

- 2.1. **Project Management.** The Department shall identify a Project Manager who shall act as and be the Department's representative between the Department and the Consultant. The Consultant shall identify a Project Manager who shall act as and be the Consultant's representative between the Department and the Consultant. If replacements and/or additions are requested for the Consultant staff, the Consultant shall communicate the needed changes in writing to the Department. Persons selected by the Consultant for replacement or addition shall possess comparable qualifications to those consultants identified in the Consultant project proposal. If the proposed replacement or addition is not acceptable to the Department and the Consultant fails to provide an acceptable person, then the Consultant shall be considered in default and the Department shall have the right to terminate this Agreement without liability.

#### ARTICLE 4 - SCOPE OF WORK

- 4.1 **General.** Pursuant to the Act, the three Special Districts which voted to levy the special district transportation sales and use tax are: Central Savannah River Area; Heart of Georgia Altamaha; and River Valley. . The work to be performed by the Consultant under this Agreement shall encompass and include all detail work, services, materials, equipment, and supplies necessary to perform the Scope of Services as herein defined and necessary to accomplish the completed work for this Agreement. At all times the Consultant will comply with the Act; all applicable federal, Georgia and local laws; the TIA Manual; all Department procedures and policies as set forth in this Agreement; and the IGA.
- 4.2 The Consultant hereby acknowledges that the nature of the TIA Program requires that this Project be delivered under a specific, fixed budget. The Consultant must provide a design with a supporting construction cost estimate that is within the construction budget as specified in Exhibit C. If at any time the design results in a construction estimate that exceeds the specified construction budget, the Consultant shall, at no additional cost to the Department, adjust the design to bring the construction estimate within the specified construction budget.
- 4.3 The Scope of Services and projected level of effort required for this Project is detailed in Exhibit B, Scope of Services, attached hereto and by this reference made a part of this Agreement. Project deliverables and Project schedule are detailed in Exhibit D: Schedule of Deliverables and Project Schedule, attached hereto and by this reference made a part of this Agreement.

#### ARTICLE 5 - COMPENSATION AND PAYMENT

- 5.1 THE PARTIES ACKNOWLEDGE THAT THE TIA PROGRAM AND THIS AGREEMENT IS ONE HUNDRED PERCENT (100%) FUNDED WITH SPECIAL DISTRICT TRANSPORTATION SALES AND USE TAX PROCEEDS COLLECTED PURSUANT TO THE ACT AND THAT THE DEPARTMENT'S PAYMENT OBLIGATIONS RELATED TO THE TIA PROGRAM AND THIS AGREEMENT ARE STRICTLY LIMITED AS SET FORTH HEREIN. THE PARTIES FURTHER ACKNOWLEDGE THAT NO ENTITY OF THE STATE OF GEORGIA OTHER THAN THE DEPARTMENT HAS ANY OBLIGATIONS TO THE CONSULTANT RELATED TO THIS AGREEMENT.
- 5.2 THE OBLIGATION OF THE DEPARTMENT TO PAY OR REIMBURSE ANY INCURRED COST OR PAY ANY LUMP SUM COST IS EXPRESSLY LIMITED TO THE AMOUNT OF SPECIAL DISTRICT TRANSPORTATION SALES AND USE TAX PROCEEDS REMITTED TO THE DEPARTMENT BY GSFIC AND DESIGNATED BY THE DEPARTMENT FOR THE TIA PROGRAM AND SPECIFICALLY THIS AGREEMENT. THIS AGREEMENT DOES NOT OBLIGATE THE DEPARTMENT TO MAKE ANY PAYMENT TO THE CONSULTANT FROM ANY FUNDS OTHER THAN THOSE MADE AVAILABLE

TO THE DEPARTMENT FROM THE SPECIAL DISTRICT TRANSPORTATION SALES AND USE TAX PROCEEDS BY GSFIC AND DESIGNATED BY THE DEPARTMENT FOR THE TIA PROGRAM AND SPECIFICALLY THIS AGREEMENT. IN THE EVENT THE FUNDS MADE AVAILABLE TO THE DEPARTMENT FROM THE SPECIAL DISTRICT TRANSPORTATION SALES AND USE TAX PROCEEDS ARE INSUFFICIENT FOR THE TIA PROGRAM AND THIS AGREEMENT AS DESIGNATED BY THE DEPARTMENT, THE DEPARTMENT'S PAYMENT OBLIGATIONS SHALL NOT EXCEED THE AVAILABILITY OF SUCH SPECIAL DISTRICT TRANSPORTATION SALES AND USE TAX PROCEEDS AND THE DEPARTMENT SHALL HAVE THE RIGHT AT ITS SOLE DISCRETION TO TERMINATE THIS AGREEMENT IMMEDIATELY UPON NOTICE TO THE CONSULTANT WITHOUT FURTHER OBLIGATION OF THE DEPARTMENT TO THE EXTENT THAT THE OBLIGATIONS EXCEED THE AVAILABILITY OF SUCH THE SPECIAL DISTRICT TRANSPORTATION SALES AND USE TAX PROCEEDS FOR THE TIA PROGRAM AND THIS AGREEMENT AS DESIGNATED BY THE DEPARTMENT. THE DEPARTMENT'S CERTIFICATION AS TO THE AVAILABILITY OF THE SPECIAL DISTRICT TRANSPORTATION SALES AND USE TAX PROCEEDS AS DESIGNATED BY THE DEPARTMENT FOR THE TIA PROGRAM AND THIS AGREEMENT SHALL BE CONCLUSIVE.

