appropriation from the Georgia General Assembly of the State of Georgia no longer exists and in the event the sum of all obligations of the Department incurred under this agreement becomes unavailable, then this Contract shall immediately terminate without further obligation on the Department. The Department Procurement Officer designated in PARAGRAPH 101A shall give immediate written notice to the Contractor should this occur and Contract becomes terminated immediately.
 - 1. **Immediate Termination:** Pursuant to O.C.G.A. Section 50-5-64, this Contract will terminate immediately and absolutely if the State Entity determines that adequate funds are de-appropriated such that the State Entity cannot fulfill its obligations under the Contract, which determination is at the State Entity's sole discretion and shall be conclusive. Further, the State Entity may terminate the contract for any one or more of the following reasons effective immediately upon written without advance notice:
 - (i) In the event the Contractor is required to be certified or licensed as a condition precedent to providing the Services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
 - (ii) The State Entity reasonably determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
 - (iii) The Contractor fails to comply with confidentiality laws or provisions; and/or
 - (iv) The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.
 - 2. **Termination for Clause.** Subject to the requirements of Paragraph 105.B.3 of this Contract, the occurrence of any one or more of the following events through no fault of the State Entity shall constitute cause for the State Entity to declare the Contractor in default of its obligations under the Contract.
 - (i) The Contractor fails to deliver or has delivered nonconforming Services or substantially fails to perform, to the State Entity's reasonable satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

- (ii) The State Entity determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
- (iii) The Contractor fails to make substantial and timely progress toward performance of the Contract;
- (iv) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the State Entity reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- (v) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
- (vi) The Contractor has engaged in conduct that has or may reasonably expose the State Entity or the State to liability, as determined in the State Entity's sole discretion; or
- (vii) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State Entity, the State, or a third party.

3. Notice of Default. If there is a default event caused by the Contractor through no fault of the State Entity, the State Entity shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the State Entity's written notice to the Contractor. ~~If~~ if the breach or noncompliance is not remedied within the period of time specified in the written notice, the State Entity may:

- (i) Immediately terminate the Contract without additional written notice; and/or
- (ii) Procure substitute services from another source ~~and charge the difference between the Contract and the substitute contract to the defaulting Contractor;~~ and/or
- (iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

4. Termination Upon Notice. Following thirty (30) days' written notice, the State Entity may terminate the Contract for convenience in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for Services provided under the Contract to the State Entity up to and including the date of termination.

5. Termination Due to Change in Law. The State Entity shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:

- (i) The State Entity's authorization to operate is withdrawn or there is a material alteration in the programs administered by the State Entity; and/or
- (ii) The State Entity's duties are substantially modified.

6. Payment Limitation in Event of Termination. In the event of termination of the Contract for any reason by the State Entity, the State Entity shall pay only those amounts, if any, due and owing to the Contractor for the Services, products and equipment actually rendered and/or incurred up to the date specified in the notice of termination for which the State Entity is obligated to pay pursuant to the Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State Entity under the Contract in the event of termination. Unless provided otherwise under this Contract, ~~t~~he State shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract.

7. The Contractor's Termination Duties. Upon receipt of written notice of termination ~~or upon request of the State Entity~~, the Contractor shall:

- (i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the State Entity may require;
- (ii) Immediately cease using and return to the State Entity, any personal property or materials, whether tangible or intangible, provided by the State Entity to the Contractor;
- (iii) Comply with the State Entity's instructions for the timely transfer of an active files and work product produced by the Contractor under the Contract;
- (iv) Cooperate in good faith with the State Entity and its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor(s); and
- (v) Immediately return to the State Entity any payments made by the State Entity for Services that were not delivered or rendered by the Contractor.

PARAGRAPH 106 - DURATION OF CONTRACT:

- A. Contract Term. The Contract between the Department and the Contractor shall begin and end on the dates specified in PARAGRAPH # 101, unless terminated earlier in accordance with the applicable terms and conditions. Pursuant to O.C.G.A. Section 50-5-64, this Contract shall not be deemed to create a debt of the State for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.
- B. Contract Renewal. The Department shall have the option, in its sole discretion, to renew the Contract for two (2) one (1) year options so long as price, terms and conditions remain the same unless contract allows for an escalation clause. The renewal is granted by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term. Renewal will depend upon the best interests of the State, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Contract Renewal Form that must be evidenced in writing by both parties. The Department does not accept or acknowledge automatic renewals.
- C. Contract Extension. In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified ~~goods and~~ services, the Department may, with the written consent of Contractor, extend this Contract for such period as may be necessary to afford the Department a continuous supply of the identified ~~goods and~~ services.

PARAGRAPH 107 - COMPENSATION

- A. Firm Fixed Price: The Contractor will be paid for the ~~goods and~~ services ~~provided~~ pursuant to the Contract in accordance with the RFP **48400-DOT0000472** and final pricing documents as incorporated into the Open Agency Service Contract and the terms of the Contract. Unless clearly stated otherwise in the Contract, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, and customs duties.
- B. FUEL PRICE ADJUSTMENT
 - 1. The Department recognizes the instability of fuel prices and it is in the best interest of the Department and the ~~Contractor~~Vendor to establish an initial base fuel price and, if necessary, make periodic adjustments during the term of the Contract. The Department is, therefore, establishing a "Fuel Cost Adjustment" in this Contract that will have the following effects:
 - (i) When fuel prices increase, within the formula's parameters, then the ~~Contractor~~Vendor will be reimbursed for the increased costs.
 - (ii) When fuel prices decrease, within the formula's parameters, the reimbursement to the ~~Contractor~~Vendor will be lowered accordingly.
 - 2. Base Fuel Prices
 - (i) The base fuel price for this Contract is as follows:
 - a. Gasoline – \$2.25 per gallon.
 - b. Diesel Fuel – \$2.40 per gallon.
 - (ii) The base usage per vehicle/per hour for this Contract is:
 - a. Gasoline – 3 gallons per hour.
 - b. Diesel Fuel – 2 gallons per hour.
 - c. The base per vehicle/per hour usage may be recalculated by the Department at any time; however the decision to do so is solely the Department's.
 - 3. Bi-Annual Fuel Cost Review
 - (i) The Department shall permit price adjustments upwardly or downwardly based upon Federal Government's Official U.S. Energy Information Administration website (www.eia.gov/petroleum/gasdiesel/) most recent data for gasoline, use "Regular – Conventional Areas, Florida. For diesel, use "Diesel – all types, Lower Atlantic" The 6-month percentage change shall be calculated from the date of the request.
 - (ii) The Contractor may submit to the Department a written request to determine if there is a significant change (+/- 5%) from the base price of fuels.
 - (iii) The calculation will be done separately for Gasoline and Diesel Fuel
 - (iv) Method of Computation
 - a. The Department will average the fuel costs for that period using the most recent information at the web site listed above.

- b. The average price will be compared to the base price.
- c. If the average price is not 5% from the base price in either direction, there will be no change in the reimbursement rate.
- d. If the change is greater than 5% (+/-), then the Department will adjust the reimbursement rate to the closest full percent (%).
- e. The actual adjustment will be calculated by subtracting the base rate from the adjusted rate, and multiplying the result by the gallons of consumption per hour/per vehicle and multiplying that result by the total vehicle hours for the monthly (invoice period).

4. Example:

To calculate the adjustment amount: \$2.75 (average) per gallon minus \$2.25 (gasoline base cost) per gallon equals \$0.50 (difference) per gallon.

\$0.50 divided by \$2.25 equals 22% which is >5% than base so it qualifies for adjustment

\$0.50 times 3.0 (gallons per hour/per vehicle-gasoline) equals \$1.50 adjustment per hour

A sample invoice for a total of 4464 hours (six vehicles 24/7 for 31 days) times \$1.50 (adjustment per hour) = \$6,696 fuel adjustment for the month.

Calculations will be made for both Diesel and Gasoline powered vehicles.