5.3 In the event that special district transportation sales and use tax proceeds are insufficient to make payment, the Department shall issue a Stop Work Notice suspending the Consultant's performance obligations under this Agreement for a period not to exceed ninety (90) days (unless another suspension period is agreed to by the Department).

5.3.1 During or after the suspension period expires, if special district transportation sales and use tax proceeds as designated by the Department for the Project are available or anticipated to be available, as determined by the Department, the Parties will resume work under this Agreement or agree to a new suspension period.

5.3.2 After this suspension period expires, if special district transportation sales and use tax proceeds as designated by the Department for the Project are not available or anticipated to be available, as determined by the Department, the Department may elect to terminate this Agreement upon written notice to the other Party..

5.4 **Eligible Project Costs.** Any cost incurred by the Consultant must meet the definition of Eligible Project Costs in order to be reimbursable.

5.5 This is a Firm Fixed Price Agreement. The Parties agree that compensation and payment shall be made as follows:

5.6 **Compensation.** For full and complete compensation for all work, materials, and services furnished under the terms of this Agreement, the Consultant shall be paid a firm, fixed price amount as set forth in Exhibit C. The firm, fixed price amount shall be based on estimated staff hours, direct labor rates, direct expenses, an overhead rate, and sub-consultant costs. The firm, fixed price amount shall not be exceeded unless the Department determines that there is a substantial change in scope, character, or complexity of the service from those originally negotiated for the Agreement

5.7 **Payments.**

5.8.1 The Consultant shall be paid by the Department for completed work and services rendered under this Agreement as provided herein. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, and equipment necessary to complete the work specified in Exhibit B, SCOPE OF SERVICES. The Consultant shall conform to all applicable portions of 48 CFR Part 31. Payment to the Consultant will be made upon receipt and approval of invoices submitted as specified.

- 5.8.2 The Consultant shall be responsible for inputting all necessary invoice data for the Consultant and all sub-Consultants into the Department's electronic invoicing system as directed by the Department. The Consultant agrees to provide an accompanying project progress report in a format acceptable to the Department which will outline in written and graphic form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Payments shall be made based on the percentage of work completed and substantiated by progress reports. Such progress reports will be checked by the Department, and payment will be made in the proportional amount of the firm, fixed price based on the percent of work completed. Upon the basis of its review of such invoices and progress reports, the Department will make payment to the Consultant as the work progresses but not more often than once a month and subject to the terms and conditions set forth in this Article. 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. Payment will be made in the amount of sums earned less previous payments. Invoices and resulting payments to the Consultant shall correspond to the progress of work achieved for the Project. The Department 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.
- 5.8.3 Payments shall be made to the Consultant within thirty (30) calendar days of receipt of an approved, itemized invoice and all supporting documentation, so long as the Consultant is in compliance with the terms of the Agreement and subject to the terms and conditions set forth in this Article. Payment for any part of the work by the Department shall not constitute a waiver by the Department of any remedies of any type it may have against the Consultant for any breach of this Agreement by the Consultant, or for failure of the Consultant to perform work required of it by the Department and as set forth in the Agreement. Should the work under this Agreement be terminated by the Department, pursuant to the provisions of ARTICLE 9 – TERMINATION AND DEFAULT, the Consultant shall be paid based upon the percentage of work satisfactorily completed at the point of termination subject to the terms and conditions set forth in this Article.

5.8 **Final Payment.**

- 5.8.1 Upon completion, delivery and acceptance of all work contemplated under this Agreement, including the receipt of all plans, specifications, reports, studies, notes, electronic data, and other related documents which are required to be furnished by the Consultant, the Consultant shall submit only one final invoice statement for the balance of the earned compensation. At such time, payment of 100% of the amounts earned, less the total of all previous payments, shall be paid by the Department to the Consultant.
- 5.8.2 The Consultant agrees to cooperate with Department in conducting the necessary actions to close out the Project when all the conditions for doing so are complete. At the completion of the Project, Department shall send a Stop Work Notice to the Consultant. The Stop Work Notice states that the Project is complete as of a specified date, all deliverables have been received or met, and no further charges should be posted to the Project in the Consultant's job cost ledger. When the Consultant receives the Stop Work Notice, Consultant must submit to the Project Manager, a final invoice, marked "Final" necessary to close out the Project, including the compilation of accounting records and other related documents for a Project Post Audit. At the completion of the Post Audit, the Parties agree to enter into a

Project Completion Agreement to officially close out the Project and resolve any outstanding issues pertaining to the Agreement, including the reimbursement of overpayments. In the event no Post Audit is required, the Parties agree to enter into a Project Completion Agreement to officially close out the Project and resolve any outstanding issues pertaining to the Agreement.