5. Bid Price The Contractor bids a fee to provide described services in this Contract as follows:

6. Invoice/Payment. The Contractor shall be allowed to invoice the Department only after the services have been rendered and invoice accepted for payment. Receipt of the service does not constitute acceptance. Invoices are not to exceed the Contractor's pricing quoted in contract and referenced in **Annex C** unless a contract amendment has been fully executed to reflect a change in pricing. An invoice must contain proper Contractor's remit to address, description of services provided/goods received, correct invoice amount, contract number and the associated purchase order number issued. The Department shall pay all approved invoices in arrears and in accordance with applicable provisions of Georgia State law. Standard payment terms are net 30 days (N30) from the date of the invoice issued, after the services/goods are accepted.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the Department for any goods or services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract.

7. Delay of Payment Due to Contractor's Failure. If the Department in good faith determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Department shall notify the Contractor of the disputed services in writing and nevertheless pay any undisputed amounts to the Contractor within the time set forth in Paragraph 107.B.6 of this Contract ~~the Contractor shall not be entitled to any compensation under the Contract until such service or product is performed or delivered.~~ In this event, the Department may withhold that disputed portion of the Contractor's compensation which represents payment for services it has in good faith determined or products that were not performed or delivered. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the Department to incur actual costs, the Department may deduct the amount of such incurred actual costs from any amounts payable to Contractor. Subject to the requirements of Paragraphs 105.B.3 and 4 of this Contract, ~~t~~The Department's authority to deduct such incurred actual costs shall not in any way affect the Department's authority to terminate the Contract.

8. Set-Off Against Sums Owed by the Contractor. In the event that the Contractor owes the Department and/or the State any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the Department and/or the State may set off the sum owed to the Department and/or the State against any sum owed by the Department and/or the State to the Contractor in the Department's sole discretion.

PARAGRAPH 108 - COMPLIANCE WITH STATUTES:

The Contractor shall use reasonable care to comply with all laws, ordinances, rules, and regulations of any government entity pertaining to the supply of any items or services to the Department pursuant to this Contract.

PARAGRAPH 109 - APPLICABLE LAW:

This Contract shall be governed in all respects by the laws of the State of Georgia. In case of disputes arising out of this Contract or amendments hereto, it is agreed that this Contract be treated as if executed solely in Fulton County, Georgia.

PARAGRAPH 110 - TRADING WITH STATE EMPLOYEES:

This Contract does not and will not violate the provisions of the Official Code of Georgia Annotated Section 45-10-20 et. seq.

PARAGRAPH 111 - ADDITIONAL TERMS:

Neither the State nor any agency shall be bound by any terms and conditions included in any Contractor packaging, invoice, catalog, brochure, technical data sheet, or other document which attempts to impose any condition in variance with or in the addition to the terms and conditions contained herein.

Notwithstanding any other provision to the contrary in this Contract or otherwise, neither party shall be responsible for a delay in its respective performance under this Contract, other than a delay in payment for Services already performed, if such delay is caused by extraordinary weather conditions or other natural catastrophes, power outage, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, acts of governmental agencies or authorities, or other events beyond the reasonable control of the claiming party.

Whenever a party's approval, consent or cooperation is required hereunder, such approval, consent or cooperation shall be provided in a timely manner, within a reasonable time to facilitate the timely performance of the Services.

The Contractor shall not control or have charge of, and shall not be responsible for, the Department's, the Department's district forces, or the Department's contractor's construction or response means, methods, techniques, sequences, procedures of construction, health or safety programs, or precautions connected with the Program.

In no event shall either party, their parents, affiliates and subsidiaries or their respective directors, officers or employees be liable to the other for any indirect, incidental, special, consequential, or punitive damages whatsoever (including, without limitation, lost profits, loss of revenue, loss of use or interruption of business) arising out of or related to this Contract, even if advised of the possibility of such damages.

PARAGRAPH 112 - ASSIGNMENT AND DELEGATION:

This Contract or any performance required by it shall not be assigned or delegated without the express written consent of the Department of Transportation. Nothing in this Contract shall be construed to give any rights or benefits in this Contract to anyone other than the Department and the Contractor, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the Department and the Contractor, and not for the benefit of any other party.

PARAGRAPH 113 - GEORGIA PROCUREMENT MANUAL:

The provisions of the Georgia Procurement Manual (GPM) are incorporated herein by reference and made a part hereof just as if it had been fully set out herein. Provided, however, that in the event of a conflict between the terms and conditions contained therein and the terms and conditions of this Contract, the latter shall govern.

PARAGRAPH 114 - WAIVER:

The waiver by the Department or the Contractor of the breach of any provision contained in this Contract shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in the Contract. No such waiver or waivers serve to establish a course of performance between the parties contradictory to the terms hereof.

PARAGRAPH 115 - OTHER SERVICES:

The Contractor shall not perform services not listed on the Scope of Work attached hereto as a part of any order made pursuant to this Contract.

PARAGRAPH 116 - REQUEST FOR PROPOSAL AND AWARD:

The terms, conditions and scope of work, mandatory questions, mandatory score questions and other supporting documentation of the Request for Proposal had been fully set herein.

PARAGRAPH 117 - ANTI-TRUST ACTIONS:

For good cause and consideration for executing this Contract placing this order, Contractor acting herein by and through its duly authorized agent hereby conveys, sells, assigns, and transfers to the State of Georgia all rights, title and interest to and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Georgia relating to the particular goods or services purchased or acquired by the State of Georgia pursuant hereto.

PARAGRAPH 118 - INDEMNIFICATION:

1. ~~Contractor's Indemnification Obligation. The Contractor agrees to indemnify and hold harmless the State and State officers, employees, agents, and volunteers (collectively, "Indemnified Parties") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:~~
- ~~(i) Any breach of the Contract;~~
 - ~~(ii) Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor;~~
 - ~~(iii) Any failure of Services to comply with applicable specifications, warranties, or certifications under the Contract;~~
 - ~~(iv) The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the Services provided under the Contract;~~
 - ~~(v) Claims, demands, or lawsuits that, with respect to the goods (if any) or any parts thereof, allege product liability, strict product liability, or any variation thereof;~~
 - ~~(vi) The Contractor's performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized employed by the Contractor;~~
 - ~~(vii) Any failure by the Contractor to comply with the "Compliance with the Law" provision of the Contract;~~
 - ~~(viii) Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Georgia or the United States;~~
 - ~~(ix) Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or~~
 - ~~(x) Any failure by the Contractor to adhere to the confidentiality provisions of the Contract.~~

PARAGRAPH 119 - ENTIRE AGREEMENT:

This Contract, as executed and approved, shall constitute the entire agreement between the parties, and no change in or modification of this Contract shall be binding upon the State or any Agency unless the change or modification shall be in writing, consented to and approved by the Department.

PARAGRAPH 120 - CONFIDENTIAL INFORMATION:

- A. **Access to Confidential Data.** The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the Department to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the Department. If it is reasonably likely the Contractor will have access to the Department's confidential information, then:
1. The Contractor shall provide to the Department a written description of the Contractor's policies and procedures to safeguard confidential information;
 2. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
 3. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
 4. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.
- B. The private or confidential data shall remain the property of the Department at all times. Some Services performed for the Department may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.
- C. **No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Department, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the Department. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the Department.

- D. **Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Department and cooperate with the Department in any lawful effort to protect the confidential information.
- E. **Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information.
- F. **Survives Termination.** The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

PARAGRAPH 121 - ATTACHMENT LISTING:

Annex A	Scope of Work, Questions and Answers
Annex B	Contractor's Proposal Response and supporting documentation
Annex C	Cost Worksheet
Annex D	GA Security and Immigration Compliance Act Affidavit
Annex E	Tax Compliance Form

PARAGRAPH 122 - SIGNATURES:

This proposal shall become a valid Contract only when signed by the Contractor and subsequently signed by an authorized representative of the Department. Signatures on this Contract between the Contractor and the Department are affixed on the date indicated.

GEORGIA DEPARTMENT OF TRANSPORTATION

CONTRACTOR

Commissioner's Signature

Signature Contractor (Principal of Company)

Typed or Printed Name Above

Typed or Printed Name and Title Above

Attest For: Georgia Department of Transportation

For: _____
Name of Company

Treasurer

Date

Date

Contractor's Federal Employer Identification # or Social Security #: _____