5.8.3 The Consultant agrees that acceptance of this final payment for this Agreement shall be in full and final settlement of all claims arising against the Department for work done, materials furnished, costs incurred, or otherwise arising out of this Agreement and shall release the Department 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.

5.9 **Withheld Amounts.** Except for issues arising from contract indemnification provisions, the Department will have the right to retain out of any payment due the Consultant under this Agreement an amount sufficient to satisfy any amount due and owed the Department by the Consultant. The Department may withhold payment on any invoice in the event that the Consultant is in default under any provision of this Agreement as of the time of processing the invoice or as of the time payment is made on the invoice. This right to withhold will continue until such time as the default has been cured, and, upon cure, the Department will have the right to retain an amount equal to the damages suffered as a result of the default and the cost to cure the default.

#### ARTICLE 9 – TERMINATION AND DEFAULT

9.1 The Department shall have the right to terminate the Agreement for: unsatisfactory performance of services; for default by the Consultant; for convenience; or where there are insufficient special district transportation sales and use tax proceeds as determined by the Department in accordance with Article 5.2 herein.

9.1.1 **For Unsatisfactory Consultant Performance.** If the Department determines that the performance of the Consultant is not satisfactory, the Department may notify the Consultant of the deficiency with the requirement that the deficiency be corrected within a specified time; but not in excess of (10) business days. If, within ten (10) business days after such notice, the Consultant does not proceed in a satisfactory way to remedy the faults specified in said notification, the Agreement will be terminated in thirty (30) business days. The Consultant will be paid for the work satisfactorily performed as determined by the Department subject to and in accordance the provisions of Article 5.

Should the Department determine that the unsatisfactory performance is sufficiently serious that it creates a public safety hazard or that immediate harm to the Department right-of-way, the Department roadway facilities or other Department property may occur, the Department may provide notice either telephonically or e-mail to the Consultant that the Consultant shall immediately stop work and thereafter the Department may undertake any actions it deems necessary to cure the unsatisfactory performance, with reasonable expenses directly related to the cure to be reimbursed by Consultant.

9.1.2 **For Default by the Consultant.** The nonperformance by the Consultant of any material terms, covenant or condition of this Agreement shall constitute a default. If the services of the Consultant are terminated by the Department for default on the part of the Consultant, the amount to be paid shall be determined by the Department with consideration given to the actual costs incurred by the Consultant in performing the work to the date of termination, the amount of work originally

required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the Department at the time of termination, the cost to the Department of employing another firm to redo or complete the work required and the time which may be required to do so, and other factors which affect the value to the Department of the work performed at the time of termination.

9.1.3 ***For Convenience.*** If the Department requires termination of the Agreement for reasons other than unsatisfactory performance or default of the Consultant or insufficient special district transportation sales and use tax proceeds, the Department will notify the Consultant of such termination, with instructions as to the effective date of work stoppage or specify the state of work at which the Agreement is to be terminated. If the Agreement is terminated before performance is completed, the Consultant will be paid for work satisfactorily performed up to the effective date of work stoppage as identified by the Department.

***9.1.4 Insufficient Special District Transportation Sales and Use Tax Proceeds.***

9.1.4.1 If the Department determines that there are insufficient special district transportation sales and use tax proceeds remitted to the Department by GSFIC and designated by the Department for a Project on an Approved Investment List or for the Program in accordance with Section 5.2 herein, this Agreement may be terminated immediately by the Department in its sole discretion upon notice to the Consultant and without further obligation on the part of the Department. In such an event, the Consultant will be paid for all work performed through the dated of such termination subject to and in accordance the provisions of Article 5.

9.1.4.2 ***Suspension Period.*** If the Department directs the Consultant to stop and suspend work under this Agreement as the result of the lack of special district transportation sales and use tax proceeds remitted to the Department by GSFIC and designated by the Department for a Project on an Approved Investment List or for the Program, such suspension shall last for a maximum period of ninety (90) days. After this ninety (90) day Suspension Period, if special district transportation sales and use tax proceeds as designated by the Department for a Project on an Approved Investment List or for the Program are available or are anticipated to become available, as determined by the Department in its sole discretion, the Consultant will have the option to: (1) continue the work under the Agreement; (2) elect to terminate the Agreement; or (3) agree to a new suspension period as determined by the Department. During any suspension period, only actual costs for work performed at the direction of the Department will be recoverable, contingent upon the special district transportation sales and use tax proceeds as designated by the Department for such costs in the Department's sole discretion. Any relevant deadlines will be extended to reflect the length of the suspension period and any resulting delays. No damages for delay or consequential damages will be recoverable as a result of any suspension period.

9.2 The Department reserves the right to cancel and terminate this Agreement in the event that any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the Consultant.